

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER,  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.9084/Del/2019  
Assessment Year: 2011-12

B.R. Goel & Sons (HUF) 1228, Kaccha Bagh, Chandani Chowk, Delhi 110006 PIN AADHB5670C	vs.	ITO, Ward 47(4), Drum Shape Building, I.P Extension, New Delhi 110002
(Appellant)		(Respondent)

For Assessee:	Shri C.S Anand, Advocate
For Revenue :	Shri Kanv Bali, Sr.DR

Date of Hearing :	06.02.2022
Date of Pronouncement :	21.02.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal filed by the assessee is directed against the order dated 12.09.2019 of the Ld. CIT(A), New Delhi, relating to Assessment Year 2011-12.

2. The ground of appeal raised by the assessee read as under:-

1. That the initiation of proceedings u/s 147 by the Id AO while mentioning that the provision of section 147(a) is applicable, is liable to be quashed because such provision stood substituted by the Direct Tax Laws (Amendment ) Act, 1987 wef 01.04.1989.

2. That the assumption of jurisdiction u/s 147 is illegal, in as much as the basic foundation of proceedings initiated by the Id. AO u/s 147 for the A.Y. 2011-12 viz. " the assessee has not filed its return of income for A.Y.2011-12", is faulty.

3. That the incorrect factual finding that prior to receiving the notice dt.31.03.2018 u/s 148 the assessee had not filed its IT for A.Y. 2011-12, had resulted into miscarriage of justice .

4. That the Id CIT(A) has erred in not quashing the initiation of proceedings u/s 147 by the A.O.

5. That the proceedings initiated us 147 are liable to be quashed because at the time of initiating proceedings us 147, the Id. AO was not sure as to whether the cash reportedly deposited in the bank account of the assessee maintained with Standard Chartered Bank, was un-accounted or not, and also not sure as to whether any income pertaining to A.Y. 2011-12 had escaped assessment or not.

6. That the proceedings initiated us 147 are liable to be quashed because the sanctioning authority viz. the Id Pr. CIT Delhi-16 New Delhi had granted sanction to the Id. AO to issue notice us 148 for A.Y. 2011-12 to the assessee, in a mechanical manner, without making any verification at his end.

7. That on the facts of the case and in law, the addition of Rs. 1,09,49,000/-, which was made by the Id. AO u/s 68 and which was upheld by the Id CIT(A), is liable to be deleted because the sources of entire cash deposited in the bank

*accounts was fully explainable with the help of assessee's own books of account, bank statements etc.*

8. *That the Id CIT(A) has failed to appreciate that without pointing out any discrepancy in the cash book, the Id AO had doubted the veracity of the transactions relating to cash deposits made during the year.*

9. *That the Id CIT(A) has failed to appreciate that without rejecting the cash book, making /upholding the addition on a/c of transactions relating to deposit of cash in the regular bank a/c duly recorded in the books of a/c ) is not justified.*

10. *That the Id CIT(A) has erred in getting herself much influenced with the representation made by the Id AO vide his application for admission of additional evidences .*

11. *That the Id CIT(A) has erred in admitting the Id AO's application for admission of additional evidences, particularly when copies of the same were not provided to the assessee.*

### **Ground No. 1 to 6**

3. Apropos ground 1 to 6 of assessee the learned counsel submitted that from the copy of the reasons recorded by the AO for initiating proceedings u/s. 147 of Income Tax 1961 (for short 'the Act'), available at page no. 1 to 5 of assessee paper book, from column 8 at page no. 1 it is discernable that the Assessing Officer proceeded to initiate proceedings on the assumption that the assessee has not filed any return of income for relevant A.Y. 2011-

12. The learned AR further drew our attentions towards page no. 2

that is reasons para 2 and 7 and submitted that the Assessing Officer, in the reasons clearly stated that the assessee has not filed its return of income for A.Y. 2011-12 even after sufficient opportunity for filing the same. The learned AR further pointed out that despite the fact that the assessee filed return of income for A.Y. 2011-12 on 02.07.2012 and also paid due taxes etc. thereon then the prime basis taken by the Assessing Officer for initiation of reassessment proceedings u/s. 147 of the Act is incorrect and invalid. Therefore in view of various judgments of Hon'ble High Courts and orders of the coordinate Benches of the Tribunal especially Hon'ble jurisdictional High Court of Delhi in the case of **PCIT vs. RMG Polyvinyl (I) Ltd. reported in 396 ITR 5 (Del)**, when the required conditions for initiation of reassessment proceedings are not satisfied then the reassessment order has to be held as invalid.

4. The learned counsel has also placed reliance on the order of ITAT Delhi Bench dated 11.06.2020 in **ITA 7437/Del/2018 for A.Y. 2009-10 in the case of Omvir Singh vs. ITO** and submitted that under identical facts and circumstances the Tribunal by following

the order of Hon'ble jurisdictional High Court of Delhi in the case of RMG Polyvinyl (I) Ltd. (supra) held that when the assessee has filed return of income for relevant A.Y. 2011-12 then the initiation of proceedings u/s. 147 of the Act and issuance of notice u/s. 148 of the Act has to be held that the Assessing Officer has invoked said provisions by wrongly assumed and jurisdiction therefore the entire reassessment proceedings and consequent order was quashed.

5. Replying to the above the Ld. Senior DR supporting the action of the AO, however he could not controvert that the assessee for A.Y. 2011-12 had filed its return of income on 02.07.20212 copy of which is available at pages no. 6 to 13 of assessee's paper book.

6. In the case of Shri Omvir Singh vs. ITO (supra) the Tribunal held as follows:- para 9 to 11

*9. We have given thoughtful consideration to the orders of the authorities below and have gone through the evidences brought on record in the form of a paper book. The undisputed fact is that in the proforma for recording reasons for initiating proceedings u/s 148 of the Act under Item No. 8A, the question is "Whether any voluntary return had been filed" and the answer is mentioned as "No". Whereas Exhibit Nos. 6 and 7*

show that the return of income was filed with Ward 2(1), Ghaziabad on 30.03.2010 and notice u/s 148 is dated 03.02.2016.

10. This clearly shows that the Assessing Officer issued notice mechanically without applying his mind. Such action of the Assessing Officer did not find any favour with the Hon'ble High Court of Delhi in the case of RMG Polyvinyl [I] Ltd 396 ITR 5. The relevant facts of that case are as under:

“4. Notice under Section 147 of the Act was issued by the AO to the Assessee on 25th March, 2011. The following reasons for the re-opening were furnished to the Assessee for reopening the assessment:

11. Reasons for the belief Information has been received from the that Information has income has escaped Investigation Wing of been received from the Income-tax assessment. Department income has escaped that M/s Pine View Construction & Traders Investigation Wing of Pvt. Ltd. is a beneficiary of accommodation the Income-tax entries received from certain established assessment entry operators identified by the Investigation Wing during the period relevant to A. Y 2004-05.

A comprehensive investigation was carried out by the Investigation Wing for identification of entry operators engaged in the business of money laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a detailed report has been forwarded.

In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the transaction mentioned in the enclosed Annexure-'A' of Rs. 1,56,00,000.

The accommodation entry provider; have given accommodation entries in the grab of share application

*money/expenses/gift/purchase of shares etc. They have worked for commission.*

*The assessee is a company incorporated on 11.09.1998. It is noticed that there is no return of come is available in the AST database of Income-tax Department.*

*Therefore. it is clear that the assessee has not filed return of income for the A. Y. 2004-05 and consequently has not offered any income for taxation. Sources of the transactions are not explained. I, therefore, have reason to believe that on account failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the extent of accommodation entry of Rs. 1,56,00,000 has escaped assessment within the meaning of section 147 of I.T. Act. 1961. To bring to tax the income which has escaped assessment, I proposed to issue notice u/s. 148 of the I.T. Act.*

*1961.*

*Since, four years has expired from the end of the relevant assessment year, and no scrutiny assessment was completed under Section 143(3) in this case for the said assessment year, the reasons recorded above for the purpose of reopening of assessment is put up kind satisfaction of Addl. Commissioner of Income Tax, Range-14, New Delhi in terms of the proviso of Section 151(2) of the I.T. Act, 1961.*

*5. As it transpired subsequently there were at least two glaring errors in the above reasons. The first error was that the A.O. proceeded on the basis that "no return of income is available in the AST database of Income-tax Department. Therefore, it is clear that the assessee has not filed return of income for the A. Y. 2004-05 and consequently has not offered any income for taxation." In the assessment order dated 30th December, 2011 passed consequent upon the reopening of the assessment, the very first line states that*

*"the Assessee had filed return declaring income of Rs.4,38,958 on 31/10/2004 which was processed under Section 143(1) of the Act on 04.01.2005."*

6. *The second glaring error in the reasons was that the total of the accommodation entries was set out as Rs.1.56 crore. In the same assessment order dated 30th December 2011 in para 2.3 it is stated as under:*

*"2.3 It is pertinent to mention here that in the reasons recorded there was some clerical error as certain single transactions were appearing in multiple and this resulted in working of the escaped income to the extent of Rs.1,56,00,000/-. However, the same has now been considered and stands corrected for the purposes of completion of proceedings."*

7. *In para 3.1 of the above assessment order, the AO has set out the information received from the Investigation Wing regarding the alleged bogus accommodation entries pertaining to 16 entities which sum in the aggregate works out to Rs. 78 lakhs.*

8. *Mr. Ruchir Bhatia, learned Senior Standing Counsel for the*

*Revenue, relied on the decisions in Income-Tax Officer v. Selected Dalurband Coal Co. Pvt. Ltd. (1996) 217 ITR 597 and ITO v. Purushottam Das Bangur (1997) 224 ITR 362 to urge that at the stage of reopening of the assessment, the AO is not expected to undertake any detailed inquiry; it was sufficient if on the basis of the information received he was prima facie satisfied that a case was made out for reopening the assessment as income had escaped assessment.*

9. *However, in neither of the above cases are the facts similar to those in the present case. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the*

*stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs.78 lakh and not Rs.1.56 crore would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.*

-----

-----

*13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.”*

*11. As the facts of the case in hand are identical to the facts of the case considered by the Hon'ble High Court of Delhi [supra], we are of the considered opinion that the Assessing Officer has wrongly assumed jurisdiction and accordingly, notice u/s 148 of the Act is hereby quashed thereby quashing the assessment order.*

7. As the facts and circumstances of the present case are identical to the facts of the case in the case of RMG Polyvinyl (I) Ltd. (supra) and Shri Omvir Singh vs. ITO (supra) therefore we are inclined to hold that the Assessing Officer initiating reassessment

proceedings mainly on the incorrect and wrong basis that the assessee has not filed its return of income for A.Y. 2011-12 and thus the Assessing Officer did not assume valid jurisdiction to initiate reassessment proceedings u/s. 147 of the Act and to pass impugned reassessment order dated 27.12.2018 u/s. 143(3) r.w.s. 147 of the Act. Therefore the same deserve to be quashed solemnly on this count and we hold so. Accordingly ground nos. 1 to 6 of assessee are allowed.

**Ground nos. 7 to 11 of Assessee**

8. Apropos ground nos. 7 to 11 the learned counsel submitted that from the copy of the assessment order for A.Y. 2007-08 para 2 it is clear that the AO himself noted that the assessee is engaged in the business of Exchange of Torn/Soiled/Mutilated Indian Currency Notes into New/Fresh and vice-versa on discount/commission basis. The learned counsel further submitted that the assessee during the course of reassessment proceedings clarified to AO that torn currency notes were deposited with normal currency notes while providing date wise details of cash withdrawn and cash deposited in the bank account. The learned counsel

further submitted that the assessee used to withdraw cash out of its bank account and used to deposit the cash in its bank accounts from time to time and the cash transactions were duly recorded in the cash book available at page no. 14 to 39 of assessee's paper book. The learned counsel further pointed out that at no point of time during FY 2010-11 there was any negative cash balance and the opening cash in hand/stock was of Rs. 68,99,594/- which was reflected in the balance sheet as on 31.03.2010 and brought as opening balance on 01.04.2010. The learned counsel further explained that the closing cash in hand/stock was Rs. 1,58,45,705/- which amount was reflected in the balance sheet on 31.03.2011 as cash in hand/stock. The learned counsel further pointed out that the AO has made addition of Rs. 1,09,49,000/- without any basis which was the amount of cash deposited to the bank accounts of the assessee with Axis Bank and Standard Chartered Bank. The learned counsel further submitted that the Assessing Officer has deliberately ignored a very relevant fact that the assessee withdrawn the assessee has withdrawn of Rs. 1,99,30,000/- from said two bank accounts which is very higher

than the total amount deposited by the assessee to the said bank accounts. The learned counsel submitted that when the assessee is in the business of Exchange of Torn/Soiled/Mutilated Indian Currency Notes into New/Fresh and vice-versa on discount/commission basis then it is obvious that the assessee would deposit cash/notes received from clients and would also simultaneously withdraw cash/notes from the bank accounts for the purpose of returning the same to the customer. Therefore there was no valid reason for the AO to make addition u/s. 68 of the Act of entire amount of cash deposited to the bank accounts of the assessee. The learned counsel also place reliance on the judgment Hon'ble jurisdictional High Court of Delhi in the case of **Sona Electric Co. vs. Commissioner of Income Tax (152 ITR 507)** and order of ITAT Delhi in the case of **ITO vs. Mrs. Deepali Sehgal (ITA No. 5660/Del/2012)** order dated 05.09.2014 and **Smt. Parminder Kaur Matharoo vs. ITO (ITA No. 840/Del/2021)** order dated 15.11.2022 and submitted that addition made by the AO and upheld the Ld. CIT(A) may kindly be set aside and deleted.

9. Replying to the above the learned Senior DR strongly supported the orders of the authorities below and submitted that the Assessing Officer after considering the cash book of assessee rightly held that the assessee could not satisfy about the source of cash deposited to the bank accounts therefore he has right in making addition in the hands of assessee u/s. 68 of the Act.

10. On careful consideration of rival submission first of all in the assessment order for A.Y. 2007-08 the AO himself noted that the assessee is in the business of Exchange of Torn/Soiled/Mutilated Indian Currency Notes into New/Fresh and vice-versa on discount/commission basis.

11. From the submissions of the assessee and facts noted by the authorities below it is clearly discernable that the Assessing Officer made addition of Rs. 1,09,49,000/- which was the total amount of cash deposited to the two bank accounts of the assessee. The learned Senior DR could not controvert that the assessee also withdrew Rs. 1,99,30,000/- from the same bank accounts during FY 2010-11. When the assessee is in the business of exchange of

old Torn/Soiled/Mutilated currency noted then the modus operandi of business would be the same as stated by the learned counsel of the assessee that is the assessee has to deposit old Torn/Soiled/Mutilated notes to the bank account and he is required to withdraw amounts from the bank account for the purpose of giving the same in exchange to its customer and clients. Therefore we declined to approve basis taken by the AO for making addition of entire cash deposited to the bank accounts of the assessee and ignoring the high amount of cash withdrawn by the assessee for the purpose of its business. Therefore addition made by the AO and upheld by the Ld. CIT(A) has no legs to stand. Our above noted conclusion also gets strong support from the judgement of the Hon'ble Delhi High Court in the case of Sona Electric Co. Vs. CIT (supra) and orders of ITAT Delhi Bench in the case of ITO vs. Mrs. Deepali Sehgal and Smt. Parminder Kaur Matharoo vs. ITO (supra) to hold that the addition made by the AO u/s 68 of the Act is not sustainable. Therefore we direct the AO to delete the same. Accordingly grounds no. 7 to 11 of assessee on merits are also allowed.

12. In the result appeal of assessee is allowed.

Order pronounced in the open court on 21.02.2023.

Sd/-

Sd/-

(B.R.R. KUMAR)  
ACCOUNTANT MEMBER

(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 21<sup>st</sup> February, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi