

**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. 448/Asr/2019**  
Assessment Year: 2017-18

Shri Ajay Kumar House No. 2018/5-Gali Dabgran Wali, Inside Mahan Singh Gate, Amritsar-143001- Punjab	Vs.	The ITO Ward 1(1) Amritsar
PAN: CSFPA8909K		
APPELLANT		RESPONDENT

Assessee by : Shri Rohit Kapoor, CA  
Revenue by : Shri Hitendra Bhauraoji Ninawe, CIT DR  
Date of Hearing : 14/06/2023  
Date of Pronouncement : 20/06/2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal is filed by the Assessee against the order of the Ld. CIT(A)-1, Amritsar dt. 29/04/2019 for the Assessment Year 2017-18.

2. In the present appeal Assessee has raised the following grounds:

1. That the order of the Assessing Officer dated 30/12/2018 passed u/s 153A r.w.s. 143(3) as well as the order of Learned CIT(A) are both against the facts of the case and are untenable in law.

2. That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the AO and without any rhyme & reason, the Ld. CIT(A) has grossly erred in restricting the addition to the tune of Rs. 11,00,000/-

out of Rs.22,00,000/- made by the AO on account of cash intercepted. As such order of the CIT(A) is also liable to cancelled.

3. That the authorities below did not appreciate that notice issued u/s 153A by the AO is bad in the eyes of law, inasmuch as, no notice u/s 153A could be issued for the AY 2017-18 and as such the assessment framed in response to notice u/s 153A is illegal, invalid and bad in the eyes of law and the assessment made is liable to be cancelled. Similarly the order of the worthy CIT(A) thereby confirming the order of the AO is bad in the eyes of law and is also liable to be cancelled and the assessment completed is liable to be cancelled/quashed.

4. That the addition has been made on the basis of conjectures, surmises and suppositions and the department has not been able to place any material on record for justifying the addition made during the course of assessment proceedings. Similarly the Ld CIT(A) has grossly erred in confirming the order of the AO. As such the order passed by the AO is bad in the eyes of law and the same is liable to be cancelled and the addition made may be deleted.

5. That the worthy CIT(A) has erred in confirming the addition of Rs.1,00,000/- out of addition made by AO at Rs.22,00,000/- on account of cash intercepted. The CIT(A) should have deleted the whole addition as the addition made at Rs.11,00,000/- is not called for.

6. That the source of the balance amount was duly explained before the AO and as well as before the worthy CIT(A). Both the authorities have not appreciated the facts of the case. As such the addition confirmed by the CIT(A) at Rs.11,00,000/- is not called for especially when the said amount was duly explained before the authorities below.

7. That the CIT(A) did not appreciate the explanation given about the savings made by the assessee out of the income earned from time to time. As such the addition sustained at Rs.11,00,000/- is not called for and the same may be deleted. Alternatively, the addition made is very high & excessive.

8. That any other ground of appeal which may be urged at the time of hearing of the appeal.

3. At the outset, the Ld. AR submitted that ground 3 of the appeal is legal ground that. that notice issued u/s 153A by the AO is bad in the eyes of law, inasmuch as, no notice u/s 153A could be issued for the AY 2017-18 and as such the assessment framed in response to notice u/s 153A is illegal, invalid and bad in the eyes of law and the assessment made is

liable to be cancelled. The order of the worthy CIT(A) thereby confirming the order of the AO is bad in the eyes of law and is also liable to be cancelled. Since, the issue of notice u/s 153A goes to the root of the matter and accordingly, we first take the legal ground for adjudication.

4. In the present case, the assessment was completed u/s 153A r.w.s 143(3) vide order dated 30.12.2018. Being aggrieved with the assessment order the appellant filed the appeal against the order before the Ld. CIT(A) and raised a legal ground that assessment order is bad in law as the Ld. AO has erred in framing the assessment u/s 153A for the year of search. However, the Ld. CIT(A) rejected the contention of the appellant by stating that mere wrong invocation of section 153A would not vitiate the entire assessment order. The relevant part of the order of Ld. CIT(A) is produced hereunder: -

*"The appellant has taken legal ground that since notice u/s 153A was issued to him for the instant YA therefore the entire assessment should be quashed,. The appellant cited section 153A to state that for this assessment year notice u/s 153A cannot be issued. I have perused the ground and the submission of the appellant. I am of the view that notice u/s 153A need not be issued for the instant assessment year 2017-18 being the search assessment year (date of search being 05.12.2016) but it does not cause any prejudice to the appellant. Further no dispute legal or procedural was raised by the appellant either before the AO or before the undersigned regarding completion of assessment u/s 143(3). The AO had issued notice u/s 143(2) before the completion of assessment. Merely the issue of notice u/s 153A does not vitiate the entire assessment order. On the facts and circumstances of the case, in my view the legal objection by the appellant is dismissed. "*

5. The Ld. AR submitted that in pursuant to the requisition u/s 132A on 05.12.2016, notice u/s 153A of the Income Tax Act, 1961 were issued to the assessee for the six assessment years immediately preceding to the relevant assessment year i.e. AY 2017-18. In response thereto, assessee has filed the return of assessment for the assessment year 2011-12 to 2016-17. He further submitted that the notice u/s 153A of the Income Tax Act, 1961 was issued to the appellant for AY 2017-18 on 13.11.2017 asking the him to file the return in response to the same (APB, Pg.1). In response to the same, the appellant filed the return of income u/s 153A on 12.11.2018. Subsequently, notice u/s 143(2) was issued on 16.11.2018 and assessment framed u/s 153A r.w.s.143(3) of the Act.

6. The Ld. Counsel contended that the Ld. CIT(A) failed to appreciate that notice issued u/s 153A by the AO was bad in the eyes of law in as much as no notice u/s 153A could be issued for the AY 2017- 18 and as such the assessment framed in response to notice u/s 153A is illegal, invalid and bad in the eyes of law being without jurisdiction and therefore, the assessment is liable to be cancelled. Meaning thereby that, the order of the CIT(A) confirming the order of the AO is being bad in the eyes of law, would also liable to be quashed.

7. Per contra, the Ld DR although stands by the impugned order, however, he failed to file any rebuttal to the contention raised by the counsel.

8. We have heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, in pursuant to the requisition u/s 132A on 05.12.2016, notice u/s 153A of the Income Tax Act, 1961 were issued to the assessee for the six assessment years immediately preceding to the assessment year under consideration i.e. AY 2017-18. In response thereto, assessee has filed the return of income for the assessment year 2011-12 to 2016-17. It is undisputed fact on record that a notice u/s 153A of the Income Tax Act, 1961 was issued to the appellant for assessment year 2017-18 on 13.11.2017, asking him to file the return (APB, Pg.1). Since, the assessment year 2017-18 was out of the period of 6 years provided for the purpose of assessment in pursuant to the requisition u/s 132A dated 05.12.2016 and hence, we are of the considered view that the notice issued u/s 153A on 12.11.2018 to the appellant assessee to file the return of income for the assessment year 2017-18 is invalid notice and subsequently, notice issued u/s 143(2) on 16.11.2018 and assessment framed u/s 153A r.w.s.143(3) of the Act would be held to be bad in the eyes

of law inasmuch as no notice u/s 153A could be issued for the AY 2017-18. The observation of the Ld. CIT(A) that merely the issue of notice u/s 153A does not vitiate the entire assessment order is non-judicious and very much in contravention to the provisions of law.

9. The ITAT Chandigarh Bench in the case of SHRI DEEPAK KUMAR JAIN, S/O SHRI RATTAN LAL JAIN THROUGH LEGAL HEIR, SMT. NEERU JAIN, MALERKOTLA VERSUS THE ACIT, CC-1, LUDHIANA 2020 (1) TMI 1034 has observed as under:

Assessment u/s 153A - addition of sum received from Sh. Nusratkram Khan Bagga as advance against sale of shop - excess jewellery found during the course of search as undisclosed income - HELD THAT:- We find that the premises of Shri Mahesh Jain was covered in the same search action and the facts as well as the legal issue involved are identical. The Tribunal in the case of brother of the assessee Shri Mahesh Jain [2017 (12) TMI 1744 - ITAT CHANDIGARH] has allowed the legal ground taken wherein held that limitation for completing the assessment for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A of the Act, but there being no provision as to under which provision of law, **the assessee can be called upon to furnish its return for that assessment year only under the provisions of section 139 and it is only in case of failure of the assessee to furnish the return under section 139 that the AO can call for return of income for the previous year either under section 142(1) or under section 147 of the Act, as the case may be. and if it is so. then the assessment for assessment year relevant to that previous year can be made only under section 143(1) or 143(3) or 144 or 147 of the Act but cannot be made under section 153A of the Act.**Reasons stated by the CIT(A), we are of the opinion that the CIT(A) was quite justified in holding that

for the assessment year under consideration, the AO had no jurisdiction to pass an order under section 153A - Decided in favour of assessee.

**10. The Hon'ble Allahabad High Court in the case of COMMISSIONER OF INCOME TAX (CENTRAL) VERSUS SRI RAJ KUMAR JAISWAL AND SMT. REKHA JAISWAL AND SRI RAM DAYAL JAISWAL, 2017 (2) TMI 1276 has observed as under:**

Assessment u/s 153A - merely quoting a wrong section will not render assessment order void ab initio and that such mention of a wrong section is a defect curable u/s 292B - Held that:- A bare reading of Section 153A shows that search having been conducted on 10.11.2005, financial year is 2005-06 and A.Y. 2006-07. As per Section 153A (1) (b), assessment or re-assessment could have been done in respect to six Assessment Years immediately preceding the assessment year relevant to the preceding year in which such search is conducted or requisition is made. It brings in period from Assessment Years 2000-01 to 2005-06. Earlier, special procedure for assessment of such cases was given in Chapter XIV-B. It is deleted by virtue of Section 158 (B) inserted by Finance Act, 2003, w.e.f. 01.06.2003. The provisions of Chapter XIV-B have been made inapplicable where search is initiated under Section 132 or books of account, document or any assets are requisitioned under Section 132A after 31.05.2003. Therein concept of "block assessment" as defined in Section 158B, included the period up to the date of commencement of search or date of requisition in the previous year, the said search was conducted or requisitioned or made, but this is missing in Section 153A. Thus assessment under Section 153A for A.Y. 2006-07 is not sustainable.

**11. In the present case, the assessment was framed u/s 153A was not merely a mistake of quoting a wrong section but it was framed in pursuant to the requisition u/s 132A for Assessment Year beyond the block of 6 year prescribed, that will certainly render the assessment order void ab initio. In our view, such type of defect of mentioning a wrong section on jurisdiction**

issue by the Assessing Officer, is not a curable mistake or defect u/s 292B of the Act.

12. Considering the facts of the case and judicial precedents, we hold the assessment framed u/s 153A r.w.s 143(3) as bad in the eyes of law being without jurisdiction and therefore, the assessment is cancelled as void *ab initio*. Accordingly, the impugned order of the CIT(A) confirming the order of the AO is being held bad in the eyes of law, and as such, it is quashed.

13. In the result, appeal is allowed.

*Order pronounced in the open court on 20/06/2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

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

A.G/DOC\*

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