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. No. 207/Asr/2023
Assessment Year: 2012-13

Mohammad Abbas Ashraf Chack Sadribal, Near REC, Hazratbal, Srinagar, Jammu & Kashmir, 190006 [PAN: AONPA1303B] **(Appellant)**	Vs.	Income Tax Officer, Ward-II, Srinagar **(Respondent)**

Appellant by	:	None (Written submission)
Respondent by	:	Sh. Yashender Garg, Sr. DR
Date of Hearing	:	19.09.2023
Date of Pronouncement	:	30.10.2023

ORDER

Per Dr. M. L. Meena, AM:

This captioned appeal has been filed by the assessee against the order of the ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 30.05.2023 in respect of Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

> *"1. The assessment is bad in law, as no notice u/s 148 of the Act stands served on assessee.*
>
> *2. The entire reassessment is bad in law, as the reassessment is based on AIR information, rather on any tangible material.*
>
> *3. The ld. AO erred in both facts & laws by deeming cash deposits of Rs.10,87,500.00as unexplained investments in an arbitrary manner, when the same represents sales made in ordinary course of business.*
>
> *4. The ld. AO erred in both facts & laws by applying net profit rate of 8% arbitrary, when the appellant has not earned net profit of more than 3% during the year."*

3. This case was selected for scrutiny, based on information received from AIR/CIB, that the assessee during the financial year 2011-12 relevant to assessment year 2012-13, the assessee has deposited cash of Rs.10,87,500/- in his Bank Saving Account of J & K Bank in REC, Srinagar. Notice under section 148 of the Income Tax Act, 1961 was issued on 27/03/2019. The assessee failed to file ROI or any response to the notice issued u/s 148 subsequent notices. In the absence of any explanation the AO added the actual cash deposits of Rs.10,87,500/- by ex-parte order u/s 144 of the Act.

4. Being aggrieved by the said order passed by the AO, the appellant has preferred appeal before the CIT(A) who has granted part relief in arbitrary manner by observing that the appellant has deposited cash of Rs. 10,87,500/- in his Saving Account with J & K Bank in REC, Srinagar. During appellate proceedings the appellant was asked to furnish a copy of the bank statement, but the appellant has not replied. AO stated that in fact, even bank account number was not given and he held that in the absence of any submission and documents the source of investment in property remains unproved. However, various courts have given decision on allowance for past savings and cash in hand in such cases. The ld. CIT(A), in the interest of equity and justice it will be reasonable to give an allowance of Rs.3,00,000/- for past savings and cash in hand. Accordingly, the addition was restricted to Rs.7,87,500/-. The grounds of appeal are **'Partly Allowed.**

5. The counsel for the appellant submitted that the ld. AO erred in both facts & laws by deeming cash deposits of Rs.10,87,500.00/- as unexplained investments in an arbitrary manner, when the same represents sales made in ordinary course of business and that the ld. AO erred in both facts & laws by applying net profit rate of 8% arbitrary, when the appellant

has not earned net profit of more than 3% during the year. He submitted a synopsis which reads as under:

"The appellate during the year was engaged in the business of sale and purchase of kashmari handicraft on small scale to earn his livelihood. The Ld. AO made assessment u/s 144 of the Act and made following additions in an arbitrary manner.

1. Addition of Rs 1087500.00 as unexplained investment on account of cash deposits.

2.Addition of Rs 351216.00 as 8% of profits on balance credits u/s 44AD of the Act

Further the entire re-assessment proceedings are bad in law, as no notice u/s 148 of the Act stands served on the assessee, besides the reopening is purely based on AIR information.

The Ld. CIT (A) confirmed addition of Rs 787500.00 out of cash deposits in an arbitrary manner and the appeal order is bad in law, as Ld. CJT (A) did not adjudicated (he grounds of appeal. The appellate has filed second appeal before Hon'ble Bench and following submissions are made in support of grounds of appeal. He filed written SUBMISSIONS IN SUPPORT OF GROUNDS OF APPEAL as under:

Ground No. 1;-

The entire reassessment proceedings are bad in law, as no notice u/s 148/142 of the Act stands served on assessee. The assessee during the period has not been served any notice u/s 148 of the Act except assessment order. Notice u/s 148 of the Income Tax Act should be issued within the prescribed limit, if the notice is not issued and served to the appellant, then the reassessment proceedings u/s 148 would be considered invalid.

In support of above, the assesee takes support of following judicial pronouncements

(i) Hon'ble Supreme Court in Y. Narayan Chetty vs. ITO (1959) 35 1TR 388 (SC); CIT vs. Thayaballi Mulia Jeevaji Kapasi (1967) 66 ITR 147 (SC); and CIT vs. Kurban HussainIbrahimjiMitkiborwala (1971) 82 ITR 821 (SC) *has held that, the notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void.*

(ii) Hon'ble Delhi High Court in case of CIT vs. Hotline International Pvt. Ltd. (296 ITR 0333)has held that in the absence of a valid service of notice u/s 148 on the assessee, the reassessment proceedings are bad in law,
(iii) Hon'ble Delhi High Court in case of CIT (Central)-! vs. Chetan Gupta ITANo. 1891/del/2012 dated 15.09.2015; 382 ITR 613 has held that no reassessment can take place without service of notice being affected on the assessee or his authorized representative.

(iv). Hon'ble Punjab & Haryana High Court in case of CIT vs. Ceban India Ltd. IT A No. 85 of 2009, Jul 7, 2009 has held that in absence of notice being served, the AO had no jurisdiction to make assessment.

Ground No 2;-

The re-assessment is bad in law, as, perusal of first para of assessment order reveal, that Ld. AO has recorded reasons purely on AIR information ***rather on any tangible material and issued notice u/s 148 of the Income tax Act 1961. The AIR information can arouse suspicion that income has escaped assessment, but the same cannot be a reason to believe that income mentioned therein has escaped assessment. In Ganga Saran and Sons P. Ltd. v. ITO [1981] 130 ITR I, the Apex Court has stated that the words and the phrase used, "has reason to believe", and in the first part of Section 147 of the Act were stronger than the word "satisfied".*** *The belief entertained by the assessing authority must not be arbitrary or irrational. It must be reasonable, or, in other words, it must be based on reasons which are relevant and material.* ***The AO does not have any material, other than the AIR Information,***

on the basis ofwhich a reasonable man would come to the conclusion, that any income chargeable to tax has escaped assessment. In *the circumstances, in absence of basic requirements of section 147 of the Act being satisfied,* ***the assumption of jurisdiction by the AO is invalid and as such, the impugned notice under section 148 of the Act cannot be sustained and the assessment proceedings are bad in law. It is further submitted, that the appellate has also not received any notice u/s 133(6) of the Act.***

The case is squarely covered by Co-ordinate Bench ITAT Amritsat Bench Decisions in

ITA No. 129(Asr)/2015 Assessment year:2005-06

Ashwani Kumar vs. Income Tax Officer Date of Order/ Judgment: 23/02/2016

In this judgment, the ITAT Amritsar has upheld that the mere AIR information that deposits were made in a bank account do not indicate that these deposits constitute an income which has escaped assessment.

ITAT observed that the facts of the case were similar to those in 'Bir Bahadur Singh Sijwali vs. ***ITO,*** *Ward-1, Haldwani' 53 Taxman. Co. 366 (Delhi - Trib.) and held that the reasons recorded by the AO for issuance of notice u/s 148 of the Act were invalid, being reasons not sufficient to believe escapement of income, based on vague information.*

Further reliance is made on latest judgement

Dinesh kumar Dalsangbhai Chaudhary Kankavati Society Vs ITO (ITAT Ahmcdabad) Appeal Number: ITA No. 452/Alid/20l9 dated of order 14/06/2023

In a landmark decision bv IT AT Ahmedabad. the Income Tax assessment made under section 147 based merely on the information of cash deposit was deemed not tenable in law.

The case, DineshkumarDalsangbhai Chaudhary Kankavati Society Vs ITO, revolved around the reopening of the assessment based only on the information that the assessee had deposited cash in the bank.

The ITAT Ahmedabad reviewed the validity of reopening the assessment and restricting the addition by the AO under section 68 of the Act. The assessee's counsel argued that the assessment was reopened solely based on suspicion rather than a formation of belief, citing the ITAT Delhi Bench case of Bir Bahadur Singh Sijwali v, I.T.O. as precedent. The court found that the AO had not conducted any investigation to ascertain the source of the impugned cash deposits in the bank. The ITAT Ahmedabad agreed with the assessee's contention and noted that the proceedings could not be initiated merely on a fallacious assumption or suspicion. It upheld that the sources of the deposit need not necessarily be income of the assessee. Drawing parallels with the Bir Bahadur Singh Sijwali v. I.T.O. case, the tribunal quashed the reassessment order, stating that it was not tenable in law to frame an assessment based solely on the information of cash deposit.

Without prejudice to the above, the assessee further submits as.
Ground No 3:-

1 he appellate during the financial year 2011-12 has maintained two Bank accounts comprising of cash credits and Saving Bank accounts for carrying his small business of sale and purchase of kashmarihandicrafts.Theassesee deposited cash, cheques and transfers in the bank in the ordinary course of business and regularwithdrawls were made for purchases and other expenses in ordinary course of business. The Ld. AO in an arbitrary manner treated cash deposits of Rs ***10,87,500.00*** *as* ***unexplained investments without any justification.*** *The assessee is a small trader carrying business of kashmari handicrafts on small scale and making sales in both cash and non cash basis and entire proceeds are deposits in the Bank accounts. Out the aforesaid deposits, the AO treated cash deposits of Rs 10,87,500.00 as unexplained investments without any finding or justification, when in fact, they were withdrawn on regular basis. Therefore the action of AO is not only unjustified but also illegal.*

For reference section 69, which deal with unexplained investments is reproduced as

Section 69 is a deeming provision and applies on fulfillment of following three conditions.

1. *That in the financial year immediately proceeding the assessment year, the assessee has made any investments*
2. *That such investments are not recorded in the Books of accounts maintained by the assessee.*
3. *That the assessee offers no explanation about the nature and source of the investments or the explanations offered by him is not in the opinion of assessing officer satisfactory.*

The above section indicates that in order to be an income, primarily the appellate must have made investment and the AO can ask for its source. Since appellate has not made any investment rather transactions, therefore addition has no basis.

Investments in financial terminally refers assets either current or non-current from which future benefits are expected to arise either in the form of regular income or capital appreciation or both, while as the appellate has simply deposited cash, which represents sales from sale proceeds and simultaneously made withdrawals for purchases and other expenses.Therefore additions made by AO are totally unwarranted and unjustified.

The Honble ITAT Delhi in case of Bir Bahadur Singh Sijwali (IT APPEAL NO 3814 (DELHI) observed that "the mere fact that the deposits had been made in the Bank account does not indicate that these deposits constitute income which has escaped assessment"

FINDING BY CIT (APPEALS)

The Ld.CIT appeals in an arbitrary manner and without application of mind made his conclusion , that in absence of submissions and documents , the source of investment in property remains unproved (Para 7.2 of appeal order) and allowed relief of 3.00 lacs, as past saving, the *CIT* ***(A) treated cash deposits as investment in property, when appellate has not made any investment in property.*** *The Ld.* ***CIT*** *(A) did not* ***adjudicate*** *the* ***grounds of appeal.***

The ***Hon'ble Bombay High Court in the case CIT v. Premkumar Ariimdas Luthra (HUF)12016] 69 taxmaiui.com 407 (Bombay) raised para 8 which is reproduced as under:***

From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the C1T(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251 (l)(a) and (b) of the Act provide that while disposing of appeal the C1T(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the C1T(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

Ground No 4:-

The Ld. AO erred in both facts and laws by applying Ne profit rate of 8% in an arbitrary manner on balance bank credits, which is unjustified, unwarranted and against the facts and circumstances of the case . Further the AO is a quasi judicial authority & in case the books results of the

assessee are to be rejected, the income of assessee is to be estimated on some reasonable basis for which comparable case and history of assessee could be taken as a guide. The assessee is engaged in the business of kashmari 1 handicrafts on small scale basis to earn his livelihood. The net profit in this category of trade is 3%. Therefore the LD. AO applying the net profit rate of 8% is unjustified and unwarranted.

Keeping these facts into consideration, it is prayed that the assessment order may please be quashed and the entire additions may please be deleted in full."

6. Per Contra, the learned additional CIT (DR) relied on the impugned order.

7. We have heard both the sides, perused record, written submissions and impugned orders. Admittedly, the Ld. AO made assessment u/s 144 of the Act, ex-parte qua the assessee and made additions of Rs 10,87,500.00 as unexplained investment on account of cash deposits and Rs 3,51,216/- as 8% of profits on balance credits u/s 44AD of the Act, in an arbitrary manner. The appellant contended that the entire re-assessment proceedings are bad in law, as no notice u/s 148 of the Act stands served on the assessee. The AR argued that the reopening is purely based on AIR information, a fact required to be verified from the assessment record. The Ld. CIT (A) confirmed additions of Rs 7,87,500.00/- out of cash deposits in

an arbitrary manner and hence, the appeal order is bad in law, as Ld. CIT (A) did not adjudicate the grounds of appeal in judicious manner.

8. In our view, the authorities below ought to have disproved the claim of the assessee by way of rebutting its contention with support of corroborative documentary evidence on record after granting an adequate opportunity of being heard. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

> *"Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration."*

9. In view of the principles of natural justice, we consider it deem fit to remand back the matter to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidence filed on record and may be filed before him during the fresh Assessment Proceedings after granting sufficient opportunity of being heard to the

assessee. The AO is directed to issue a Show Cause Notice before passing a reasoned order in accordance with law. Accordingly, the Assessment order is set aside and matter is remanded back to the assessing authority to pass de novo assessment as per law.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.10.2023

Sd/-	**Sd/-**
(Anikesh Banerjee)	**(Dr. M. L. Meena)**
Judicial Member	**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.

True Copy

By Order