

**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. Nos. 221, 222 & 226/Asr/2023
Assessment Years: 2012-13, 2013-14 & 2011-12

Smt. Bharti Singh
G. T. Road -14,
Rani Ka Bagh, Amritsar
Punjab- 143 001
[PAN: BASPS2356E]
(Appellant)

Vs. ACIT, Circle (3),
Amritsar

(Respondent)

Appellant by : Sh. Tarun Bansal, Adv. &
Sh. Lakshay Bansal, CA
Respondent by : Sh. Manoj Aggarwal, Sr. DR
Date of Hearing : 14.09.2023
Date of Pronouncement : 21.09.2023

ORDER

Per Bench:

These captioned appeals have been filed by the assesseees against the separate orders of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 28.06.2023 & 19.07.2023 in respect of Assessment Years 2011-12, 2012-13, & 2013-14.

2. The assessee has raised the inter- linked identical grounds of appeal except variation in amount of addition and therefore, these three appeals were heard together and disposed off by this consolidated order for the sake of brevity.

3. The grounds are extracted from ITA No. 211/Asr/2023 as under-

- "1. That the Ld. A.O wrongly recorded reasons u/s 148 dtd. 27-03-19 and reopened the case u/s 148 by treating Rs. 4062760/- (Expenses) out of total expenses of Rs. 1,13,48,078, by calculating thru a hypothetical figures of expenses and ratio = 25.19% as allowable expenses for A.Y. 2012-13 and balance 100%-25.19% = 74.81% disallowable as bogus and in genuine expenses and this disallowance based only on hypothetical figures of expenses and ratio for the A.Y. 2015-16, without bringing any relevant material, independent evidence, independent verification against the same on record for AY 2012-13 and no reasons to believe arises, no record to show escapement, is a case of borrowed satisfaction and without jurisdiction, further CBDT circular on standard procedure u/s 147 not followed by A.O and proceedings of A.Y. 15-16 have not yet got finality.*
- 2. That the approval / sanction of PCIT-1 dtd. 28-03-19 u/s 151 is mechanical in nature, void-ab-initio being not even iota of record was before him, before sanction indicating that the 100- 25.19=74.81% expenses are in - genuine and bogus for A.Y 2012-13, except the reasons so recorded, which are based on hypothetical theory of A.O of in genuine expenses for A.Y 2015-16 and which have not yet got finality and is bad-in-law.*
- 3. That the Ld. A.O has erred in facts, as well as, in law, as no books of accounts have been rejected, as produced before AO in assessment proceedings u/s 148, before making the addition and is bad- in- law and CIT(A) admitted this fact but gave part relief and still is bad-in-law.*

4. That the Ld. A.O wrongly ignored that it is necessary to make addition, as per reasons recorded u/s 148 and before making addition on other grounds, since no addition made on the ground of reasons recorded, then the other additions will not sustain.
5. That Ld. A.O imbalanced the Balance-Sheet as filed u/s 148 by making addition of Rs. 8220496/-under the head Sundry Creditors on liability side and further not gave second effect in Balance-Sheet on assets side and created a superfluous difference between figures of return as filed u/s 148 and old return filed u/s 139(1) dtd. 29-09-2012 and made the addition as under and is bad in law, but accepted all other assets & liabilities of Balance-Sheet ,as well as net profit as filed u/s 148:-

Sundry creditors in return u/s 139(1) dtd 29-9-12	=	Rs.86,45,818
<u>Less:sundry creditors in return u/s 148</u>	=	<u>425,322</u>
Addition created	=	<u>8220496</u>

And further wrongly ignored that return filed u/s 148(1) becomes the original return as per section 148(1) read with sec 139 and old return dtd. 29-09-2012, is redundant and any addition based on old return is bad- in- law and further no defect is pointed out in return as filed u/s 148 before making addition.

6. That Ld. A.O made the following additions by creating a superfluous difference between figures of return as filed u/s 148 and old return filed u/s 139(1) dtd. 29-09-2012 and is bad in law and further wrongly ignored that return filed u/s 148 becomes the original return as per sec 148(1) read with sec 139 and old return dtd. 29-09-2012 is redundant and further no defect is pointed out in return as filed u/s 148 before making the addition and without any base as under:-

Table Amount in Rs.

Sr. No	Particulars	Amount as per Return u/s 139(1) dtd. 30-09-13 (3)	Amount as per Return u/s 148	Additions
(1)	(2)		(4)	(3-4)
1	Receipts	16192750	16141750	51000

7. *That the Ld. AO accepted the return u/s 148 as it is, as filed, for A.Y 2014-15 and 2016-17 i.e; without making any addition, though the case was reopened on the same hypothetical theory of in genuine and bogus expenses of A.Y 2015-16 only. Since the return and books of account for the A.Y 2012-13 is systematic and having same pattern and flow of figures towards A.Y 2014-15 and 2016-17, hence a pragmatic view rather than pedantic approach is required.”*

4. At the outset, apropos ground no. 4 the Ld. counsel for the appellant submitted that the Ld. A.O. has committed an error by ignoring that it is necessary to make addition, as per reasons recorded u/s 148 but in present case additions are made on other grounds which find no reference in the reason recorded for reopening of the assessment under section 147 of the act. Since, no addition made on the ground of reasons recorded, hence, the additions would not sustain. In support, he placed reliance on the judgement of the coordinate Amritsar Bench in the case of Gaurav Joshi versus Income Tax Officer in ITA No.274 ASR 2018 order dated Jan.16, 2019; [2019] 174 DTR 0353(Asr)Trib) where in the coordinate bench following the decision of honourable jurisdictional High Court in the case of “CIT versus Atlas Cycle Industries”, 180 ITR 319 has quashed the assessment order framed by the AO, vide para 9,10 and 11 by observing under:

“9. It is also relevant to point out that the AO while issuing the notice u/s 148 of the Act has mentioned that the assessee had deposited a cash of Rs.1,39,28,640/- during the financial year 2009-10 in the bank account which had escaped assessment. On the contrary, in the assessment order, he mentioned that the cash deposited in the bank account of the assessee was Rs.51,24,064/-, which is evident from para 8.3 off the assessment order dated 14.12.2017. Therefore, the reasons recorded by the AO were not emerging from the record available with him.

10. On a similar issue, the Hon'ble Jurisdictional High Court in the case of CIT Vs Atlas Cycle Industries (supra) held as under:

"9. Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the ITO does not get the jurisdiction to make a reassessment. This view of ours finds support from the Supreme Court decisions in CIT vs. A.Gaura Joshi Raman & Co. (1968) 67 ITR 11 (SC) and [Bankipur Club Ltd. vs. CIT](#) 1972 CTR (SC) 245 : (1971) 82 ITR 831 (SC) . Similar view has been taken by the Rajasthan High Court in Addl. [CIT vs. Ganeshilal Lal Chand](#) (1984) 43 CTR (Raj) 120 : (1985) 154 ITR 274 (Raj). , On behalf of the [Revenue, CIT vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd.](#) 1976 CTR (Gui) 214 : (1977) 106 ITR 159 (Gui), a decision of the Gujarat High Court was cited. On a consideration of the matter, we are of the view that in view of the aforesaid Supreme Court decisions, the view taken by the Rajasthan High Court is correct and the view taken by the Gujarat High Court is not correct. Accordingly, we dissent from the view taken by the Gujarat High Court and in view of the decisions of the Supreme Court and Rajasthan High Court, we hold that the ITO did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the reassessment."

11. In the present case also, the AO recorded the reasons which were not found to exist on the record, therefore, the reassessment framed deserves to be quashed. In view of the aforesaid discussion, we are of the confirmed view that viewed from any angle, the reassessment framed by the AO was not justified, hence quashed."

5. Per Contra, the learned additional CIT (DR) supported the impugned order, however he failed to rebut the contentions of the Ld. counsel.

6. We have heard both the sides, perused the record and impugned orders. Admittedly, the appellant's case was reopened u/s 148 r.w.s.147 of the Act by the AO for the reason of claim of non-genuine expenses but the additions were not made on account of expenses rather have been made on different account such as sundry creditors, depreciation, TDS etc. The issue is squarely covered by the coordinate bench decision in the case of "Gaurav Joshi versus Income Tax Officer", (Supra) wherein the Tribunal held that that the AO while issuing the notice u/s 148 of the Act has mentioned that the assessee had deposited a cash of Rs.1,39,28,640/- during the financial year 2009-10 in the bank account which had escaped assessment. However, in the assessment order, on the contrary, he mentioned that the cash deposited in the bank account of the assessee was Rs.51,24,064/-, which is evident from para 8.3 off the assessment order dated 14.12.2017. Therefore, the reasons recorded by the AO were not emerging from the record available with him.

7. In the present case, the AO while issuing the notice u/s 148 of the Act has mentioned that the assessee had claimed non-genuine expenses for the years under consideration. On the contrary, in the Assessment order, undisputedly the additions were made on account of sundry creditors, depreciation, TDS etc. In view of the matter, we hold that neither the additions were made based on the reasons recorded by the AO u/s 147 of the Act nor the reasons recorded by the AO were emerging from the record available with him to support the disputed additions. Meaning thereby that all the additions in the three Assessment Years under consideration were reopened on identical reasons on account of claim of bogus expenses claim whereas the additions were made on account of sundry creditors, depreciation, TDS etc in the assessment order without any reference to reasons recorded is held to be without jurisdiction.

8. From the above, it is evident that the grounds of claim of excess/ bogus expenses on which reassessment notice was issued were not found to exist, and in our view, the moment such is the position, the ITO does not get the jurisdiction to make a reassessment. Our this view, finds support from the Supreme Court decisions in CIT vs. A. Gaura Joshi Raman & Co. (1968) 67 ITR 11 (SC) and Bankipur Club Ltd, vs. CIT 1972 CTR (SC) 245

: (1971) 82 ITR 831 (SC) . Similar view has been taken by the Rajasthan High Court in Addl. CIT vs. Ganeshilal Lal Chand (1984) 43 CTR (Raj) 120 : (1985) 154 ITR 274 (Raj).

9. Following the coordinate Bench decision in “Gaurav Joshi versus Income Tax Officer”, (Supra) we hold that the AO recorded the reasons which were not found to exist on the record in as much as additions were made and therefore, we hold that the reassessment framed deserves to be quashed as being without jurisdiction.

10. Since, the appellant get relief on legal issue in ground 4 and therefore other legal ground and grounds on merits have not been adjudicated.

11. The facts and issues in I.T.A. No. 221/Asr/2023 in respect of Assessment Year 2012-13 are identical to the other appeals of the appellant in ITA Nos. 222 & 226/Asr/2023, in respect of the Assessment Years 2013-14 & 2011-12 and therefore, our observation and finding given in I.T.A. No. 221/Asr/2023 in respect of Assessment Year 2012-13 shall be applicable to the appeals of the appellant in ITA Nos. 222 & 226/Asr/2023,

in respect of the Assessment Years 2013-14 & 2011-12, in mutatis mutandis, ordered Accordingly.

12. In the backdrop of the aforesaid discussion, these three appeals of the appellant are disposed of in the terms indicated as above.

Order pronounced in the open court on 21.09.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order