

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 807/Del/2022
Asstt. Year: 2011-12

Raj Kumar Prop. M/s Raj Cotton & Oil Mills Kanina Road, Charkhi Dadri, Bhiwani, Haryana-127306 PAN AEGPK1974D	Vs.	DCIT, CC-1 Gurgaon.
(Appellant)		(Respondent)

Assessee by:	Shri Gautam Jain, Adv. Shri Lalit Mohan, CA
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	01/02/2023
Date of pronouncement	09/02/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 18.02.2022 of the Ld. Commissioner of Income Tax (Appeals) – 3, Gurgaon (“CIT(A)”) pertaining to Assessment Year (“AY”) 2011-12.

2. The assessee has raised the following grounds of appeal:-

“1. That the learned Commissioner of Income Tax (Appeals)-3, Gurgaon has further erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without

appreciating that the same were without jurisdiction and hence deserved to be quashed as such.

- 1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.*
- 1.2 That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.*
- 2. That since no notice under section 143(2) of the Act was issued and served on the appellant subsequent to filing of return in response to notice under section 148 of the Act and prior to framing an order of assessment under section 147/143(3) of the Act, order of assessment so framed is without jurisdiction and deserves to be quashed as such.*
- 2.1 That the finding that "further from the assessment record it is found that the appellant has not furnished return in response to notice u/s 148 of the Act, therefore the AO was justified in not issuing u/s 143(2) of the Act" is factually incorrect, legally misconceived and untenable.*
- 3. That the learned Commissioner of Income Tax (Appeals) has further erred both on facts and in law in confirming an addition of Rs. 10,48,420/- out of addition of Rs. 1,12,83,338/- representing alleged profit on alleged sales of Rs. 2,62,10,040/- with M/s Sh. Shyam Trading Company, a paper concern of Sh. Vipin Garg*
- 3.1 That while confirming the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the factual substratum of the case, statutory provisions of law and as such, addition so confirmed is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.*
- 4. That the learned Commissioner of Income Tax (Appeals) has also erred both on facts and in law in upholding the rejection of books of accounts u/s 145(3) of the Act and computing the income in the manner provided u/s 144 of the Act."*

3. Brief facts are that the assessee is an individual engaged in the business of crushing of sarso and binola in the name of M/s. Rajcotton & Oil Mills. He filed his return for AY 2011-12 on 10.09.2011 declaring income of Rs. 9,31,990/-. His case was re-opened under section 147 of the Income Tax Act, 1961 (**the "Act"**) by issue of notice under section 148 of the Act on 29.03.2018. Show cause notice was issued on 14.12.2018 to which the assessee filed replies. During the re-assessment proceedings, the Ld. Assessing Officer (**"AO"**) found from the ledger account of Shri Shyam Trading Co. that the assessee booked sales of Rs. 2,62,10,040/- from the said concern. Enquiries made by the Directorate of Income Tax, Gurgaon revealed that Shri Shyam Trading Co. is a concern of Shri Vipin Garg who is engaged in the business of providing bogus accommodation entries and money laundering activities. The Ld. AO vide ordersheet entry dated 24.12.2017 required the assessee to show cause why his books be not rejected under section 145(3) of the Act. The assessee replied vide letter dated 25.12.2018 which has been reproduced by the Ld. AO in para 4.5 of his order. The explanation of the assessee was not acceptable to the Ld. AO who rejected the assessee's books under section 145(3) of the Act and applied profit rate of 8% on sales/gross receipts of Rs. 14,10,41,735/- which gave profit of Rs. 1,12,83,338/- and completed the assessment on total income of Rs. 1,12,83,338/- on 28.12.2018 under section 143(3) r.w.s. 147 of the Act.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). During appellate proceedings, the assessee challenged the validity of proceedings initiated under section 147 of the Act and notice under section 148 as also the impugned addition on merits. Written submission running into 86 pages (approx.) was filed before the Ld. CIT(A) who held that re-assessment proceedings initiated by the Ld. AO was in accordance with the provisions of the Act, observing inter alia at page 94 of his order that the assessee has not furnished return in response to notice under section 148 of the Act, therefore, the Ld. AO was justified in not issuing notice under section 143(2)

of the Act. Addition of Rs. 1,12,83,338/- was, however not sustained and it was restricted to Rs. 10,48,420/- only.

5. Still dissatisfied, the assessee is in appeal before the Tribunal.

6. The Ld. AR submitted that the assessee has taken jurisdictional legal ground which needs to be adjudicated upon. He invited our attention to page 94 of the appellate order wherein the Ld. CIT(A) has observed that the return of income was not filed by the assessee in response to notice under section 148 of the Act and therefore, he dismissed the assessee's plea on jurisdiction. The Ld. AR contended that the above observation of the Ld. CIT(A) is contrary to the facts on record. He referred to the assessee's letter dated 10.12.2018 containing objection to reopening of the case under section 147/148 of the Act (copy at pages 29-37 of the Paper Book) wherein at page 37 the assessee reiterated that he has filed letter dated 27.11.2018 stating that the return filed by the assessee under section 139(1) of the Act be treated as return in response to notice under section 148 of the Act. The Ld. AR also referred to the copy of reply to notice dated 29.03.2018 under section 148 of the Act placed at page 27-28 of the Paper Book wherein the assessee stated that he has already filed the reply to notice under section 148 of the Act on 28.04.2018 and that he does not want to amend his return. All this has escaped the attention of the Ld. CIT(A). The Ld. AR placed on record copy of order dated 14.11.2022 passed by the Ld. AO to give effect to the appellate order dated 18.02.2022 of the Ld. CIT(A) wherein the Ld. AO in para 3 has mentioned the returned income of Rs. 9,31,990/- while determining the assessed income of the assessee at Rs. 19,80,410/-. He therefore submitted that it is clearly evident that the impugned reassessment proceedings were void ab-initio as the mandatory statutory notice under section 143(2) of the Act was not issued by the Ld. AO subsequent to filing of return by the assessee in response to notice under section 148 of the Act.

7. The Ld. DR relied on the order of the Ld. CIT(A).

8. We have given our careful thought to the rival submission and perused the records. We find substance in the contentions of the Ld. AR. The Ld. CIT(A) has himself noted in para 4.1 at page 90 of the appellate order while dealing with ground No. 1-3 of the assessee that notice under section 148 was issued on 29.03.2018, in response to which the assessee vide letter dated 12.12.2018 and 21.12.2018 furnished copy of ITR already furnished under section 139(1). Earlier a show cause was issued by the Ld. AO on 04.12.2018 to furnish the return in response to notice under section 148 of the Act. Despite this, the Ld. CIT(A) proceeded with the incorrect premise that the return was not filed in response to notice under section 148 of the Act.

9. Needless to say that it is now well settled that the assessee need not file fresh return on receipt of notice under section 148 of the Act if he feels that the earlier return should be treated for the purpose of re-assessment, he may inform the Ld. AO of his decision to treat his previous return as the return filed in response to the notice and then the previous return shall be treated as the fresh return submitted in response to the notice. Reference may be made to the decision of the Hon'ble Rajasthan High Court in Tiwari Kanhaya Lal vs. CIT (1985) 154 ITR 109 (Raj.) and the decision of Hon'ble Calcutta High Court in Iqbal Singh Atwal vs. CIT(1984) 147 ITR 599 (Cal.).

10. On the above facts and in the circumstances of the assessee's case in the interest of justice and fair play, we deem it fit to restore the matter back to the file of the Ld. CIT(A) who may call for the assessment record from the Ld. AO to verify the contention of the assessee and decide afresh the issue of jurisdictional grounds taken before him after allowing reasonable opportunity of hearing to the assessee as also to the Ld. AO. We order accordingly.

11. We refrain from adjudicating the ground relating to merit of the impugned addition retained by the Ld. CIT(A) as the Ld. AR did not argue before us on the issue.

12. In the result, the appeal of the assessee is partly allowed with direction given in para 10 above.

Order pronounced in the open court on 9th February, 2023.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Dated: 09/02/2023

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	