

**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. No.58/Asr/2023
Assessment Year: 2012-13**

Sh. Jaspreet Singh S/o Surjeet Singh, R/o 37, Guru Teg Bahadur Nagar Nakodar, Distt. Jalandhar. [PAN:-ABPPS3988R] (Appellant)	Vs.	DCIT-Central Circle-1, Jalandhar. (Respondent)
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Appellant by	Sh. Surinder Mahajan, CA
Respondent by	Sh. Amit Jain, Sr. DR

Date of Hearing	29.05.2023
Date of Pronouncement	07.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT

(A)’, order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2012-13. The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Circle-1, Jalandhar, [in brevity ‘the AO’] order passed u/s 147/143(3) of the Act.

2. The assessee has taken the following grounds:

“1. That on the facts & circumstances of the case, learned assessing officer has grossly erred in law in initiating proceedings u/s 147 of the Act since conditions for assumption of jurisdiction u/s 147 of the Act were lacking, in as much as, neither the reason to believe provide requisite nexus for the belief that income has escaped assessment nor there was any application of mind before assumption of jurisdiction. It may kindly be held that notice u/s 148 issued by the AO was illegal and invalid and consequent assessment framed u/s 143(3) r.w.s. 147 of the Act be held illegal and bad in law.

2. That on facts and circumstances of the case, order passed by the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi is illegal and bad in law since no addition in respect of items other than the one on which notice is given can

be made if reasons for initiation of proceedings u/s 147/148 of the Act ceased to exist.

3. *That on facts and circumstances of the case, order passed by the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi is illegal and bad in law and has been passed without considering the submissions of the assessee*

4. *That on the facts & circumstances of the case, Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law in upholding addition of Rs. 2,00,000/- being levelling charges. Addition confirmed is illegal and bad in law.*

5. *That on the facts & circumstances of the case, Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law in upholding addition of Rs. 2,00,000/- being commission paid. Addition confirmed is illegal and bad in law.*

6. *That order passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi is based on assumptions & presumptions far away from facts of the case. Orders based on assumptions and presumptions are not permitted under law and are void ab-initio.*

7. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off.”*

3. Brief fact of the case is that the assessee has challenged both the legal and factual ground before the bench. The grievance of the assessee is that the notice u/s 147 was issued without jurisdiction and there is no such any application of mind before assumption of the jurisdiction. Although the addition amount of Rs.2 lac related to expenses in land levelling and Rs.2 lac for commission expenses which were claimed related to sale of land during calculation of capital gain. The Id. AO completed the assessment with the addition amount of Rs.2 lacs for land expenses and Rs.2 lacs for commission payment. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO, after adjudicating both the legal and factual ground. Aggrieved the assessee filed the appeal before us.

4. The Id. Counsel for the assessee vehemently argued and placed that the inquiry was conducted by the Id. AO before the recorded reason which was without application of mind. There is no nexus in between reopening u/s 147 with

formation of belief. The Id. AR further placed that the assessee paid the amount of Rs.2 lac commission through banking channel. Accordingly, the documents were submitted in **APB pages 10 to 14**. Further, the details related to payment of Rs.2 lacs for levelling charges of land was submitted before the bench. The Id. AR also submitted the letter dated 22.07.2019 which was duly placed before the Id. AO during the time of hearing, **APB pages 7 to 8**.

5. The Id. DR vehemently argued and first invited our attention in the grounds of appeal which was agitated by the assessee before the first appellate authority. The grounds are duly extracted from page no. 2 and 3 of the appeal order:

“3. Grounds of appeal: -

1. The substantive grounds of appeal are as under:-

G1. That Ld. Assessing Officer has grossly erred in law in framing the assessment without assumption of valid jurisdiction.

G2. That on the facts and circumstances of the case, Ld. Assessing Officer has grossly erred in law in making addition of Rs. 2,00,000/- being levelling charges. Addition made is illegal and bad in law.

G3. That on the facts and circumstances of the case, Ld. Assessing Officer has grossly erred in law in making addition of Rs. 2,00,000/- being commission paid. Addition made is illegal and bad in law.

G4. That addition has been made in arbitrary manner on assumptions & presumptions, which makes the additions made illegal and bad in law.

