

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1703/DEL/2020
[Assessment Year: 2009-10]

Anil, S/o Sh. Asharam, Village Bahadurpur, Meerut. PAN-BWZPA7981C	<u>Vs</u>	Income-tax Officer, Ward-1(1), Meerut.
APPELLANT		RESPONDENT
Assessee represented by		Shi C.S. Anand, Adv.
Department represented by		Shri Om Parkash
Date of hearing		17.07.2023
Date of pronouncement		05.09.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Meerut, dated 13.08.2020, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

- “1. That on the facts of the case and in law, the jurisdiction assumed by the ld AO u/s 147 of the I.T. Act, 1961 for AY 2009-10 is illegal.*
- 2. That the proceedings initiated u/s 147 of the I.T. Act, 1961 for AY 2009-10 are liable to be quashed because the ld. AO had initiated proceedings u/s 147 of the I.T. Act, 1961 on 23.03.2016 n the basis of the state information, for which the notice had been issued and reply had been received by the ld AO long ago.*

3. *That the proceedings initiated u/s 147 of the I.T. Act, 1961 for AY 2009-10 are liable to be quashed because the ld. AO had initiated proceedings u/s 147 of the I.T. Act, 1961, without applying his own mind.*
4. *That the proceedings initiated u/s 147 of the I.T. Act, 1961 for AY 2009-10 are liable to be quashed because the ld. AO had initiated proceedings u/s 147 of the I.T. Act, 1961 under the wrong impression that the appellant had invested an amount of Rs. 35,00,000/- on 28.08.2008 towards purchase of an immovable property.*
5. *That the proceedings initiated u/s 147 of the I.T. Act, 1961 for AY 2009-10 are liable to be quashed because the ld. AO had not specified the reason as to how & why he had formed a belief that taxable income had escaped assessment in the hands of the appellant for A.Y 2009-10.*
6. *That the proceedings initiated u/s 147 of the I.T. Act, 1961 for AY 2009-10 are liable to be quashed because the ld. Pr.CIT had mechanically granted approval to the ld AO to issue the notice u/s 148 of the I.T. Act, 1961*
7. *That the assessment proceedings conducted in pursuance to the notice dt. 23.03.2016 issued u/s 148 of the I.T. Act, 1961 for AY 2009-10, are liable to be quashed/annulled because the ld. AO had mechanically proceeded with the assessment proceedings without ensuring that the notice dt. 23.03.2016 issued u/s 148 of the I.T. Act, 1961 is actually served upon the appellant.*
8. *That the assessment proceedings conducted in pursuance to the notice dt. 23.03.2016 issued u/s 148 of the I.T. Act, 1961 for AY 2009-10, are liable to be quashed/annulled because the ld. AO had not made sincere efforts to serve the notice u/s of the I.T. Act, 1961 upon the appellant whose complete/accurate address was not available with him, by deputing the notice server or inspector to serve the notice u/s 148 of the I.T. Act, 1961 upon the appellant.*
9. *That on the facts of the case under the law, the addition of Rs. 12,85,833/- made by the ld AO u/s 69A of the I.T. Act, 1961 which had been confirmed by the ld CIT(A), deserves to be deleted because the provisions of section 69A of the I.T. Act, 1961 are not at all applicable, particularly when it is not the case of the ld AO that the appellant was found to be the owner of any money, bullion, jewellery or other valuable article.*

10. *That on the facts of the case under the law, the addition of Rs. 12,85,833/- made by the ld AO in the hands of the appellant having no income other than agricultural income, which had been confirmed by the ld CIT(A), deserves to be deleted because the ld AO had adopted a casual approach during the remand proceedings and chosen not to examine Sh. Asha Ram whose affidavit had been filed by the appellant by way additional evidence and the ld CIT(A) had not taken cognizance of such fatal lapse on the part of the ld AO.*

11. *That on the facts of the case under the law, the appellate order dt. 13.08.2020 passed by the ld CIT(A) Meerut deserves to be cancelled/ annulled because he had adopted a casual approach and chosen to ignore the submissions made by the appellant apropos challenge of jurisdiction”.*

2. Facts giving rise to the present appeal are that in this case the assessment was reopened and a notice u/s 148 of the Act was issued on 23.03.2016. Thereafter reminder letters were issued. In response to the notices issued u/s 144 read with Section 142(1) of the Act the assessee attended the office of the AO. The AO did not accept the explanation offered by the assessee regarding source of investment and made addition of Rs. 12,85,833/- and assessed income at Rs. 12,85,833/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition and dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the synopsis.

4. On the other hand, learned DR opposed the submissions made on behalf of the assessee and reiterated the submissions of the Revenue. He also reiterated the submissions as made in the written synopsis.

5. I have heard learned representatives of the parties and perused the material available on record. Ground nos. 1 to 8 are against initiation of proceedings u/s 147 of the Act.

5.1. The assessee has made multi-fold contentions regarding initiation of proceedings being bad in law. It is contended on behalf of the assessee that the notice u/s 148 was issued at a wrong address. Further, there was no application of mind by the assessing authority, as the reason for reopening of the assessment as per the AO was that the assessee had purchased vide sale-deed dated 28.08.2008 an immovable property for a consideration of Rs. 35,00,000/-. In fact this property was jointly purchased. This fact was duly stated in reply filed by the assessee.

5.2. So far question of validity of initiation of proceedings for reopening of assessment is concerned, AO was having some information regarding purchase of immovable property. The assessee had not filed his return of income. Therefore, the AO was justified in initiating the proceedings u/s 147 of the Act. The assessee stated that the notice was issued on a wrong address. However, it is on record that the assessee has participated in the proceedings. Therefore, this ground also lacks merit.

5.3. Now coming to the merit of addition, it is stated by the assessee that assessee was having only source of income being the agriculture income. The AO has not brought any other material on record suggesting that the assessee was having any other income. Moreover, the assessee had clearly stated that the amount was also received from his father. The AO picked up the statement partly and did not consider the fact that the father of the assessee was having a bigger piece of land. The authorities below have not made any verification of the statement made in the affidavit of father of the assessee that he had also sold trees out of which he gifted

money to his son. Therefore, considering the totality of facts and in the absence of any material rebutting the averments made in the affidavit of father of the assessee, I am of the considered view that AO was not justified in making the impugned addition and rejecting the plea of the assessee that he had also received money from his father apart from the agricultural income. The impugned addition is, therefore, deleted.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in open court on 5th September, 2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI