

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.2335/Del/2022
Assessment Year: 2012-13

DCIT, International Taxation, Circle-Gurugram, Gurugram	Vs.	Sh. Vikas Arora, BC-59, Nirvana Country, Gurugram
PAN :AHCPA2887J		
(Appellant)		(Respondent)

Assessee by	Sh. Rajeev Ahuja, Advocate
Department by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	10.10.2023
Date of pronouncement	16.10.2023

ORDER

This is an appeal by the Revenue against order dated 11.07.2022 of learned Commissioner of Income Tax (Appeals)-43, New Delhi for the assessment year 2012-13.

2. The grounds raised by the Revenue are as under:

1. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in quashing the approval of Ld. CIT for initiation of proceedings u/s 148 of the Act?*
2. *Whether on the facts and circumstances of the case, Ld. CIT(A) has exceeded his jurisdiction in holding that approval of Ld. CIT was mechanical in nature?*

3. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in holding that reasons to believe were recorded on borrowed satisfaction ignoring the inquiry conducted by the then AO which was part of record available with Ld. CIT(A) and in turn, his decision is perverse on facts?*
4. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in not adjudicating the case on merits through a speaking order?*
5. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in accepting the submissions of the assessee without any supporting documents when reasons of addition for non-submission of supporting documents were clearly recorded in the assessment order?*
6. *The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of the appeal.*

3. Briefly the facts are, the assessee, a non-resident individual, filed his return of income for the assessment year under dispute declaring income of Rs.10,15,790/-. The return of income so filed was processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information that in the financial year relevant to assessment year under dispute, an amount of Rs.3,68,15,167/- has been credited to the bank account of the assessee. Since, the amount credited to the bank account was not offered in the return of income, the Assessing Officer reopened the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act, the assessee filed his

return of income declaring income of Rs. 10,15,790/-. In course of assessment proceeding, the Assessing Officer called upon the assessee to explain the source of the amount credited to the bank account. In response, the assessee furnished his reply, stating that the deposits in the bank account are out of amount received from sale of property. Alleging that the assessee did not furnish any documentary evidence to substantiate his claim, the Assessing Officer treated the amount of Rs.3,68,15,167/- as unexplained cash credit under section 68 of Act and added back to the income of the assessee, while completing the assessment under section 143(3) read with section 147 of the Act.

4. Against the assessment order so passed, the assessee filed an appeal before learned first appellate authority, inter alia, challenging the validity of the reopening of assessment under section 147 of the Act. Based on the submissions made by the assessee, learned first appellate authority called for and examined the assessment records to decide the issue relating to validity of reopening of assessment under section 147 of the Act. After perusing the materials available on record, he found that the reopening of assessment was made only for the reason of credit

entries of Rs.3,68,15,167/- in the savings bank account held with ICICI Bank.

5. He observed, while recording satisfaction/approval, learned CIT has not applied his mind and granted approval mechanically. He further observed that the reasons recorded by the Assessing Officer for reopening of assessment does not reveal any independent application of mind by the Assessing Officer. He observed that merely based on information received from ACIT, Investigation Wing the Assessing Officer has reopened the assessment without making any independent inquiry. He further observed that the Assessing Officer in the reasons recorded has erroneously mentioned about non-filing of return of income by the assessee. Whereas, the assessee has filed his return of income. Learned Commissioner (Appeals), ultimately, concluded that the reopening of assessment under section 147 of the Act is invalid. While doing so, he also relied upon various judicial precedents.

6. Insofar as the merits of the addition is concerned, learned Commissioner (Appeals) observed that in the return of income filed for the assessment year under dispute, the assessee has considered the credit entries appearing in the bank statements, and has also offered explanation regarding the source of such

credit entries. Thus, he held that the credit entries cannot be treated as unexplained cash credit under section 68 of the Act. Accordingly, he deleted the addition.

7. We have considered rival submissions and perused the materials on record. Facts on record reveal that in the return of income voluntarily filed for the impugned assessment year under dispute, the assessee has disclosed the credit entries appearing in the bank account. Whereas, in the reasons recorded for reopening the assessment under section 147 of the Act, copy of which is placed at page no. 47 of the paper-book, the Assessing Officer has stated that the assessee has not filed his return of income. Further, the Assessing Officer has referred to the information received from the Investigation Wing regarding the credit entries in the savings bank account of the assessee. The aforesaid facts clearly reveal that though, the assessee has filed his return of income voluntarily disclosing the transaction appearing in the bank account, however, being completely oblivious of the return of income filed by the assessee, the Assessing Officer has proceeded to reopen the assessment merely relying upon the information received from the Investigation Wing.

8. The very fact that the Assessing Officer has proceeded to reopen the assessment assuming that the assessee has not filed his return of income for the assessment year under dispute, clearly reveals non-application of mind by the Assessing Officer to the facts and materials on record.

9. On perusal of return of income and the computation of income filed by the assessee, it is evident that the assessee has considered the income derived from sale of property credited to the bank account. That being the factual position emerging on record, in our view, reopening of assessment appears to be without proper application of mind and based on conjectures and surmises. There is no live link between the materials available on record and the formation of belief. Therefore, in our view, learned first appellate authority was justified in holding the reopening of assessment under section 147 of the Act to be invalid.

10. On merits also, the assessee has made out a strong case. As rightly observed by learned first appellate authority, the assessee furnished the necessary details explaining the source of the credit entries. Without properly examining the materials brought on record, the Assessing Officer has made the addition. Since, the assessee has explained the source of credit entries, in our view,

learned Commissioner (Appeals) was justified in deleting the addition. Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds of appeal.

11. In the result, the appeal is dismissed.

Order pronounced in the open court on 16th October, 2023

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 16th October, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi