

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND

ITA No. 88/Del/2023
Assessment Year: 2012-13

Brij Mohan Goyal, J-3/8, First Floor, Krishna Nagar, Delhi 110051 PAN AEHPG1043A	vs.	ITO, Ward-58(4), Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Saurav Rohatgi, CA
For Revenue :	Shri Om Parkash, Sr. DR

Date of Hearing :	06.04.2023
Date of Pronouncement :	30.06.2023

ORDER

Per Chandra Mohan Garg:-

This appeal has been filed by the assessee against the order of CIT(A) (NAFC) Delhi dated 17.11.2022.

2. The assessee has challenged impugned reassessment order on its legality as well as on merits. In ground no. 1 the assessee has challenged the validity of initiation of reassessment proceedings as well as issuance of u/s. 148 of the I.T Act 1961, and impugned reassessment order by alleging that the Assessing Officer did not assume valid jurisdiction to initiate proceedings and issue notice and to frame consequent reassessment order as the Assessing Officer proceeded to initiate the proceedings on the basis of purely incorrect facts and by observing that the assessee has not filed his return of income for AY 2012-13. The ld. counsel of assessee, after submitting above legal contentions also placed reliance on the order of ITAT Delhi 'C' Bench in the case of Haifzuddin Hazi vs. ITO in ITA No. 3690/Del/2016 dated 16.02.2020 and submitted that only on this count initiation of reassessment proceedings, notice and impugned reassessment order u/s. 143(3)/147 of the Act deserve to be quashed being bad in law and without assuming valid jurisdiction. He also pointed out that in para 2 of the reasons the Assessing Officer notes that the assessee has not filed his return of income

for AY 2012-13 and at the same time in the first para of reassessment order he notes that the assessee has filed his return of income for AY 2012-13 on 11.03.2013 therefore the Assessing Officer proceeded to initiate reassessment proceedings on purely incorrect premise and without application of mind therefore entire proceedings and all consequent notices and orders including impugned reassessment order may kindly be quashed. He also pointed out that even copy of the reassessment order provided to the assessee there is no mentioning of any date of order which again vitiate the said reassessment order.

3. Replying to the above, the Id. Senior DR supported the orders of the authorities below. However, on being asked by the bench he did not controvert the factum of filing of return of income by the assessee for AY 2012-13 on 11.03.2013.

4. Identical issue was placed before the coordinate bench of the ITAT Delhi in the case of Haifzuddin Hazi vs. ITO(supra) wherein the bench quashed the entire proceedings and impugned reassessment and first appellate order on this count that the assessee, in fact filed his return of income for relevant assessment year but the Assessing Officer without checking with the Department and his own records proceeded to initiate proceedings by observing that the assessee has not filed return of income for relevant year.

5. In the similar set of facts and circumstances, ITAT Delhi 'C' Bench in the case of Hafizuddin Hazi vs. ITO (supra) quashed the initiation of reassessment proceedings u/s. 147 and notice u/s. 148 of the Act. Relevant part of the said order of ITAT Delhi reads as follows :

"19. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied by Id. Counsel for the assessee. We find, the assessee, in the instant case, had filed the original return of income on 31.10.2006 declaring the total income at Rs.10,87,058/- which was processed accordingly. We find, the AO reopened the assessment on the ground that the assessee has purchased residential property amounting to Rs.31,50,000/- and the same is not verifiable from the return of income filed for the AY 2006-07 and the assessee has not furnished the return of income. The reasons of such reopening has already been reproduced in the preceding paragraph. From the above, it is clear that the reopening was made on the ground that the assessee has not filed the return of income and, therefore, the income to the extent of Rs.31,50,000/- has escaped assessment. Since the assessee has already filed the return of income, a fact brought on record by the AO himself in the body of the assessment order itself, therefore, the very reason for which the case of the assessee was reopened is factually incorrect.

20. It has been held in various decisions that when the AO reopened the case of the assessee on the premise that the return was not filed as per the database of the

Department although it was already filed, then, such reassessment proceedings are not in accordance with the law and has to be quashed. For this proposition, we rely on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. RMG Polyvinyal (I) Ltd. (supra), and the decision of the Hon'ble Gujarat High Court in the case of Vijay Haishchandra Patel vs. ITO (supra) relied on by the Id. Counsel for the assessee. The various other decisions relied on by the Id. Counsel on this issue also support his case to the proposition that when reopening was based on the premise that the assessee has not filed his return of income as per database of the Department, but, the assessee has actually filed the return of income, then, such reopening is not in accordance with the law and has to be quashed since such reopening was based on wrong facts. We, therefore, quash the reassessment proceedings initiated by the AO and subsequent proceedings are accordingly quashed. Since the assessee succeeds on this legal ground, the various other grounds challenging the reopening of the assessment as well as addition on merit become academic in nature and, therefore, are not being adjudicated."

6. The facts and circumstances of the present case are quite similar to the facts and circumstances of the case of Hafizuddin Hazi vs. ITO(supra). Therefore, respectfully following the same, I hold that in the present case, the assessee has actually filed the return of income and the Assessing Officer in the satisfaction note noted that the assessee has not filed return of income. Thus, I safely presume that the Assessing Officer has initiated reassessment proceedings by mentioning wrong and incorrect facts of the case and on the sole premise that the assessee has not filed return of income for the A.Y. 2009-10. Therefore, I safely presume that the Assessing Officer has initiated the reassessment proceedings and passed reassessment order on the basis of incorrect facts and without application of mind. Therefore, I compelled to hold that the action of the Assessing Officer and impugned reassessment order are bad in law and unsustainable. Consequently, action of the Assessing Officer in initiating reassessment proceedings and the impugned reassessment order dated 10.03.2016 are hereby quashed.

7. Since, in the earlier part of this order, I have quashed initiation of reassessment proceedings and reassessment order u/s. 147 r.w.s. 143(3) of the Act, and Id. representatives both the sides have not placed any arguments on the other grounds of assessee on merits therefore I don't deem it proper to adjudicate those grounds in absence of any arguments.

8. In the result, the appeal of the assessee is allowed on legal ground.

Order pronounced in the open court on 30.06.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 30th June, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi