

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 72/RPR/2020
निर्धारण वर्ष / Assessment Year : 2010-11

Parveen Shaileena
Behind Ankur Hospital,
Hanuman Mandir, Jail Road,
Sai Nagar, Raipur (C.G.)
PAN : BATPS7678N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-4(5), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Choudhary N.C Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.07.2023

घोषणा की तारीख / Date of Pronouncement : 14.07.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur dated 30.01.2020, which in turn arises from the order passed by the A.O. u/ss.147 r.w.s.144 of the Income-tax Act, 1961 (for short 'Act'), dated __.12.2017 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. The Id. Assessing Officer erred in law as well as in fact while making an addition of Rs.10,01,500.00 on account of cash deposit in bank. Further, the first Appellate Authority (CIT, Appeals) also erred in law by sustaining the addition made by the A.O, the same is bad in law and is liable to be deleted.

2. The appellant reserves the right to add, amend, or alter any ground or grounds at the time of hearing.”

Also the assessee has raised additional grounds of appeal which reads as under:

“Additional Ground No.1

1. On the facts and circumstances of the case and in law, notice u/s.148 dt.30-3-17 issued by ITO-4(3), Raipur; reassessment made u/s.147 r.w.s 144 by ITO-4(5), Raipur dt.19-12-17 is invalid, since no notice issued by ITO-4(5) who framed the assessment, and in absence of order u/s127 by the competent authority to assume a valid jurisdiction by ITO-4(5); reassessment made u/s147 dt.19-12-17 would be invalid, and is liable to be quashed.”

Additional Gr.No.2:

"2. On the facts and circumstances of the case and in law, reasons are wrongly recorded for Rs.20,03,000 being cash deposits into bank, merely on presumption & surmises, on unverified information, without having any tangible material on fallacious assumption that the bank deposits constitute undisclosed income when sources of cash deposits need not necessarily be income of the assessee; while cash deposits are Rs.10,41,500; in absence of 'reasons to believe' as mandated by law u/s147 which is sine qua non for assuming valid jurisdiction to reopen the case; reopening u/s147/148 is liable to be quashed."

Additional Gr. No.3

"3. On the facts and circumstances of the case and in law, approval granted by the ld. CIT u/s.151(1) on 28-3-17 in most mechanical & routine manner without application of mind as non pointing out the mistake/ error by the ld. CIT which committed by the ld. AO is prima facie evidence of non-application of mind by the ld. CIT while granting the approval u/s.151(1); in absence of a valid approval u/s.151(1) as mandated by law; reopening of assessment u/s.147/148 would be invalid, bad in law and hence, is liable to be quashed."

As the additional grounds of appeal raised by the assessee company before us involves questions of law based on the facts available on record, therefore, the same are admitted by relying on the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC).

2. Succinctly stated, the case of the assessee was reopened by the A.O vide notice issued u/s.148 of the Act dated 30.03.2017 for the reason that though the cash deposits of Rs.20.03 lacs were made by the assessee in his bank account with Axis Bank Ltd., Branch : Opp. New Jeevan Bima Marg, Pandri, Raipur but no return of income was filed by him.

3. During the course of assessment proceedings, it was observed by the A.O that as the assessee had failed to file his return of income and also did not comply with the notices which thereafter were issued by him, therefore, he vide his order passed u/s. 147 r.w.s. 144 of the Act dated ____ .12.2017 held the cash deposits of Rs.10,01,500/- made over the year in his bank account as unexplained cash credit u/s.68 of the Act.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities as well as the material available on record.

7. At the very outset, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that he is not pressing additional ground No.1. After considering the concession of the Ld. AR the **additional ground No.1** is dismissed as not pressed.

8. The Ld. AR at the time of hearing of the appeal had assailed the validity of jurisdiction that was assumed by the A.O on two-fold reasons, viz. (i) that proceedings u/s.147 of the Act were initiated on the basis of

misconceived facts; and (ii) that the assessment framed could not be sustained for want of a valid approval u/s.151(1) of the Act. Elaborating on his aforesaid contentions, it was submitted by the Ld. AR that though proceedings u/s.147 of the Act were initiated in the case of the assessee for the reason that cash amounting to Rs.20.03 lacs was deposited in his bank account but the same was factually incorrect. Carrying his contention further, it was submitted by the Ld. AR that the assessee during the year under consideration had made cash deposits of Rs.10,01,500/- in her bank account. On the basis of the aforesaid facts, it was the claim of the Ld. AR that now when the very basis for initiation of proceedings u/s.147 of the Act was factually incorrect, therefore, neither the “reasons to believe” nor approval granted by the Pr. CIT u/s.151(1) of the Act without application of mind could be sustained.

9. On merits, the Ld. AR had come forth with two-fold contentions, viz. (i) that the assessee who had got married during the year under consideration i.e. on 03.11.2009 was in receipt of ‘*Meher*’ at the time of her marriage out of which amounts were withdrawn by her over the year. Carrying his contention further, it was claimed by the Ld. AR that a part of cash withdrawals were utilized by the assessee for re-depositing the same in her aforesaid bank account.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. Having given a thoughtful consideration to the challenge thrown by the Ld. AR to the validity of the jurisdiction that was assumed by the A.O u/s.147 of the Act a/w. validity of the approval granted by the Pr. CIT-1, Raipur u/s.151(1) of the Act, we are unable to persuade ourselves to concur with the same. It is the claim of the Ld. AR that as the total cash deposits in the bank account of the assessee during the year under consideration amounted to Rs.10.01 lacs (approx.), while for proceedings u/s. 147 of the Act were initiated for the reason that there were cash deposits in the bank account amounting to Rs.20.03 lacs, which was factually incorrect, therefore, reopening of the case on such wrong basis could not be sustained and was liable to be struck down.

12. We are unable to concur with the aforesaid contention of the Ld. AR. As the A.O had on the basis of Individual Transaction Statement (ITS) of the assessee with the Income Tax Department, acted upon the information about cash deposits of Rs.20.03 lacs (supra) in the assessee's bank account, therefore, we are of the considered view that there were sufficient reasons with him to arrive at a bonafide belief on the basis of material available on record that the income of the assessee who had not filed her

return of income for the year under consideration had escaped assessment u/s. 147 of the Act.

13. In so far the reliance placed by the Ld. AR on the judgment of the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. Vs. Income Tax Officer & Ors (1999) 236 ITR34 (SC), the same is not only found to be distinguishable on facts but in fact supports the validity of the reopening of the case of the present assessee before us. As observed by the Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd. Vs. Income Tax Officer & Ors (supra), the A.O at the stage of reopening of a case is only required to have some material before him for formation of a bonafide belief that the income of the assessee chargeable to the tax had escaped assessment. The Hon'ble Apex Court had observed that the sufficiency or correctness of the material being acted upon by the A.O could not be considered at the stage of initiating proceedings u/s.147 of the Act. On the basis of the aforesaid settled position of law as had been laid down by the Hon'ble Apex Court, we are of the considered view that as the contention of the Ld. AR, wherein she has assailed the validity of the jurisdiction assumed by the A.O for initiating proceedings u/s.147 of the Act; as well as the validity of the approval granted by the Pr. CIT, Raipur u/s.151(1) of the Act for the reason that the "reasons to believe" were based on wrong and incorrect facts is devoid and bereft of any force of law, therefore, the same is destined to fail. We, say so, for the reason that as the A.O at the

stage of initiating proceedings u/s.147 of the Act had acted upon the ITS (supra) of the assessee as was available before him, as per which, cash deposits of Rs.20.03 lacs were made in her bank account during the year under consideration, therefore, he had sufficient material before him to arrive at a bonafide believe that income of the assessee chargeable to tax had escaped assessment. Thus, the **additional grounds of appeal Nos. 2 & 3** raised by the assessee are dismissed in terms of our aforesaid observations.

14. Apropos the merits of the case, it was the claim of the Ld. AR that the cash deposits in the bank account of the assessee were sourced out of the withdrawals made by her from the amount of “*Meher*” which was received by her at the time of her marriage and was credited in her bank account; as well as out of the personal savings that were accumulated by her over the years. As the assessee had neither before the lower authorities nor before us been able to successfully establish that the cash withdrawals made from her bank account were utilized for redepositing the same, therefore, her said claim cannot be fully accepted. Apart from that, a perusal of the bank account of the assessee in no way establishes an inextricable nexus between the cash withdrawals and cash deposits made in her bank account which would have otherwise fortified her aforesaid claim. Although, we find no logic or reasoning in the aforesaid claim of the Ld. AR, for the reason that it is incomprehensible that an assessee would

have withdrawn amounts and thereafter redeposited the same in her bank account, but at the same time cannot remain oblivious of the substantial amount of cash that was available with the assessee out of the cash withdrawals made by her over the year. As such, we find substance in the claim of the Ld. AR that the assessee would have been in possession of certain cash in hand sourced out of the substantial amount of cash withdrawals made during the year under consideration; as well as her accumulated savings of the past years. We, thus, on the basis of our aforesaid conviction, are of the considered view that availability of cash of Rs.1,00,000/- with the assessee can safely be held to have been sourced out of her past savings and cash withdrawals during the year, and the same would fairly take care of the aforesaid claim of the Ld. AR. We, thus, in terms of our aforesaid observations vacate the addition made by the A.O to the extent of Rs.1,00,000/-.

15. In the result, appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in open court on 14th day of July, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 14th July, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :-

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The Pr. CIT-2, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.