

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'D', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 902/Del/2021: Asstt. Year: 2012-13

Ekta Adnani, 210, Tagore Park, Delhi-9, Delhi	Vs.	ACIT, Circle-1(1)(1), International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AOCPA9532M		

**Assessee by : Sh. Sahil Gupta, CA
Revenue by : Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 07.03.2023	Date of Pronouncement: 10.03.2023
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:-

The present appeal has been filed by the assessee against the order of the Id CIT(A)-42, Delhi dated 24.12.2022 for Assessment Year 2012-13.

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

(i) Ground No. 1:

a) *That on 09.07.2013 a notice from the office of Income Tax Officer, Ward 26(4), New Delhi was received with subject as "Non filling of Income tax Returns for Assessment Year 2012- 13", wherein explanation was required for the issue amount of Rs. 21,00,000/- (copy of notice attached as annexure 2), the said notice was replied with the submission that the appellant is an NRI and the proceeds in the accounts are deposited by her from her tax resident country that is Dubai, the purpose of this transfer was for investment in India (detailed reply attached as annexure.?).*

b) *That the learned AO has recorded the reasons for notice u/s 148 to investigate the credit of Rs. 21,00,000/-. The reasons recorded is the primary evidence and backbone of the entire reassessment proceeding u/s 147, meaning thereby reasons in support of the section 148 notice*

is the very issue in respect of which the AO had raised assessment a query during the proceedings and if appellant had responded justifying its stand, then non-rejection of the explanation in the Assessment Order amounts to the AO accepting the view of the appellant i.e. the AO should justify the reasons for his non acceptance of the justification and if the same is not done expressly then the order is liable to withdrawn. The same ground was raised in the appellant proceeding before CIT-A, and CIT-A has opined that this ground can only be taken if the issue under consideration is investigated in prior assessment, here during the appellate proceedings before CIT, the reliance was placed in ACIT vs. Marico Ltd., 117 Taxmann.com 244 (SC) (Copy of Order attached as annexure!), in the said judgment it was concluded that, if appellant has explained the factual position on any issue and AO has not rejected the same in the assessment order, then it can be concluded that the issue has been accepted by the department, the intention of court is, when a factual position is already explained by appellant, then it would prejudicial if the same issue is raised again and again, this is to avoid unnecessary litigation.

c) That in the current situation an issue was raised by the department on 09/07/2013, the same was duly replied by the Appellant, thereafter order u/s 143(1) was passed, now it is clear that the issue under consideration was already duly explained in compliance of notice dated 09/07/2013, though in ACIT VS. Marico Ltd., 117 Taxmann.com 244 (SC) issue was explained during course of assessment proceeding, but that stage was an initial stage wherein question was raised, likewise in the case of appellant, she was enquired for the amount and upon accepting the same order u/s 143(1) was passed without any sort of additions, therefore the said stand of appellant was accepted, meaning thereby holding the principal raised in ACIT vs. Marico Ltd., 117 Taxmann.com 244 (SC) the Re- assessment proceedings are liable to be quashed, on the principle of change of opinion.

(ii) Ground No. 2:

That the section under which assessment order is passed by learned AO is bad in the eyes of law and the order should not have any validity, as the charging section. is not applicable on the appellant, as the head under which the additions are made is "Income from House Property", here to the surprise no reference is made by the learned AO regarding the conclusion based on which it is concluded that appellant is having any house property, therefore not only the charging section is wrong rather the charging head of income is also wrong, the same issue was raised before CIT-A, however learned CIT-A has over looked the fact that the main ground raised in appeal was that the additions is done the chapter of "House property" and nothing material on record is placed by learned AO regarding the reason drawn in making additions under this chapter viz a viz not even the address of property is

mentioned which could prove the efforts done in assessment proceedings and substantiate the additions.

(iii) Ground No. 3:

a) That it is a settled principle that, when evidence is relied by an authority and in a backdrop a conclusion is drawn. against any Appellant, then before passing the final order a reasonable opportunity must be given to the appellant to explain his own version of any evidence against him, here in the present case though a SCN ("SCN") was issued however:

firstly * the incomplete, requiring SCN as issued was to solely furnish it appellant Income Tax Return (though the same was furnished earlier as per annexure 3.) and as per the principal laid down in *Maruti Suzuki India Ltd. v. Addl. CIT, TPO [2010] 192 Taxman 317* (Copy of Order attached as annexure), a SCN should contain a detailed contention of the authority who is proposing any adverse claim over the appellant, here in the present instance the issued notice was solely eyeing for the Income Tax Return in order to process the case further and no opinion as framed in the backdrop was intimated to the Appellant.

Secondly in the present case initially a SCN was issued on 07/11/2019, then compliance of the said notice was done by the appellant on 14/11/2019, then again on 15/11/2019 notice u/s 142(1) was issued and as per the principal laid in *Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust v. Assistant MANU/ID/5153/2007* (Copy of Order attached as annexure??), if any subsequent compliance in the assessment proceedings was considered as good compliance (like in this case a fresh requirements by learned AO was made) then it can be concluded that the defaults committed earlier were ignored and the SCN stands completely answered as once a fresh notice u/s 142(1) is issued, then it can be presumed that AO is in complete satisfaction with the reply.

Therefore, in light of above it can be stated that in the present case no SCN is issued as, firstly the SCN was incomplete, secondly the learned AO after receiving the reply of SCN had further issued notice u/s 142 (1) to Appellant, even the reasons recorded for the notice u/s 148 were provided after the compliance of SCN, therefore the SCN issued on 07/11/2019 can be termed null and void.

b) That principles of natural justice should be applied by the income-tax authorities at assessment stage, as also in appellate proceedings. The authorities should not deviate from them in exercise of their quasi-

judicial or administrative functions. If there is flagrant violation of natural justice, the order can be held null and void.

c) That learned CIT-A has observed that appellant was fully aware about the reasons of assessment proceedings, therefore not elaborating the issue in SCN is not required and reliance is placed in the case of Smt. Reena Jain v. CIT [2007] 160 TAXMAN 173 (ALL.) (Copy of Order attached as annexure), where the appellant had full knowledge of entire matter, it could not be said that, non-supply of full reasons in place of gist of reasons had prejudiced them, here the learned CIT- A has over looked the fact or is having preconceived notion that SCN contains the detail of reasons recorded only, rather it should be a concluded version of authority being adjudicating a matter.

d) That importance of a proper SCN is discussed in para a to c above, however learned CIT-A has place reliance on judgment of Smt. Reena Jain v. CIT, brief facts of this case is Assessing Officer rejected assessee explanation regarding genuineness of alleged gifts received by assessee through Assessing reassessment cheques Officer proceedings from donor- initiated and supplied gist of reasons recorded for issuance of notice under section 148 in form of SCN - appellants case was that appellants were supplied with gist of reasons instead of full reasons in absence of which they could not submit their full reply and said approach had vitiated entire proceedings - Whether since Appellants had full knowledge of entire matter and, in fact, they had met same by submitting their reply/explanation, it could not be said that non-supply of full reasons in place of gist of reasons had prejudiced them, and, therefore, proceedings initiated under section 148 were held valid, the case of appellant is entirely different, facts here are that upon receiving reasons recorded, appellant had tried to explain the factual position to the Learned AO, which was as per appellant a true fact and she was under impression that learned AO has fully understood the matter and nothing against the appellant is determined by AO, however to her surprise when the final order was received it contained lot of factual errors which as per appellant was explained in course of assessment proceedings.

e) That as explained in para (a) it is clear that factually no-SCN is issued in the present case. The purpose of SCN is to give opportunity to the appellant regarding the understanding of the authority about the case, which according to the principal of natural justice is foremost required, as if there is a gap between the understanding of authority regarding the factual position, as everyone has its own interpretation, then appellant should be given a final opportunity to explain the correct position. Therefore, as explained above, by not issuing a SCN the assessment proceeding should be quashed for want of noncompliance of principal of natural justice.