G5. That various explanations filed during assessment proceedings have been ignored and brushed aside arbitrarily, which makes the assessment framed illegal & bad in law.

G6. That Ld. AO has failed to consider various issues raised by the assessee in replies filled during the assessment proceedings and this tantamount to denial of reasonable opportunity of being heard. This makes the alleged assessment void ab –initio.

G7. That the assessee requests for leave to add or annex any other grounds of appeal, before the appeal is heard or disposed off.”

6. The ld. DR further placed that the assessee was unable to submit the proper evidence before the revenue related to verification of payment for levelling charges and for commission. The ld. DR invited our attention in appeal order page no. 15 paras 5.8 to 5.11 which are extracted as below:

“5.8 Accordingly, Ground No.1 of this appeal is treated as dismissed.

5.9 The AO has made the addition of Rs.2,00,000/- as levelling charges as the appellant did not furnish any response to the query u/s 133(6) of the I.T. Act nor during the assessment proceedings. The AO rejected the claim of the appellant that the land was occupied by a tenant who was running a cycle stand, before its sale and there was no apparent reason for levelling the land which was already being used. The appellant did not submit any evidence of actually incurring this expenditure. The appellant submitted that he had submitted the details before the AO on 10.12.2019 stating that the persons to whom levelling charges have been paid can be produced if so desired. However, it is pertinent to note that the appellant could not produce any kind of documentary evidence to prove the levelling expenses of Rs.2,00,000/-either during the assessment proceedings or during the appellate proceedings. Therefore, the addition made by the AO of Rs.2,00,000/- on account of levelling expenses were not based on assumptions and presumptions and was made only after the appellant could not discharge the onus cast upon him to produce the evidences.

Hence, the addition made of Rs.2,00,000/- on account of levelling charges is hereby confirmed.

5.10 The AO has made the addition of Rs.2,00,000/- as commission charges paid to Shri Deepak Kumar of Nakodar. The appellant submitted a photocopy of the receipt signed by Shri Deepak Kumar stating that he had received a commission of Rs.2,00,000/- on 29.03.2013 against sale of property at Civil Lines, Jalandhar on 27.12.2011. The appellant could not prove the identity of Shri Deepak Kumar. The handwritten undated receipt produced by the appellant of Shri Deepak Kumar does not mention his PAN and complete address. The appellant also could not satisfactorily explain the reason for payment of commission of Rs.2,00,000/- to Shri Deepak Kumar after a time span of almost one and a half year. The appellant was also not able to clarify whether Shri Deepak Kumar had disclosed this commission in the ITR filed for the relevant financial year. The AO rejected the claim of the appellant on the basis that it was illogical for a person residing in Nakodar for sale of property at a prime locality in Jalandhar. However, it is pertinent to note that the appellant could not produce any kind of documentary evidence apart from the hand written undated receipt of Shri Deepak Kumar in order to prove the commission

expenses of Rs.2,00,000/- either during the assessment proceedings or during the appellate proceedings. Therefore, the addition made by the AO of Rs.2,00,000/- on account of commission expenses were not based on assumptions and presumptions and was made only after the appellant could not discharge the onus cast upon him to prove the identity and genuineness of the transaction. 'Hence, the addition made' of Rs.2,00,000/- on account of commission expenses to Shri Deepak Kumar is hereby confirmed. Hence, Ground of Appeal No.2 to 6 are hereby dismissed.

5.11 Accordingly, these grounds of appeal are treated as dismissed. “

7. We heard the rival submission and considered the documents available in the record. The ld. AR challenged the jurisdiction related to reopening u/s 147 of the Act. The specific ground no. 1 and 2 was not taken before the first appellate authority. Further, the documents which are provided before the bench was not sufficient as per the ld. DR. The ld. CIT(A) had grievance for non-submission of documents related to PAN and the complete address of Mr. Deepak Kumar, to whom assessee paid the commission. Considering the above fact, we remit back

the matter to the Id. CIT(A) for adjudication of legal issue which is agitated by the assessee before the bench and the other grounds are kept open for adjudication a fresh. Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

8. In the result, the appeal of the assessee bearing **ITA No. 58/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 07.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

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