

**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. 10/Asr/2021  
Assessment Year: 2011-12**

Sh. Saroop Hari S/O. Swaran Singh, VPO Nadali via Bhunga, Distt. Hoshiarpur [PAN:-ABVPH3525R] <b>(Appellant)</b>	Vs.	ITO, Ward-4, Hoshiarpur  <b>(Respondent)</b>

<b>Appellant by</b>	Sh. J.S. Bhasin, Adv
<b>Respondent by</b>	Sh. Ravinder Mittal, Sr DR.

<b>Date of Hearing</b>	31.10.2023
<b>Date of Pronouncement</b>	09.11.2023

**ORDER**

**Per: Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Jalandhar, [in brevity the 'CIT (A)'], order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2011-12. The impugned order was emanated from the order of the Id. Income

Tax Officer Ward- 4, Hoshiarpur, [in brevity 'the AO'] order passed u/s 143(3)/147 of the Act.

2. The assessee has taken the following grounds:

*“1. That the ld. CIT(A) while adjudicating assessee’s legal grounds of appeal No. 1 & 2, grossly erred in mechanically dismissing the assessee’s ground No. 2 whereby validity of proceedings-initiated u/s. 147/148 were specifically disputed, without giving any findings on this issue. Notably, all her findings were directed only against Ground No.1 on service of 148 notice.*

*2. That by any reckoning, on facts and on law, proceedings u/s. 147/148, could not be validly initiated merely for verification of cash deposits in bank. As such, the consequential order is also void ab inito.*

*3. That non supply of reasons recorded despite a written request, after compliance of notice u/s. 148, vitiated the reassessment, inasmuch as, it deprived the assessee to file legal objections as mandated by Hon’ble Apex Court in the case of GKN Drive Shaft 259 ITR 19(SC).*

*4. That without prejudice to above the CIT(A) grossly erred in confirming the addition of Rs.11,17,400/- made u/s. 69A, without proper appreciation of the facts and the explanation filed by the assessee. That addition, if any, could not exceed a peak balance in the bank account.*

5. *That the impugned order, being against law and facts of the case, deserves to be set aside.”*

3. The AR mentioned that the appeal is filed with a delay of 358 days. The petition for condonation of delay is filed and the delay is duly explained. The ld. AR mentioned that delay for 220 days was due to the assessee's illness and was suffering in Caner, relevant medical papers are duly filed before bench. For rest of the 358 days, the assessee is covered by COVID period which is covered by order of the Hon'ble Apex Court order **Suo Moto Writ Petition 441 ITR 722 (SC) dated 10.01.2022**. The ld. DR had not made any strong objection against the assessee. Accordingly, the delay for 358 days is condoned.

4. The brief fact of case is that as per the ld. AR the assessee basically a holy and virtuous person, has been surviving on dole received from his admirers during religious discourses beside a meagre income generated from running a small business of general merchandise in his village Nadali. Though not a regular assessee, he received notice u/s.148 from ITO Hoshiarpur, based on AIR information, for having made cash deposits aggregating to Rs.11,17,400/- in his savings bank a/c with ICICI Bank at Hoshiarpur. In compliance to 148 notice, return filed declaring total turnover amount to Rs. 11,39,900/- and net profit was declared U/s 44AD @8.25% which works out amount to Rs.1,25,850/- which

declared as total income. The assessee asked for reason recorded U/s 148 mandated by the order of Hon'ble Apex Court in the case of **GKN Drive Shaft Vs. ITR (2003) 259 ITR 19(SC)**. But there is no supply of reason to assessee during the proceeding. The case was taken in scrutiny and after summary trial, rejecting the assessee's explanation as to source of impugned cash being his trading receipts of general merchandise, the impugned order came to be passed on 07.02.2018 thereby making addition of Rs.11,17,400/- u/s. 69 holding it to be unexplained deposits in bank. Being aggrieved the assessee filed an appeal to the Id. CIT(A). Unfortunately, when contested before CIT(A), all the grounds on law and on facts were rejected. Being aggrieved on appeal order the assessee filed an appeal before us.

5. The Id. AR submitted written submission which is kept in the record. The Id. AR vehemently argued and first invited our attention in legal ground that the assessee's case was reopened u/s. 148. The assessee was not regular return filer. The assessee filed return in perusing section 148 and filed the return as per provisions of section 44AD of the Act by declaring turn over Rs.11,39,900/- relating to trading business. The assessee offered net profit @8.25% u/s. 44AD which works out amount to Rs. 1,25,390/-, which is declared in the return of income. The Id.AR further argued that assessee asked for recorded reasons as

mandated by **GKN Drive Shaft**, *supra*. But recorded reasons were not supplied to assessee during the entire proceedings. Further Id. AR argued that cash deposit of the assessee was accepted without making single verification by the Id. AO and directly issue the notice u/s. 148. Both legal issues were challenged before the Id. CIT(A). The Id. CIT(A) had not adjudicated the legal issue in appeal order.

6. The Id. AR invited our attention in the assessment order page 1. The relevant paragraph is reproduced as below:

“2.....

*Notice u/s. 142(1) of the act dated 22.11.2018 alongwith the questionnaire annexed thereto and show cause letter dated 22.11.2018 were issued & duly served upon the assessee and the proceedings were finally fixed for hearing on 30.11.2018 at 10.30 A.M. in my office situated at Mall Road, Hoshiarpur. On 3.11.2018, too, neither any body attended the proceedings or was nay written reply/request for adjournment submitted to this office, despite the fact that the above mentioned notice u/s. 142(1) dated 22.11.2018 was receivedby the assessee himself on 22.11.2018. However, on 03.12.2018, the assessee himself appeared & attended the proceedings. He orally stated that basically he is a Sant. The assessee filed a copy acknowledgement (ITR-V) of ITR-4S, e-filed on 19.07.2018 which was e-verified on 28.08.2018 alongwith Computation of Total income and written*

*submission. Vide written submission, received submission, received in this office on 03.12.2018, the assessee submitted that during the year under consideration, he was running a small business of trading in general goods. He filed his ITR as per provisions of section 44AD for the year under consideration. Further, on perusal of ITR-4S and Computation of Total Income, it was noticed that the assessee declared Gross turnover at Rs.11,39,900/-, Sundry debtors, Sundry Creditors and Stock-in-trade NIL. However, the assessee showed cash balance at Rs.41,200/-. Scanned copy of Computation of Total Income, filed by the assessee is enclosed herewith as per Annexure-I. It was also seen that the assessee, declared deemed profit u/s. 44AD @8.25% to the tune of Rs.1,25,390/-The ld. AR mentioned that ground no. 2 was not challenged before CIT(A). The issue is newly raised before the Bench. The ld. AR respectfully relied on **National Thermal Power Co. Ltd. vs CIT (1998) 229 ITR 383 (SC)** related raising of additional ground before the bench.*

7. The ld. DR vehemently argued and fully relied on the order of the Revenue authorities.

8. We heard the rival submissions and considered the documents available in the record. During the return u/s 148, the assessee declared a net profit by pursuing

the provisions u/s. 44AD amount to Rs. 1,25,850/-. The ld. AO added back the unexplained cash deposit in bank amount of Rs.11,17,400/- with the total income of the assessee. One hand the ld. AO rejected the return., On other hand the declared net profit is considered during computation of total Income. The declaration of net profit U/s44AD is presumptive profit so the entire expenses are not to be verified as per the provisions. But being dissatisfied on explanation of existence of business of assessee, the addition u/s. 69 amount of Rs. 11,17,400/- was duly made by the ld. AO.

8.1 Related to the legal issue, the ld. DR relied on appeal order. The ld. CIT(A) had already relied on the order of the **Hon'ble High Court of Punjab & Haryana** in the case of **CIT vs Rajvir Singh 243 CTR 0185 (P & H)**, held

*“Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment year 1977-78 - Where pursuant to notice issued under section 148 assessee had filed its return of income, impugned notice could not be held defective for want of specifying status of assessee”*

8.2. For non-issuance of the reasons recorded, the ld. AR respectfully relied on the order of **Hon'ble High Court of Gujrat** in the case of **Sahkari Khand Udyog Mandal Ltd vs. ACIT 92015) 370 ITR 107(Guj)** held that AO should suo moto supply reasons recorded once the return is filed against 148 notice.

