

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 2644/Del/2018
(Assessment Year: 2008-09)

Shri Sanjay Yadav, Vs. Income Tax Officer,
S/o. Sh. Ram Niwas, Ward-2(4), Ghaziabad
SB-133, Shastri Nagar,
Ghaziabad

PAN: ABIPY1244R

Assessee by : Dr. Rakesh Gupta, Adv
Shri Shrey Jain, Adv

Revenue by: Ms. Kirti Sankratyayan, Sr. DR

Date of Hearing 04/01/2024

Date of pronouncement 09/01/2024

ORDER

1. The appeal in ITA No. 2644/Del/2018 for AY 2008-09 arises out of the order of Id CIT(A), Ghaziabad [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 595525990180117 dated 02.02.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 dated 29.03.2016 (hereinafter referred to as 'the Act') by ITO, Ward-2(4), Ghaziabad (hereinafter referred to as 'Id. AO').

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

"1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 17,50,000/- allegedly on the ground that the father was not having sufficient income to gift his son and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of CIT(A) confirming the addition of Rs. 17,50,000/- under section 69 c the Income Act, 1961 is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the addition of Rs. 16,00,000/- allegedly on the ground that creditworthiness of the lender is not proved and that too by recording incorrect facts and findings and without observing the principles of natural justice.

6. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the addition of Rs. 16,00,000/- under section 69 of the Income Tax Act, 1961 is bad in law and against the facts and circumstances of the case.

7. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. The assessee has raised additional grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order on the ground that notice u/s 148 has been issued by non- jurisdictional AO i.e ITO ward-3(3), Noida whereas the Jurisdiction lies with ITO ward-2(4), Ghaziabad.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing impugned reassessment order and that too without assuming jurisdiction and without serving valid mandatory notice u/s 148 in accordance with law.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing impugned reassessment order and that too without assuming jurisdiction as per law and without serving the mandatory notice u/s 143(2) of the Income Tax Act, 1961 and is in violation of principle of natural justice.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not admitting the additional evidence filed by the assessee which is in gross violation of principles of natural justice.

Since the above ground of appeal are purely legal and as a result of direct judicial decision of full bench of Hon'ble Delhi High Court in the case of CIT vs. Sardari Lal & Co., (2001) 251 ITR 0864, Delhi High Court, Full Bench."

4. Apart from the original grounds, I find that assessee has also raised additional grounds vide letter dated 18.10.2018 challenging the validity of assumption of jurisdiction u/s 147 of the Act by stating that notice u/s 148 of the Act has been issued by non jurisdiction AO; that the notice u/s 148 of the Act was not served on the assessee; that notice u/s 143(2) of the Act was not served on the assessee etc. To address the additional grounds raised by the assessee, the bench on earlier occasion had directed the revenue to produce the assessment records. The Id DR on the date of hearing produced the assessment records and on perusal of the same it was found that section 148 notice dated 12.03.2015 was issued by ITO-Ward-3(3), Noida and the same was served on the assessee's father in person on 30.09.2015. Evidence in this regard is enclosed in page 2 of the paper book. Further, page 3 of the PB contains proforma of the Id AO for seeking approval u/s 151 of the Act from the Id Joint CIT. In the said proforma, in response to Question No. 7 thereon, the Id AO had mentioned that the assessee had not filed any return of income voluntary for AY 2008-09. This is factually incorrect in view of the fact that the assessee had indeed filed his original return of income u/s 139(1) of the Act way back on 10.06.2008 declaring total income of Rs. 1,04,145/- in electronic mode. The evidence in the form of copy of ITR acknowledgement in this regard is enclosed in page 1 of the PB. This itself goes to prove that the entire reopening of assessment was made by the Id AO on incorrect assumption of fact that the assessee had not filed his original return of income. Since, the reopening is based on incorrect assumption of fact, the entire formation of belief in the mind of the Id AO that income of the assessee has escaped assessment vanishes. Accordingly, I have no hesitation to hold the very primary basis of initiating reopening proceedings u/s 147 of the Act in the hands of the assessee falls flat and is *void ab initio* and accordingly quashed. Further, I also find that the notice u/s 148 of the Act was not served on the assessee which is evidenced from pages 16-17 of the assessment folder as notice is remaining un-served in the assessment folder itself. In view of this, I hold that the additional ground Nos. 2 and 3 raised by the assessee are hereby allowed.

5. Since, reopening is quashed on this preliminary legal ground, the other additional grounds and other original grounds raised by the assessee need not be

gone into, as adjudication of the same would merely become academic in nature. Hence, no opinion is given thereon and they are left open.

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

Order pronounced in the open court on 09/01/2024.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi