

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.1547/DEL/2023
Assessment Year 2011-12

Mrs. Krishna Devi, D/o Sh. Dilip Singh, H.No. 143, Sadh Mohalla, VPO Kakrola, Uttam Nagar, New Delhi.	Vs.	ITO Ward-43(1) New Delhi
TAN/PAN: AWCPD2332C		
(Appellant)		(Respondent)

Appellant by:	Shri V.K. Sabharwal, Adv. Shri Aditya Rai, Adv.		
Respondent by:	Ms. Kirti Sankratyayan, Sr.DR		
Date of hearing:	02	01	2024
Date of pronouncement:	02	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 15.03.2023 arising from the assessment order dated 06.12.2018 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. When the matter was called for hearing, the ld. counsel for the assessee has raised two fold objections (i) the notice under Section 148 has been issued on the assessee on the premise that no return has been filed by the assessee and this is evident from

paragraphs 2 and 3 of the assessment order. The ld. counsel submitted that the very premise itself is wholly incorrect and consequently the assumption of jurisdiction is vitiated as the reasons recorded are contrary to the records. The ld. counsel referred to a letter dated 26.11.2018 to submit that the AO was duly informed about the filing of the return and existence thereof and consequently the reasons recorded alleging escapement of income on the ground that no returns were filed is without any factual foundation. The allegation of escapement based on such incorrect factual foundation is unsustainable in law.

3. With reference to second objection, the ld. counsel submitted that after issuance of notice under Section 148, it was obligatory on the part of the Assessing Officer to issue notice under Section 143(2) of the Act for assumption of jurisdiction to reassess the returned income. As stated, a perusal of the assessment order would show that there is no reference to the issuance of notice under Section 143(2) of the Act. Consequently in the absence of any notice issued under Section 143(2), the re-assessment order passed under Section 147 r.w. Section 143(3) is bad in law.

4. In rebuttal to second objection, the ld. DR for the Revenue relied upon the assessment framed under Section 147 r.w. Section 143(3) and submitted that the contention of the assessee towards issuance of notice under Section 143(2) being mandatory is partly correct. The ld. DR pointed out that obligation towards issuance of notice under Section 143(2) will arise only where the return in response to notice under Section

148 has been filed. The assessee has neither filed any return of income in pursuance of reopening notice under Section 148 nor asserted that return filed under Section 139 should be treated as return filed in response to the notice under Section 148 of the Act.

5. As regards other objections, the ld. DR relied upon the order of the lower authorities.

6. I have carefully considered the rival submissions and perused the material available on record.

7. A perusal of the reasons recorded under Section 148(2) clearly reveals that the Assessing Officer has proceeded under Section 147 r.w. Section 148 on the premise that assessee has not filed any return of income and by virtue of such act, chargeable income has escaped assessment. It is the case of the assessee that the very basis of the assumption of jurisdiction under Section 148 is without any legal or factual foundation. An acknowledgement copy of return of income for Assessment Year 2011-12 in question was referred which points that return of income was filed manually on 31.07.2011 vide machine no. 340300019. This being so, the jurisdiction assumed under Section 147 *de hors* the facts on record and thus clearly vitiated in law. The identical issue has been dealt by the Division Bench in case of *Kunwar Ayub Ali vs. ITO (ITA No.3137/Del/2018 order dated 17.04.2023)* in favour of the assessee. The consequent re-assessment order passed on the basis of nonest notice under Section 148 is thus bad in law. Therefore, the reopening of assessment itself being held illegal, it is not

necessary to go into other aspect of the matter including the merits of the additions under challenge.

7. I thus set aside the order of the CIT(A) and quash the impugned re-assessment order.

8. In the result, the appeal of the assessee is allowed.

Order was dictated and pronounced in the open Court on 02/01/2024

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/01/2024**

Prabhat