

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 12 to 14/Asr/2022
Assessment Years: 2012-13 to 2014-15

Sh. Arun Narula,
H. No. 101, Model Town
Mandi, Guruharsahai,
Ferozepur-152022

[PAN: AERPNI 7833F]
(Appellant)

V. Asstt. Commissioner of Income
Tax, Central Circle, Amritsar

(Respondent)

Appellant by Sh. Ashray Sarna, CA

Respondent by Sh. Radhey Shyam Jaiswal, Sr. DR

Date of Hearing : 11.05.2023
Date of Pronouncement : 24.05.2023

ORDER

Per Bench:

The captioned appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 08.12.2021 in respect of Assessment Year 2012-13 to 2014-15 challenging

reopening of the assessment u/s 147 of the Act on borrowed satisfaction whereby raising the following common grounds of appeal:

- “1. *That the order passed by the Hon'ble CIT(A) dated 08.12.2021 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3) r.w.s. 147 of the Act and without complying with the mandatory conditions u/s 147/148/151 as envisaged under the Income Tax Act, 1961.*
3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 29,99,972/- without considering the facts of the case and without observing the principles of natural justice.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. On identical fact, the appellant has raised a sale legal issue in all the three appeals that the assessments are reopened based on borrowed satisfaction in violation of mandatory provisions of the law, as per the mandatory conditions u/s 147 of the Income Tax Act, 1961. Therefore, these appeals were heard together and disposed of by consolidated order for the sake of brevity. The I.T.A. Nos. 12/Asr/2022 is taken as a lead case.

3. At the outset, the Id. counsel for the assessee has submitted that the AO has not applied independent mind in recording reasons while reopening

the assessment. He has merely reproduced the observation of the Id. CIT(A) as per the appellate order passed in respect of Assessment Year 2011-12 being made while adjudicating the appeal arising out of the assessment order passed u/s 144 r.w.s. 153A of the income Tax Act, 1961 in respect of three assessments. The reason reads as under:

“1. Brief details of the Assessee:

The return of income u/s 139(1) of the Act was filed on 31.03.2012 declaring salary income of Rs. 6,86,640/- for the A.Y. 2011-12. A search u/s 132 of the Income Tax Act 1961 was conducted at the residence of the assessee on 05.12.2013 and a number of documents/loose papers and books of accounts were seized during the course of search. Subsequently the case was centralized with Central Circle, Amritsar and assessment was completed u/s 144 r.w.s 153A of the IT Act, 1961 for the A.Y. 2011-12 wherein an addition of Rs. 9,360/- on account of disallowance of deduction claimed u/s 80C of the I.T. Act and addition of Rs. 34,30,000/- on account of unexplained credits u/s 68 of the I.T. Act 1961 were made in this case.

The assessee for A.Y. 2011-12 being aggrieved, filed an appeal before Ld. CIT(A)-S, Ludhiana on 22.04.2016, The Ld. CIT(A)-5, Ludhiana vide his order dated 31.10.2018 in appeal no. 58/IT/CIT(A)-5/LDH/2016-17 has partly allowed the appeal of the assessee by holding, in as follows:

The AR has explained the source of credit entries of Rs. 26,30,000/- during the year. It is submitted that Rs. 6,30,000/- was received from M/s Labha Ram & Sons as agricultural income. However, a perusal of the return and computation of income shows that the assessee has declared only the salary income of Rs. 6,96,000/- and no other income has been declared under any taxable or exempt head. Therefore, the argument about this receipt does not find support from the Income Tax Return filed by the assessee. Hence, it is to be treated as taxable amount in the hands of the assessee. The balance Rs. 20,00,000/- was received in four entries of Rs. 5,00,000/- each, however, the nature of receipts have not been explained. The AR has not filed anything about the identity of the persons and their capacity to pay the sums. In the absence of any remark about the

nature of these receipts, these are to be taxed as unaccounted income of the assessee. Therefore, the total addition on account of credit in the bank account comes to Rs. 26,30,000/- as against addition of Rs. 34,30,000/- made by the AO. The appellant gets a relief of Rs. 8,00,000/- and addition to the extent of Rs. 26,30,000/- is confirmed.

Accordingly, this ground of appeal is partly allowed.

Before proceedings further, it is relevant to mentioned here that as per the report of the AO submitted vide letter no. DCIT/CC/ASR/2018-19/868 dated 20/25.09.2018, there were credits of Rs. 29,99,972/- for the A.Y. 2012-13 but no addition was made by the AO for A. Y. 2012-13. Similarly, the credits during the period relevant to A. Y. 2013-14 were Rs. 10,82,944/- where as the addition of Rs. 5,14,944/- only was made by the AO, also the credit during the period relevant to A. Y. 2014-15 were Rs. 7,52,287/- and addition of Rs. 5,18,319/- only was made by the AO. The AO is directed to take necessary action as per Income Tax Act, 1961 to bring to tax the amounts that have escaped assessment in the above mentioned assessment years (A.Y. 2012-13, 2013-14, 2014-15). These maybe considered as direction u/s 150 of the Income Tax Act, 1961.

Further, an opportunity is also given to the assessee vide letter No, 1218 dated 18.12.2018 to explain its source of credit amounting to Rs. 29,99,972/- during the A.Y. 2012-13. However, the assessee has furnished the same reply before undersigned which was earlier submitted before the Ld. CIT(A)-5, during the course of appellate proceedings. This further strengthen the facts that assessee has no documentary evidence to prove the genuineness of the source ^ of credits found in his bank account.

In view of above facts & directions received from the Ld. CIT(A)-5, Ludhiana u/s 150(1) and on perusal of assessment record, I have reasons to believe that income of Rs. 29,99,972/- has escaped assessment for the A.Y, 2012-13.

Accordingly this is a case fit for issuance of notice u/s 148 of the Income Tax Act, 1961 for the A.Y 2012-13.”

4. The counsel argued that the ld. AO has not uttered a single word to even suspect any income escaped assessment. The ld. AR contended that

the AO has issued a Letter No. 1218 dated 18.12.2018 reproducing the observation of the Id. CIT(A) to explain the source of credit amounting to Rs.29,99,972/- during the assessment year 2012-13. He has only mentioned that the assessee has furnished the same reply before him what was submitted before the Id. CIT(A) during the course of appellate proceedings that further strengthen the facts that assessee has no documentary evidence to prove the genuineness of the credits found in his bank account. The AO finally concluded that in view of the above facts and directions received from the Id. CIT(A)-5, Ludhiana u/s 159(1) and on perusal of assessment record, I have reasons to believe that income of Rs.29,99,972/- has escaped assessment for the A.Y. 2012-13. Thus, the AO has not applied independent mind rather he has acted in the direction of the Id. CIT(A)-5, Ludhiana issued u/s 150(1) of the Act to reopen the assessments of the appellant-assessee in respect of assessment years 2012-13 to 2014-15 meaning thereby the reasons recorded for reopening of the assessments are of the Id. CIT(A)-5, Ludhiana u/s 150(1) of the Act and not of the Assessing Officer u/s 147 of the Act. He contended that such reason are no reasons under the provisions of section 148 of the Income Tax Act, 1961. Accordingly, he prayed that the assessment order passed by the AO on the basis of invalid reasons is without jurisdiction and hence

bad in law. He requested that the assessment may be quashed on validity of the reasons. In support, the Id. counsel placed reliance on the judgment of Hon'ble ITAT, Lucknow 'A' Bench in the case of Anshuman Ghosh v. Income Tax Officer on paras 14 to 16, which reads as under:

"14. In CIT vs. Rameshwardas Ram Narain (supra), the penalty was imposed by the ITO without obtaining the prior approval of the IAC. The Hon'ble Allahabad High Court held that the AAC was not justified in directing ITO to proceed in accordance with law. In CIT vs. Estate Of Late Sri N. Veeraswamy Chettiar (supra), the Hon'ble Madras High Court has held that conferment of jurisdiction on the ITO, which he is not lawfully seized of, is not within scope of the appellate powers of the AAC.

15. Moreover, as per the provisions of s. 147 of the Act, it is only if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, that he may assess or reassess such income. Thus, the reason to believe escapement of income has necessarily to be that of the AO only and not of any other authority. In <A> CIT vs. SFIL Stock Broking Ltd. (2010) 233 CTR (Del) 69: (2010) 41 DTR (Del) 98: (2010) 325 ITR 285 (Del) , it has been held, inter alia, that the AO cannot reopen a completed assessment merely because he has been directed to do so by a superior officer, therefore too, the direction issued by the learned CFT(A) cannot entitle the AO to initiate proceedings under s. 147 of the Act.

16. In view of the above, finding, the grievance of the assessee is to be justified, the same is accepted. The direction in question, i.e., the direction issued by the learned CIT(A) vide para 5.7 of the impugned order, as reproduced in para 5 of this order, is hereby ordered to be expunged."

4.1 The Ld. AR also relied on the Hon'ble ITAT, Kolkata Bench "C" Kolkata in the case of Income Tax Officer Ward-1(2) v. Sri Biswajit Chatterjee where the Tribunal vide para 11 observed as under:

“11. Now the Revenue has agitated before us that Ld. CIT(A) erred in not giving direction to reopen the case of earlier years of the assessee in which investments were made. In this regard, we find that Ld. CIT(A) has been given power u/s. 251 of the Act to confirm the order of AO reduce, enhance or annul assessment order under the provision of Act there is no power available to Ld. CIT(A) to give direction to AO for reopening the case of other years. The Income Tax Act provides different schemes wherein the AO is empowered to assess or re-assess the income which has escaped assessment. So at the most, if the Revenue wishes to tax the escapement of income then it has followed the scheme provided under the Act. The relevant provisions for taxing the escape income are given u/s 147/263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of **ITO vs. Murlidhar Bhaghubabu** reported in 52 ITR 335 (SC). The relevant extract of the judgment is reproduced below:-

“Section 33(4) of 1922 Act only refers to a finding or direction made by an appellate authority and does not itself confer any power on an appellate authority to make a finding or direction. Indeed, section 34 of 1922 Act deals with entirely a different aspect, that of empowering an ITO to bring to assessment escaped income, and has no concern with the powers of an appellate authority. The provision which deals with the powers of an appellate authority is section 31 of 1922 Act.”

Respectfully following the judgment of Hon'ble Supreme Court in the case of **Murlidhar Bhaghubabu** (supra) we conclude that Ld. CIT(A) has no power under the provision of law for giving any direction to AO for reopening of assessment. The appeal before Ld. CIT(A) is confined to the particular assessment year which is before him. Thus, in view of the above proposition, we dismiss the ground of Revenue's appeal. Consequently, Revenue's ground is dismissed.”

5. Per contra, the Ld DR although supported the impugned order, however, he has not filed any rebuttal to the contention raised by the counsel except contending that the observation of CIT(A) is used as 3rd party information in the reason for reopening of the assessment by the AO.

6. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is undisputed fact on record that the AO has reproduced in the reasons for reopening of the assessment for the assessment year under consideration, the observation of CIT(A) given in the appellate order in respect of the Assessment Year 2010-11 in verbatim as above. The AO concluded the reasons by stating that “in view of the above facts and directions received from the Id. CIT(A)-5, Ludhiana u/s 159(1) and on perusal of assessment record, I have reasons to believe that income of Rs.29,99,972/- has escaped assessment for the A.Y. 2012-13.” Thus, the AO has not applied independent mind rather he has acted in the direction of the Id. CIT(A)-5, Ludhiana issued u/s 150(1) of the Act to reopen the assessments of the appellant-assessee in respect of assessment years 2012-13 to 2014-15 meaning thereby the contention raised by the Ld. Counsel that reasons recorded for reopening of the assessments are of the Id. CIT(A)-5, Ludhiana u/s 150(1) of the Act and not that of the Assessing Officer u/s 148 of the Act, the mandatory provisions of law. In our view, such reason recorded on the directions of the CIT(A) in verbatim are no reasons under the provisions of section 148 of the Income Tax Act, 1961. Accordingly, we hold that the assessment order passed by the AO on the basis of such invalid reasons is without

jurisdiction and hence bad in law. Our view gets supports from ration given by the Hon'ble Supreme Court in the case of Murlidhar Bhaghubabu (supra) that Ld. CIT(A) has no power under the provision of law for giving any direction to AO for reopening of assessment as followed by the ITAT, Kolkata Bench "C" Kolkata in the case of "Income Tax Officer Ward-1(2) v. Sri Biswajit Chatterjee", (Supra).

7. In view of the above, we accept the objection of the assessee as genuine justified under the mandate. We therefore hold the impugned order of the CIT(A) as infirm to the facts on record and bad in law. Accordingly, the impugned order is quashed as void *ab initio*.

8. On parity of facts, our observation and finding given in ITA No. 12/Asr/2022 shall be squarely applicable to the matter in ITA No. 13/Asr/2022 and 14/Asr/2022, in *mutatis mutandis*.

9. In the backdrop of the aforesaid discussion, the captioned bunch of appeals are disposed of in the terms and observation made as above.

Order pronounced in the open court on 24.05.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order