(iv) Ground No. 4:

a) That as stated in the history of case, appellant after her marriage got herself shifted to Dubai along with her husband and gradually attained the status of NRI. In order to secure her future in India and for maintenance of her old age parents, she had been sending money to India from Dubai, the same is done in the current AY 2012-13, in this year appellant was having following bank accounts in India:

Sr. No.	Bank	Nature of A/c	A/c No.
1.	Canara Bank	NRO Savings A/c	2416104017403
2.	Canara Bank	NRE Savings A/c	2416103017402
3.	Canara Bank	Gen Savings A/c	2416101016434
4.	Union Bank of India	NRE Savings A/c	419002020011530
5.	Union Bank of India	NRO Savings A/c	419002060010520

apart from above Appellant was having an account in post office with SB A/C no. 3003609 and Canara Robico Mutual Fund A/C no. 1072859492, however appellant had closed these accounts and due lack of knowledge, she forgot to keep the copy of the account statement, the same was intimated to the learned AO also.

b) That following are the summary of the credit transactions in the accounts:

- Canara Bank NRO Savings A/c No. 2416104017403:

	Amount (Rs.)
Source of credit	
Interest income	60

The transaction in this account are negligible.

- Canara Bank NRO Savings A/c No. 2416104017403:

Source of credit	Amount (Rs.)
Dividend	268,694
Ekta Adnani Dubai	3,200,000
Interest Received	13,274
Canara bank Mutual Fund A/c.	500,000
Total	3,981,968

So, it is evident that all the receipts are from the own account of Appellant maintained her tax resident country.

Canara Bank General Savings A/c No. 2416101016434:

<i>Source of credit</i>	<i>Amount (Rs.)</i>
<i>Ekta Adnani NRO A/c.</i>	<i>4,315</i>
<i>Interest received</i>	<i>184</i>
<i>Cash</i>	<i>11,800</i>
<i>Total</i>	<i>16,299</i>

The transactions in this account are negligible.

Union Bank of India NRE Savings A/c No. 419002020011530

<i>Source of credit</i>	<i>Amount (Rs.)</i>
<i>Canara Bank Mutual Fund A/c</i>	<i>100,000</i>

This is a nontaxable receipt.

- Union Bank of India NRO Savings*
- A/c No. 419002060010520:*

<i>Source of credit</i>	<i>Amount (Rs.)</i>
<i>Cash</i>	<i>5,000</i>
<i>Interest</i>	<i>73</i>
<i>Total</i>	<i>5073</i>

The transactions in this account are negligible.

c) That Appellant is maintaining NRE and it is a settled understanding that as per RBI and Bank guidelines generally only foreign credits are allowed in the account under this scheme, so it is apparent by the nature account Savings account with Canara Bank of that, appellant had transferred funds from foreign country in this account, also as mentioned in history, appellant had transferred funds from Dubai, where she is residing from many years and has gradually attained the status of NRI by residing in that country and again it is a settled law that for an NRI only those incomes are taxable in India, which accrue or arise in India.

d) That in the Bank Statements filled before Learned AO, it is clearly mentioned in the narration that source of funds is Dubai, also a certificate is attached as annexure, which is an extracted copy of bank statement itself and which is certified by the bank regarding the origin

of credits in the account, this certificate is not an additional evidence as this is just an extracted copy of the statement furnished before the learned AO and learned CIT-A, therefore not application for additional evidence is filed separately.

e) That it is evident from above that there are no taxable credits of income of any sort which has accrued or arisen in India, therefore on this ground also the order of the learned AO is liable to be vacated.

3. In this case the assessee submitted additional evidences such as Dubai Bank statement, money transfer slip, certificate from bank, substantiating the claim of making remittances from Dubai. These additional evidences go to the root cause of making the addition and required for adjudication of the case. Hence, the additional evidences filed have been accepted.

4. Since the revenue hasn't had the benefit of the additional evidences before them, we deem it fit to remand the matter to the file of the Id CIT(A), who shall consider the additional evidences and pass a speaking order in accordance with the provisions of Income Tax Act, 1961.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 10/03/2023.

Sd/-

(Kul Bharat)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/03/2023

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT