

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2507/Kol/2019
Assessment Year: 2010-11**

Suresh Joshi 63, Dwarika Jungle Road, Bhadrakali, Hind Motor- 712232 (PAN: ABJPJ5798G)	Vs.	Income Tax Officer, Ward- 36(2), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri A. K. Tibrewal, FCA
Respondent by : Shri G. Hukugha Sema, CIT, DR

Date of Hearing : 17.01.2023
Date of Pronouncement : 17.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-10, Kolkata vide appeal No. 1109/CIT(A)-10/Wd-36(2)/2010-11/2017-18/Kol dated 27.09.2019 against the order of Ld. ITO, Ward-36(2), Kolkata passed u/s. 143 r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 27.12.2017.

2. Assessee has raised as many as nine grounds of appeal. From the perusal of these grounds, we note that broadly two issues are involved, first one being legality of the proceeding initiated u/s. 148 of the Act and validity of the assessment order passed u/s. 147 of the Act along with compliance of conditions contained in section 151 of the Act which covers ground nos. 1 to 6 and the second issue on merit

relating to addition of Rs.9,75,90,067/- made u/s. 68 of the Act in respect of cash deposits made in two bank accounts bearing A/c. Nos. 62790501311 and 6277053955 in ICICI Bank opened fraudulently in the name of Sarita Trading Company, alleged proprietary concern of the assessee and the other in the name of the assessee without appreciating that the said bank accounts are not owned by the assessee.

3. Brief facts of the case are that assessee is an individual and an employee of S. B. Enterprises looking after marketing of the bed sheets and earning salary and commission from the said concern. He filed his return on 17.02.2011 originally, reporting total income of Rs.1,58,680/-. Case of the assessee was taken up by invoking the provisions of sec. 148 of the Act by recording the reasons to believe that the assessee is a beneficiary of Rs.2,46,61,795/- deposited in cash in the bank account of Shri Kamal Sharma which was ultimately transferred to the bank account of the assessee with ICICI bank bearing A/c. No. 62790501311. Notice u/s. 148 of the Act was issued on 29.03.2017 alleging escapement of income from assessment. In response to such notice, assessee submitted that his original return filed on 17.02.2011 be treated as the return filed in response to this notice. Assessee sought copy of reasons recorded for initiation of proceeding u/s. 148 of the Act which were supplied to the assessee on 13.06.2017. The reasons supplied by the Ld. AO on 13.06.2017 are reproduced as under:

“As per information available with the department, the assessee is the beneficiary of Rs.2,46,61,795/- that was deposited in cash in the bank account of Shri Kamal Sharma (PAN: CEUPS1428G), during FY 2009-10 through ICICI Bank which was in turn transferred to the assessee’s (M/s. Sarita Trading Co/Suresh Joshi) ICICI bank account bearing No.62790501311. The sum of Rs.2,46,61,795/- was not offered for taxation during AY 2010-11.”

In view of the above findings, I have reason to believe that the Total income of Rs.2,46,61,795/- has escaped assessment within the meaning of section 147 of the I. T. Act, 1961.”

3.1. Statutory notices u/s. 143(2) and 142(1) of the Act were served on the assessee, which was duly replied by the assessee. In this respect, assessee submitted that during the year under consideration, he had only one bank account with Punjab National Bank, A/c. no. 0089001700002490. Assessee also submitted that he was not aware of any other bank accounts which were opened by using his details. He also submitted a copy of complaint filed before the Police Station Burrabazar, Kolkata referring the matter of bank accounts which are opened in his name by misuse of his documents.

3.2. In the course of assessment proceeding, Ld. AO issued a summon u/s. 131 of the Act on the assessee for recording his statement. Statement of the assessee was recorded on 13.12.2017 wherein assessee has categorically submitted that he never knew about the two bank accounts with ICICI bank as alleged by the Ld. AO in the reasons to believe recorded. In his statement, assessee has stated that his neighbour Shri Babulal Pareek had introduced a person by name of Shri Kamal Sharma who had induced him that he would make PAN card for him without any cost for which relevant details were given by the assessee to Shri Kamal Sharma and have been misused by him thereafter.

3.3. Ld. AO after noting all these submissions found that the explanations are not satisfactory and thus completed the assessment by making an addition of Rs.9,75,90,067/- in

respect of cash deposit/transfers in the hands of the assessee. Aggrieved, assessee went in appeal before the Ld. CIT(A). Ld. CIT(A) dismissed the appeal of the assessee, both on the jurisdictional issue as well as on the merits of the case. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee emphasized on the legality of the assessment proceeding undertaken u/s. 147 read with section 148 of the Act. On the legal issue, Ld. Counsel referred to page 4 of the paper book, which is a certified true copy of the order sheet entries of the assessment proceeding. From the order sheet entry dated 24.03.2017, he referred to the reasons to believe recorded by the AO for the proposal sent by him to Ld. Pr. CIT-12, Kolkata for his kind perusal and seeking necessary approval for issuing notice u/s. 148 of the Act. Below this order sheet entry, he referred to the order sheet entry dated 29.03.2017 which states that *“Got the approval of the Ld. Pr. CIT-12, Kol for issue of Notice u/s. 148 of the I. T. Act, 1961 in this case of Notice u/s. 148 of the I. T. Act, 1961 is being issued to the assessee.”* To point out stark contradiction in this order sheet entry, Ld. Counsel referred to one letter dated 27.03.2017 issued from the office of Pr. CIT-12, Kolkata addressing the Ld. AO granting approval on the proposal made by the Ld. AO for action u/s. 148 of the Act.

4.1. Both proposal made as per order sheet entry dated 24.03.2017 and the letter granting approval are reproduced below:

ANNEXURE

Sri Suresh Joshi
Prop. of M/s. Sarita Trading Co.
PAN- AJBPJ5798G
A.YR. 2010-11

24/03/2017:

The assessee filed his original return of income in ITR-4 for the relevant assessment year through e-filing on 17/02/2011 declaring total income of Rs.1,58,680/-.

Information received from ITO, WD-44(2), Kolkata vide No. ITO, Wd-44(2)/Kol/Information/2015-16/464 dated 25/04/2016 revealed that the assessee (M/s. Sarita Trading Company/Suresh Joshi) is the beneficiary of Rs.2,46,61,795/- that were deposited in cash in the bank account of Sri Kamal Sharma, PAN-CEUPS1428G during financial year 2009-10 relevant to assessment year 2010-11 through ICICI Bank which were in turn transferred to the assessee's (M/s. Sarita Trading Company/Suresh Joshi) ICICI Bank Account bearing No.62790501311.

The cash of Rs.2,46,61,795/- was deposited in the ICICI bank account of Sri Kamal Sharma during the period from 30/06/2009 to 28/07/2009 is the money of the assessee Sri Suresh Joshi (Prop. of M/s. Sarita Trading Company) has channelized his cash into cheque in the disguise manner. Thus, the sum of Rs.2,46,61,795/- is nothing but the undisclosed income of the assessee which has not been offered for taxation during assessment year 2010-11.

Under the circumstances, I am in the view that the assessee has not disclosed fully or truly his total income in his return of income. Hence, I have reason to believe that the sum of Rs.2,46,61,795/- has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 for A. Y. 2010-11. Therefore, I proposed to issue notice u/s.148 with the prior approval of the Pr. CIT-12, Kol.

Proposal in Form No.10 is sent to the Ld. Pr. CIT-12 /Kolkata through proper channel for kind perusal and seeking necessary approval for issuing notice under section 148 for the A.Y. 2010-11 to the assessee.

Certified to be true copy

उज्ज्वल कुमार
UJJWAL KUMAR
आयकर अधिकारी, वार्ड-36(2), कोलकाता
Income Tax Officer, Ward-36(2), Kol.
कांठ/Code No. WBGW-136(2)



Biswajit Sarkar
24/03/17
[BISWAJIT SARKAR]
आयकर अधिकारी, वार्ड - 36(2), कोलकाता
Income Tax Officer, Ward-36(2), Kolkata

29/03/2017

Got the approval of the Ld. Pr. CIT-12, Kol. for issue a notice u/s. 148 of the I.T. Act, 1961 in this case. A Notice u/s. 148 of the I.T. Act, 1961 is being issued to the assessee.

Suresh Joshi *Biswajit Sarkar*

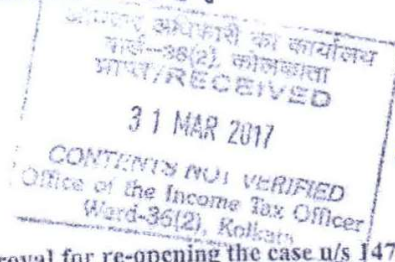


OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-12, KOLKATA
Aayakar Bhawan Poorva, 7th Floor, 110 Shanti Pally, Kolkata- 700 107.

No. Pr. CIT-12/Kol/U/s.147/2016-17/ 2985

Date: 27.03.2017

To
The ITO, Ward-36(2),
Kolkata.



Sir/Madam,

Sub.: Approval for re-opening the case u/s 147 of the I.T. Act 1961 in the case of Shri Suresh Joshi (PAN: AJBPJ5798G) for the A.Y. 2010-11- Matter regarding.

K
Kindly refer to the above.

I am directed by Pr. C.I.T.-12, Kolkata to communicate the following comments:-

"For the reasons recorded by the AO I am satisfied for this proposed action u/s 147/148 of the I.T Act. Hence approved."

This is for your kind information and necessary action.

Yours faithfully,

Encl: Assessment folder

[Md. Tajul Islam]
I.T.O., Tech.-12, Kol.

For Pr. Commissioner of Income Tax - 12, Kol

M. No. Pr. CIT-12/Kol/u/s.147/2016-17/

Date: 27.03.2017

Copy forwarded to the JCIT, Range -36, Kolkata for his kind information.

Verified to be true copy

उज्ज्वल कुमार
UJJWAL KUMAR
आयकर अधिकारी, वार्ड-३६(२), कोलकाता
Income Tax Officer, Ward-36(2), Kcl.
WBGW-136(2)



[Md. Tajul Islam]
I.T.O., Tech.-12, Kol.
For Pr. Commissioner of Income Tax - 12, Kol

Suresh Joshi

4.2. From the above, Ld. Counsel strongly asserted that proposal by Ld. AO was made on 24.03.2017. On the said proposal the approval was granted vide letter dated 27.03.2017. This letter was received in the office of the Ld. AO on 31.03.2017 along with the 'assessment folder' as noted in the said letter itself. He pointed that date of receipt is duly stamped. Against it, it is noted that "Contents not verified". Ld. Counsel asserted that contrary to these dates the notice u/s. 148 of the Act has been issued on 29.03.2017 which states that "*this notice is being issued after obtaining the necessary satisfaction of the Addl. Commissioner/Commissioner of Income Tax/Chief Commissioner of Income Tax*". Thus, Ld. Counsel contended that when the letter granting approval for the proposal made by Ld. AO for action u/s. 147/148 of the Act have been received by his office only on 31.03.2017 along with assessment folder, the notice issued prior to 31.03.2017 i.e. on 29.03.2017 is without obtaining the prior approval as mandated u/s. 151 of the Act. According to him, the notice has been issued prior to the receipt of approval from the office of Ld. Pr. CIT-12, Kolkata.

5. Ld. Counsel further submitted that the reasons to believe recorded by the Ld. AO is nothing but a borrowed satisfaction as in the proposal itself, it has been noted that information has been received from ITO, Ward-44(2), Kolkata vide letter dated 25.04.2016. He further stated that there is no independent application of mind by the ld. AO on the said information so received by the ld. AO since the bank account no. with ICICI bank referred in the reasons to

believe is different from the correct bank account no. for which the assessee has been alleged to be a beneficiary. The last digit of "0" is missing in the reasons to believe recorded by the Ld. AO in the account bearing no. 62790501311. On confronting these facts on the legal issue raised by the ld. Counsel to the ld. CIT, DR, nothing was brought on record to controvert the stated facts and the list of events.

5.1. Further, on the merits of the case, ld. Counsel submitted that from the very first instance, assessee had been claiming that he never opened the alleged two bank accounts with ICICI bank in respect of which additions have been made in his hands. To substantiate his claim, assessee had made a complaint to the Burrabazar Police Station, Kolkata on 03.07.2017, copy of which is placed at page 10 of the paper book. He further requested to the Police Station vide his letter dated 03.10.2017, praying for lodging an FIR for taking necessary steps for forging his documents to open the alleged two bank accounts. The same is placed at page 11 of the paper book. Ld. Counsel also referred to the statement of the assessee recorded u/s. 131(1) of the Act on 13.12.2017 by the Ld. AO wherein specific questions were asked in respect of the alleged transaction of cash deposit in the two bank accounts with ICICI bank. In answer to these questions, assessee had very categorically denied being aware of the said bank accounts and of the transaction of cash deposit therein.

5.2. The relevant extracts from the said statement are reproduced as under:

Q.6	How many bank accounts (SB, Current, OD, FD etc.) have you maintained during F.Y. 2009-10?
Ans.	Sir, there was one bank account maintained in PNB Bank having A/c Nos. 0089001700002490.
Q.7	What were the transactions taken place in the accounts mentioned by you as above?
Ans.	Sir, in this account I used to deposit the income earned by me.
Q.8	Do you know the business concern namely Sarita Trading Co., if yes, please state the name and address of the proprietor.
Ans.	Sir, I am not aware of this concern namely Sarita Trading Co.
Q.9	It has come to our notice that there are two bank accounts standing in your name in ICICI Bank having A/c No. 627905013110 and 627705053955 were maintained during F.Y. 2009-10. Please state about these bank accounts.
Ans.	Sir, I am not aware of these bank accounts. I would like to add here that on receipt of your notice, I got shocked and on advice of my near and dear, I lodged an FIR before Police, copy of which has already been submitted before your goodself.
Q.10	It has been observed that total cash deposits in the above bank accounts, during the F.Y. 2009-10, was of ₹ 5,67,90,952/- . Please explain the source of these cash deposits.
Ans.	Sir, as I earlier said, I am not aware of these cash deposits and bank accounts. I have already lodged an FIR before Burra Bazar Police Station, Kolkata on 03.07.2017 after receiving your notice.

5.3. Ld. Counsel further submitted that issue regarding deposit of cash of Rs.5,67,90,952/- in A/c. No. 627905013110 and Rs.1,61,37,320/- in A/c. No. 62770553955 were never intimated to the assessee at any stage of the assessment proceeding and yet the additions were made in respect of the said amounts. Ld. Counsel strongly submitted that no such addition can be made on the basis of any material or evidence which is sought to be relied on by the Ld. AO unless he has confronted the

assessee with such material. Ld. Counsel submitted that Ld. AO has never supplied any material on the basis of which he has alleged the deposit of cash of the above stated amounts in the two bank accounts of ICICI bank which in clear violation of principles of natural justice. Ld. Counsel asserted that Ld. AO as well as Ld. CIT(A) have failed to consider the copy of General Diary (GD) and First Information Report (FIR) filed on 03.07.2017 and 03.10.2017 respectively with Burrabazar Police Station, Kolkata against Shri Kamal Sharma who is suspected to have forged his signature and use the said accounts fraudulently. He also submitted that assessee was never given an opportunity to cross examine Shri Kamal Sharma and without providing copy of the impugned bank statements to the assessee which again is in violation to the principles of natural justice. Ld. Counsel further stated that Ld. AO could provide a copy of the bank statement of only one of the account and for the other has not been provided till date. From the bank statement of one of the account namely A/c. No. 627905013110 (in the reasons to believe recorded, this account no. is stated as 62790501311), Ld. Counsel submitted that Ld. AO has failed to conduct any enquiry on his own to find the details in respect of credit entries stated therein.

5.4. He further stated that in respect of all these documents and records as well as details furnished, Ld. CIT(A) has not made any enquiry on any of these aspects and has merely stated about what the Ld. AO had given/provided to the assessee. Ld. CIT(A) has altogether failed to make his

observations and findings on the submissions made by the assessee. Nothing has been brought on record to controvert the submissions and assertions made by the assessee. Ld. Counsel also referred to the affidavit sworn in by the assessee before the First Class Judicial Magistrate on 22.08.2019 which was furnished before the Ld. CIT(A) and has not been considered while disposing the appeal. Ld. Counsel also pointed to the reference made by Ld. CIT(A) to section 292C of the Act which does not apply in the present case as it relates to articles or things found in the possession or control of any person in the course of search u/s. 132 or survey u/s. 133A of the Act. In the present case, there is no search or survey conducted on the assessee.

6. Per contra, Ld. CIT, DR placed reliance on the order of Ld. CIT(A).

7. We have heard the rival contentions and perused the material on record. On the legal issue raised by the assessee vide ground no.1 to 6, from the chronology of list of events, we note that notice u/s. 148 dated 29.03.2017 has been issued prior to the date of receipt of letter containing the approval on the proposal made by the Ld. AO for taking action u/s. 148 of the Act which was in fact, received in the office of ld. AO only on 31.03.2017. Also, we take note of the fact from the order sheet entry dated 29.03.2017 wherein Ld. AO has noted that approval from the Ld. Pr. CIT-12, Kolkata has been received for issuing notice u/s. 148 of the Act, which is contrary to the acknowledged, duly stamped letter,

issued from the office of Id. Pr. CIT-12, Kolkata addressed to the Ld. AO.

7.1. Section 151 of the Act requires that no notice shall be issued u/s. 148 by the AO after the expiry of four years from the end of the relevant assessment year unless the Pr. Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of such notice. In the present case, the communication of the satisfaction by the Ld. Pr. CIT-12, Kolkata on the proposal made by the Ld. AO for taking action u/s. 148 of the Act was communicated to the AO only on 31.03.2017 as is evidenced by the letter dated 27.03.2017 extracted above. However, the notice u/s. 148 has been issued on 29.03.2017 which is prior to the date of receipt of communication from the office of Ld. Pr. CIT-12, Kolkata towards his satisfaction that it is a fit case for the issue of such notice. Accordingly, in our considered view, we find force in the submissions made by the Ld. Counsel, to hold that the notice issued u/s. 148 of the Act is not in accordance with the provisions contained in section 148 to 151 of the Act, rendering the entire assessment proceeding invalid.

8. On the merits of the case, we note that from the very first instance, assessee had been in a very loud and clear manner categorically denying the fact that the alleged two bank accounts and the transactions of deposit in cash/transfer therein are not his and has always disowned the same. He has taken the possible steps of making complaint to the Police station seeking appropriate redressal

and enquiry on the matter by bringing the relevant facts on record. We note that both Ld. AO as well as Ld. CIT(A) have not undertaken any exercise of enquiry or examination on the assertions made by the assessee nor have made any attempt to find out the status of any action taken by the Police on the complaints made by the assessee.

8.1. A perusal of the bank statement for account no. 627905013110 [pgs 22-69 of Paper Book] would reflect that credit entries in the said account are followed by frequent debit entries/transfers to various proprietorship concerns/private limited companies. Copy of master data extracted from MCA database is available in pages 86-94 of Paper Book for few private limited companies wherein it can be seen that the assessee is not holding directorship in any entity. Such data was available in public domain and Ld. AO with the right intent could have used advanced data mining techniques to trace the actual beneficiaries of the funds deposited/transferred in the above mentioned impugned accounts. Details regarding proprietorship concerns should have been extracted by the Department through detailed enquiry/investigation. No effort to trace out the real beneficiary, suspected to be Mr. Kamal Sharma, who the assessee alleged to be the mastermind in the whole operations of opening bank account, deposit and withdrawal/transfer of cash/amount is not found to have taken place.

8.2. We find that nothing has been brought on record either by the ld. AO or by Ld. CIT(A) to controvert the submissions

made by the assessee disowning the two bank accounts and the transactions therein. Assessee has been made to disprove the alleged transactions in the two bank accounts.

8.3. We also note that reference made by the Ld. CIT(A) under section 292C of the Act is misplaced as in the present case, it is not a case of either search or survey under the Act conducted on the assessee.

8.4. In the above stated facts of the case, actions of the authorities below goes against common sense, logic and human probability. In such circumstances, making huge addition in assessee's hand of the entire deposit of cash in the two bank accounts which admittedly has got out of these bank accounts to some other beneficiary or layers through which the real beneficiary gets the ultimate benefit, cannot be countenanced and that the Department would also not be able to recover the tax from the assessee in the instant case who is a person of modest means. Such an approach would eventually help only the ultimate beneficiary (not being the assessee) and no one else.

8.5. Considering the facts and circumstances of the case, chronology of events, provisions of the Act and the lack of adequate enquiries on the part of the authorities below despite possible actions undertaken by the assessee, we are of considered view to allow the grounds of appeal, both on the legal issues raised and on the merits of the case holding

that assessment order is bad in law and no addition is called for as alleged by the Ld. AO.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17th March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-10, Kolkata
 4. ITO, Ward-36(2), Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata