

**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.723/Asr/2019
Assessment Year: 2010-11**

Sh. Kiranjit Singh Vill. Dudhala, Kathu Nagal, P.O. Distt. Amritsar. [PAN:-AOWPS0657M] (Appellant)	Vs.	ITO-Ward-4(3), Amritsar. (Respondent)
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Appellant by	Sh. Anil Aggarwal, Adv.
Respondent by	Sh. Pradeep Kumar, Sr. DR

Date of Hearing	15.06.2023
Date of Pronouncement	22.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-2,Amritsar,[in brevity the ‘CIT (A)’], order passed u/s 250(6) of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y.

2010-11. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-4(3) Amritsar, [in brevity 'the AO'] order passed u/s 143(3)r.w.s. 147 of the Act.

2. The assessee has taken the following grounds:

“1. That the assessment order deserves to be quashed as the proceedings under section 147 have been initiated on the basis of suspicion and there was absolutely no material on record giving the AO any reason to believe that any income has escaped assessment.

2. That enquiry notices were issued without seeking approval from the CIT-2, Amritsar and as such the assessment proceedings-initiated u/s 147 were vitiated.

3. That the assessment order deserves to be quashed as there is no valid service of notice u/s 148

OTHER GROUNDS

4. That the Ld. C.I.T (A) has erred in recording wrong facts in respect of purchase of land.

5. That the Ld. C.I.T (A) has erred in not accepting two agreements to sell filed and receipt from purchaser having paid Rs. 9,00,000/- giving little consideration to the facts of the case as well as on law.

6. That the Ld. C.I.T (A) has erred in giving little consideration to additional evidence filed.

7. That the Ld. C.I.T (A) has erred in considering Rs. 1.33,000/- only cash available as withdrawn on 9-11-09 and 28-1-10 as against cash deposit of Rs. 1,48,000/- on 12-3-10 and 30-3-10 whereas cash of Rs.30,000/- and 25,000/- as was withdrawn on 14-9-19 and 12-9-19.

8. That the Ld. C.I.T(A) has erred in ignoring the returned income and not giving full credit to cash flow chart filed while giving credit for the cash amount deposited in the bank account.

9. That the Ld. C.I.T(A) has erred in confirming the addition of Cheque of Rs.2,30,000/- deposited in the bank account on 29-10-2009.

10. That the appellant craves leave to add, alter or delete any of the grounds at the time of hearing of appeal.”

3. The Id. AR of the assessee has also raised the additional ground:

“1. Because in any view, in the facts and circumstances the Assessment framed u/s 143/147 of the IT Act is without Jurisdiction void-ab-initio, as the proceedings u/s 147/148 were initiated by other A.O. (not having Jurisdiction of the case of the appellant), the impugned Assessment/Additions are bad in law, and are liable to be quashed/annulled.

2. That the approval by Id. Pr.C.l.T is given on the basis of non-existence facts without recording satisfaction required u/s 151 of the Act.

3. That the asstt. order deserves to be quashed as the proceedings u/147 have been initiated on the basis of illegal approval granted by Id. Pr. C.l.T -2, Asr u/s151 of the Act, 1961

4. That the notice u/s 148 is defective and assessment framed on the basis of said defective notice is illegal, bad in law and is liable to be cancelled.

5. That no valid notice is issued u/s 148 in terms of section 149 of income tax act, 1961.

6. That no valid notice u/s 148 is ever served to justify that the reassessment proceedings is as per law.

7. That on the facts and circumstances of the case service of notice u/s 148 by affixture is illegal, bad in law and is liable to be cancelled.

8. That in the facts and circumstances of the case the reassessment proceedings are illegal, bad in law and is liable to be cancelled.”

4. Brief fact of the case is that the assessment was completed u/s 143(3) r.w.s. 147 of the Act with addition of Rs.12,99,000/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) considered the submission of the assessee both legal and the merit. Accordingly, the appeal was allowed partly. Being dissatisfied on the appeal order the assessee filed an appeal before us.

5. During hearing before the ITAT the Id. AR vehemently argued and filed a paper book. The Id. AR first challenged the jurisdiction of the assessing officer related to issuance of notice u/s 148 of the Act. The Id. AR placed that the Id. AO ward-5(3), Amritsar has no jurisdiction over the case but issued the notice u/s 148. Later on the assessment was completed by the Id. AO, Ward 4(3) had not issued 148, who had jurisdiction for issuance of notice u/s 148. The Id. AR submitted the written submission which is reproduced as below:

“Brief submissions on additional legal ground no 1 that the reasons and notice u/s 148 was issued by A.O ward 5(3) Asr was not having jurisdiction over the case and asstt was framed by the A.; /ard 4(3) ASR who did not issue notice u/s 148.

Hon’ble court has directed to address the issue that how the asstt is without jurisdiction in the light that the proceedings were initiated by the A.O) with the approval of Pr. CIT -2 ASR and re-assessment is framed by A.O when both are under the jurisdiction of same Pr. CIT -2 ASR

My submission is that A.O ward 5(3) did not have jurisdiction over the case but recorded reasons and ss jed notice u/s 148 with the approval of Pr. CIT-2 but asstt was framed by A.O Ward 4(3) Asr who did not issue notice u/s 148. It is for the Deptt to prove that at the time of reasons recorded the A.O 5(3) was having valid jurisdiction and before asstt is framed the jurisdiction is transferred from ward 5(3) to Ward 4(3) ASR by an order u/s 127(1) of income tax act by the Pr. CIT, Asr

Many opportunity was given by this court to the department to produce order u/s 127 of Income tax act by Pr. CIT, ASR-2. But the same was not produced. On 8-2-23 it was noted by this court that last opportunity is provided to the department to produce transfer of jurisdiction order of CIT before the next

date of hearing i.e 15-3-23 otherwise it will be presumed that department has nothing to offer. But nothing was produced on the last date of hearing on 15-3-23.

My submission is that if the A.O ward 5(3) was the jurisdictional A.O when approval was granted by Pr. CIT -2 on the basis of reasons recorded and thereafter the jurisdiction was transferred to A.O ward 4(3) Amritsar, there should be an order u/s 127 on record and intimation has to be sent to assessee regarding change in jurisdiction by A.O Ward 4(3) Asr and noting has to be made in the asstt. order that case has been received on transfer of jurisdiction u/s 127 of the Act. But from the language used in the asstt. order it is clear that there was no such order and he has tried to put veils on the acts of A.O Ward 5(3) Amritsar.”

6. The Id. DR vehemently argued and placed the ground of the appellate authority which is reproduced as below:

“3. Ground of appeal

1. That the Assessment order passed by Ld. AO u/s 143(3)/147 of the Income Tax Act, 1961 dated 30.11.2017 is illegal, arbitrary and contrary to the facts on records and illegality pervades over all other grounds of appeal.

2. *The Ld. AO has altogether ignored in income tax return filed u/s 147 of the Income Tax Act, 1961 by the assessee.*
3. *The Ld. AO has ignored the copy of agreement to sell the property produced by the assessee.*
4. *The Ld. AO has ignored the withdrawals made from the bank which were deposited again by the assessee.*
5. *On the given grounds it is appealed that the additions of Rs. 12,99,000/- should be deleted.*

Additional ground

The Ld. AO has erred in making the addition of Rs.2,30,000/- on account of credit entry in bank account of the assessee on 29.10.2009. The case of the assessee was re-opened for assessment u/s 147/148 of the Income Tax Act, 1961, on the basis of cash deposits in the bank. As per instruction no. 7/2014 dated 26.09.2014 issued by CBDT, the Ld. AO was required to enquire into the matters on the basis of which the case of the assessee was selected for scrutiny. To enquire into the credit entry was outside the preview of the Ld. AO.

6. *That the appellant craves leave to add, amend or withdraw any new ground or grounds of appeal before or at the time of hearing of appeal.”*

7. The Id. DR further argued that both ITO Ward 5(3) and 4(3) are under the same PCIT, Amritsar. So, there is no application of section 127 for change of jurisdiction related to issuance of notice u/s 148.

8. We heard the rival submission of both the parties and consider the documents available in the record. The Id. Counsel primarily argued the legal ground which was taken afresh before the ITAT. The same issue was never be agitated before the Id. CIT(A), related to jurisdiction of the Id. AO for issuance of notice u/s 148. Under these facts and circumstances of the case and in the interest of substantial justice and fairness to both the rival parties, as also that adjudication of this issue will require enquiries and verification of the facts, we are inclined to set aside the appellate order passed by Id. CIT(A) on this issue of jurisdiction of the Id. AO for issuance of notice U/s 148 and restore the matter back to the file of Id. CIT(A) for fresh adjudication on merits and in accordance with law. The Id. CIT(A) is directed to pass detailed, reasoned and speaking order after making such enquiries and verifications as he may deem fit. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law, and evidence/explanations

submitted by assessee in its defence shall be admitted by Id. CIT(A) in the interest of justice, which shall then be adjudicated by Id. CIT(A) on merits in accordance with law. We clarify that we have not commented on the merits of the issue and all the contentions are kept open. The appeal filed by assessee is allowed for statistical purposes. We order accordingly.

9. In the result, the appeal of the assessee bearing **ITA No. 723/Asr/2019** is allowed for statistical purposes.

Order pronounced in the open court on 22.06.2023

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