**Hon'ble Bombay High court in CIT vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom)** held that though the reopening was within time, since the reasons recorded were not furnished to assessee till the completion of assessment, the reassessment order cannot be upheld.

We respectfully relied on the order of Hon'ble Jurisdictional High Court in the case of **Raninder Singh v. Commissioner of Income-tax, Patiala, [2019] 101 taxmann.com 210 (Punjab & Haryana)**

*“12. The next submission made by the learned counsel for the revenue is that the revenue should be permitted to pass speaking order so also fresh assessment orders simultaneously. This submission has been objected to by the learned counsel for the petitioner on the ground that the right of the petitioner to challenge adverse orders after adjudication on the objections of the petitioner, if any, cannot be taken away. We find merit in her submission. The petitioner may have his legal remedy. The Court cannot prevent him.*

*13. Learned counsel for the petitioner then submitted that the petitioner should be given an opportunity to raise objections regarding limitation in respect of the proceedings in question. In our opinion, there can be no prohibition for the petitioner in raising the question of law, namely the issue of limitation before the authority and therefore, the petitioner is always at liberty to do so. All the question of law and the objections raised by the petitioner will have to be decided by the authority according to law. The averments made in the petition about furnishing of documents as contemplated by Section 78(6) of the Evidence Act is a matter of legal objection which may be decided by the authority.*

*14. In the result, we are of the view that the proceedings in question are required to be remitted to the respondents for fresh hearing and the decision/adjudication according to law. We, therefore, make the following order: —*

**ORDER**

(i)	<i>CWP NO.5872 OF 2018 and CWP NO.5873 OF 2018 are partly allowed;</i>
(ii)	<i>Impugned orders dated 23.03.2016 (Annexure P-1), order dated 14.02.2018 (Annexure P-17) and consequential two notices dated 14.02.2018 (Annexures P-18 &amp; P-19) in both the writ petitions, are quashed and set aside;</i>
(iii)	<i>The proceedings which are the subject matter of both these writ petitions are remitted to the respondents for fresh hearing and disposal on the objections dated 13.02.2018 on facts and in addition to the legal objections, if any, including one of limitation and disposal according to law, within six months from the date of obtaining certified copy of this order;</i>
(iv)	<i>No order as to costs.”</i>

8.3. Considering the above discussion, the grievance of the assessee is that the assessee's **ground nos-1 &2** were not adjudicated by the Id. CIT(A). The **ground no-3** is freshly taken before the bench. The grievance of the assessee is accepted by the bench. There is failure to follow the order of the Hon'ble Apex Court in case of **GKN Drive Shaft** (supra) for non-supplying of recorded reason by the Id. AO and absence to follow the steps as directed by the Hon'ble Apex Court. We

respectfully relied on the order of **Raninder Singh** (supra) as the assessee has liberty to file objection before the assessing authority and the Id. AO is bound to reply the same. Combining all the legal grounds, we remit back **grounds 1 to 3** to the file of the Id. AO and direct to issue the recorded reason U/s 148 to the assessee. The objections raised by the assessee will have to be decided by the authority according to law.

8.4. Related factual issue the assessee has submitted bank statements, **APB page 5-10**. The transactions in bank in impugned assessment year are continuous nature related deposit and withdrawal of fund. The amount was not deposited in a single day. So, the formula of peak credit can be applied for assessee in impugned assessment year. Accordingly, assessee's **ground nos. 4** is remitted back to the file of the Id. AO. Needless to say, that the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the Id. AO and adjudicated on merits in accordance with law. We order accordingly.

8.5. The assessee's **ground no-5** is general in nature.

9. In the result, the appeal of the assessee bearing no. **ITA No.10/ASR/2021** is allowed for statistical purposes.

**Order pronounced in the open court on 09.11.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

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

True Copy  
By Order