

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.8557/Del/2019
Assessment Year: 2010-11

Vipin Kumar, S/o Shri Rajveer Singh, M-117, Mahindra Enclave, Shastri Nagar, Ghaziabad 201001 PAN AKKPK 3568 M	vs.	ITO, Ward-2(5), Ghaziabad 201002
(Appellant)		(Respondent)

For Assessee :	Shri Jitender Wadwa, CA
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	13.03.2023
Date of Pronouncement :	31.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 09.08.2019 of the Ld. CIT, Ghaziabad, relating to Assessment Year 2010-11.

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

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the*

action of Ld. AO in framing the impugned reassessment order u/s 147/144 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions w/s 147 to 151 as envisaged under the Income Tax Act. 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/144, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 15,50,200/- by recording incorrect facts and findings, without considering evidences on record and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs. 15,50,200/- allegedly on the ground that the deposit of cash in the bank account as undeclared and unrecorded when the deposit was out of withdrawal from the bank account, is bad in law and against the facts and circumstances of the case.

3. Apropos ground no. 1 & 2, the learned assessee representative (AR) submitted that the AO has proceeded to initiate reassessment proceedings u/s. 147 of the I.T Act 1961 (for short the Act) and issue notice u/s. 148 of the Act by recording reasons on 16.02.2017 without application of mind and while noting in corrects and figures therefore the initiation of reassessment proceedings and all consequent orders may kindly be quashed. The learned AR

submitted that the Assessing Officer noted that the bank account belong to assessee and the assessee deposited Rs. 15,50,200/- cash to his bank account whereas the said bank account was jointly owned by the assessee and Ms. Bhavana and the total deposits on said bank account were Rs. 16,00,000/- therefore the AO proceeded to initiate reassessment proceedings on wrong premise and without application of mind and without having and obtaining copy of statement of bank account of assessee therefore the AO proceeded to initiate reassessment proceedings without assuming valid jurisdiction as per requirement of law therefore the entire proceedings and consequent impugned order may kindly be quashed.

4. Replying to the above the learned Senior DR strongly supported the orders of the authorities below and the same of initiating reassessment proceedings the AO has not required to collect all the relevant documentary evidence and to verify them. The Assessing Officer is only require to have *prima facie* reason to believe that income has escaped assessment as per mandate of

section 147 of the Act, and therefore the objections of assessee is not tenable and the same may kindly be dismissed.

5. On careful consideration of above submissions I am of the view that the AO after obtaining approval as per requirement of section 151 of the Act, of PCIT Ghaziabad issued notice u/s. 148 of the Act, by recording following reasons:-

As per AIR information available with this office that the assessee Shri Vipin Kumar, M-117, Near Shopia School, Mahindra Enclave, Shastri Nagar, Ghaziabad has deposited cash amounting to Rs. 15,50,200/- In cash in his bank account with ING VYSYA Bank during the F.Y. 2009-10 i.e. A.Y. 2010-11. In this regard verification letter was issued on 19.07.2016 . As such, I have reason to believe that deposited cash was made by undisclosed sources and income of Rs. 15,50,200/- is escaped to tax. If, it is approved, the notice u/s 148 may be issued.

6. In view of above, I clearly noted that there was AIR information available with the AO in the form tangible material and thereafter the AO proceeded to initiate reassessment proceedings and to issue notice u/s. 148 of the Act to the assessee. From the reassessment order dated 26.12.2017 it is clearly discernable that the assessee did not appear before the Assessing Officer and did not raised any

legal objection against initiation of reassessment proceedings and issuance of notice u/s. 148 of the Act, and the AO had to passed assessment order ex-party qua assessee u/s. 147 r.w.s. 144 of the Act. However, the assessee carried the matter before the Ld. CIT(A) and on this legal ground it was contended by the learned AR that as per judgement of ITAT Delhi Bench in the case of **Bir Bahdur Singh Sijwali vs ITO (2015) 68 SOT 197 (Del)** to submit that mere AIR information of cash deposit which nothing more cannot entitle the AO to assume jurisdiction u/s. 147 of the Act. From the reasons recorded by the AO as has been reproduced hereinabove it is clear that except copy of AIR information there was nothing else in the hands of AO at the time of initiating reassessment proceedings and issuing notices u/s. 148 of the Act. Even in the reasons the AO noted wrong facts that the account is owned by sole operator Shri Vipin Kumar, and amount of cash deposited by him during A.Y. 2010-11 was Rs. 15,50,200/- whereas the copy of statement of bank account clearly shows that the assessee was not sole operator of said bank account but he was joint account holder with Ms. Bhavana and amount of cash deposit was not Rs.

15,50,200/- and it was higher figure then noted by the AO. From the reasons it is clear that the Assessing Officer after receiving the AIR information issued a letter to the assessee and in the reasons it is not been mentioned that the said letter dated 19.07.2016 was served on the assessee. Despite the fact that the AO was having all detail of said bank account with ING VYSYA Bank but he did not even bothered to obtain copy of bank account from the said branch of bank situated at Shastri Nagar Ghaziabad and he directly jumped to record that he had reason to believe that the deposited cash was made by under disclosed sources. This above analysis of reasons recorded by the AO clearly shows that except AIR information there was nothing else in the hands of AO at the time of initiating reassessment proceedings and the AO without applying mind to the information and without any further verification from the bank prosecute to record he had reason to believe that income has escaped assessment for A.Y. 2010-11. In view of proposition rendered by ITAT Delhi in the case Bir Bahdur Singh Sijwali vs ITO (supra) I am inclined to hold that mere AIR information of cash deposit without any other information and verification or

examination by the AO the AO is not entitled to assume valid jurisdiction to initiate reassessment proceedings u/s. 147 of the Act and issue notice u/s. 148 of the Act. In such a situation the initiation of reassessment proceedings, issuance of notice and all consequent orders have to be held as unsustainable and bad in law and thus deserve to be quashed. Accordingly legally grounds no. 1 & 2 of assessee are allowed and orders of the authorities below are quashed.

7. Since in the earlier part of this order, I have quashed initiation of reassessment proceedings, notice u/s. 148 of the Act, and all consequent proceedings and orders therefore the grounds of assessee on merits are not being adjudicated upon as having become academic.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.03.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 31st March, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi