

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
Dr.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.2777/Del/2023**

**[Assessment Year : 2011-12]**

|   |                         |                                   |
|---|-------------------------|-----------------------------------|
| Seema Singh,<br>E-65, Chatterpur Extension, Near<br>Suman Chowk, New Delhi-110074.<br><b>PAN-CAZPS4606K</b> | vs                      | ITO,<br>Ward-32(3),<br>New Delhi. |
| <b>APPELLANT</b>  |                         | <b>RESPONDENT</b>                 |
| <b>Appellant by</b>   | Shri Pulkit Verma, Adv. |                                   |
| <b>Respondent by</b>  | Shri Om Parkash, Sr.DR  |                                   |
| <b>Date of Hearing</b>  | 23.04.2024              |                                   |
| <b>Date of Pronouncement</b>  | 30.04.2024              |                                   |

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 29.03.2023 for the assessment year 2011-12.

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

1. *“That on facts and in law, the order passed by the learned CIT(A), to the extent prejudicial to the appellant, is bad in law and liable to be quashed.*
2. *That on facts and in law, the Ld. AO has erred in reopening the assessment u/s 147 by Issuing notice u/s 148 and has erred in passing ex-parte order u/s 144 without giving proper opportunity of being heard.*
  - 2.1 *That on facts and in law, the Ld. CIT(A) has erred in passing the ex-parte order without giving proper opportunity of being heard.*

3. *That on facts and in law, the Ld. CIT(A) has erred in confirming the action of the AO in issuing notice u/s 148 and assuming jurisdiction u/s 147 in absence of condition precedent for the assumption of jurisdiction, the order passed by AO is bad in law, void ab initio and liable to be quashed.*
- 3.1 *That on facts and in law, the Ld. AO has erred in reopening the assessment u/s 147 by Issuing notice u/s 148 and has erred in passing ex-parte order/s 144 without giving proper opportunity of being heard.*
- 3.2 *That on facts and in law, the Ld. AO has erred in passing the order u/s 147 r.w.s 144 without providing the reasons recorded for reopening of the case which is contrary to the guidelines laid down by Hon'ble Supreme Court ruling in GKN Driveshaft Ltd 259 ITR 19 (SC).*
4. *That on facts arid in law, the CIT(A) has erred in confirming the action of the AO in framing the assessment and passing the order under Section 147 r.w.s. 144 without serving notice under Section 143(2) of the Act.*
- 4.1. *That on facts and in law, the order passed by Ld. AO under Section 147 r.w.s. 144 without serving notice under Section 143(2) is a nullity, bad in law and liable to be quashed.*
5. *That on facts and in law, the Ld. CIT(A) grossly erred in upholding the order of Ld. AO in making addition to the extent of Rs. 22,12,884/ without appreciating the fact that assessment order nowhere specifies under which section the addition has been made.*
6. *That on facts and in law, the Ld. CIT(A) erred in upholding the addition of Rs. 22,12,884/- on account of undisclosed income ignoring the fact the said source of the amount pertains to sale of immovable property being backed by documentary sale deed as well interest income which was made through banking channels.*

6.1 *That on facts and in law, the Ld. AO erred in taxing the entire alleged undisclosed time deposit of Rs. 22,00,000/- instead of interest accrued/received without doubting the genuineness of the alleged time deposit or treating it as unexplained under deeming provisions of the Act.*

6.2 *That on facts and in law, the Ld. AO erred in treating the interest income of Rs. 12,884/-as unexplained without considering the fact that the said interest income of Rs. 12,884/-is not taxable since the gross total income of the Appellant for A.Y: 2011-12 is less than the exemption limit.*

*That the Appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.”*

3. Briefly stated facts of the case are that the assessee had not filed income tax return. The Assessing Officer (“AO”) recorded that as per information received during the relevant Assessment Year, the assessee had made time deposit of INR 22,00,000/- in her bank account. The case of the assessee was re-opened for assessment. A notice u/s 148 of the Income Tax Act, 1961 (“the Act”) was issued to the assessee. The notice was not complied by the assessee. The AO therefore, proceeded to pass assessment order u/s 144/147 of the Act vide order dated 12.12.2018. Thereby, he made addition of INR 22,00,000/- on account of unexplained cash deposit in her bank account of INR 12,884/- on account of interest earned from bank deposits.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) also, there was no effective representation on behalf of the assessee. Therefore, Ld.CIT(A) dismissed the appeal of the assessee and sustained the addition made by the AO.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee vehemently argued that re-opening of the assessment is not justified and addition made by the AO, is arbitrary and unjustified. Ld. Counsel for the assessee further re-iterated the submissions as made in the short written submissions. For the sake of clarity, relevant contents of the written submissions are reproduced as under:-

*“The Appellant was subjected to reassessment under Section 148 alleging escapement of income to the extent of Rs. 22,00,000/- (INR Twenty-Two Lakh Only) being Time deposit during AY 2011-12. Subsequently, various notices under Section 142(1) were issued by the Revenue which were not responded since the Appellant was not aware of the proceedings and the E-mail ID mentioned in the income tax portal pertains to the chartered accountant who failed to intimate the Appellant. Subsequently, assessment order under Section 147 read with Section 144 was passed holding that: -*

*"6. The assessee has invested in Time Deposit amounting to Rs. 22,00,000/- the source of investment of Rs. 22,00,000/- has not been explained by her. When an assessee does not produce evidence, tries to avoid and digress the issue before the Assessing Officer, it necessarily creates difficulties and prevents ascertainment of true and correct facts as the Assessing Officer is denied the advantage of scrutinizing the factual assertion and claim of the assessee. In case where the assessee deliberately and intentionally fails to produce evidence. creates hurdles to any inquiry or investigation, an adverse view might be justified. It would be different, if the details and evidence were not available with the assessed or it was explained and justified why the details and*

*evidence could not be furnished. Without being oblivious to the constraints of the assessee, an objective and fair approach has been followed and ample opportunities have been provided. But any dishonest facade and smokescreens which masquerade as pretence should be exposed and not accepted.*

*Being aggrieved, the Appellant approached the CIT(A) which was also dismissed ex- parte. The impugned CIT(A) order as well as assessment order dated 12.12.2018 is bad in law due to the following reasons: -*

- 1. The Reassessment is based on incorrect facts since no time deposit of Rs. 22,00,000/- was made in AY 2011-12 i.c., the reasons recorded are bad in law.*

*It is now trite law that factually erroneous assumptions do not justify assumption of Jurisdiction and rather vitiate it. No quasi-judicial authority can clutch at a jurisdiction premised on incorrect facts. The facts are Jurisdictional and its absence leads to absence of jurisdiction. A mere perusal of the reasons recorded by the Ld. AO (affirmed by CIT(A) reveals the factual inaccuracies. Following facts are patently incorrect: -*

*\* In Para 4 of the reasons recorded it is noted by the Ld. AO that as per the information received from the Verification Portal, the assessee has made Time Deposit of Rs. 22,00,000/- during FY 2010-11 (AY 2011-12).*

*Further, kind reference is invited to para 6 of the Assessment Order dated 12.12.2018 which has already been reproduced above. Without Prejudice, while recording or reasons is apparent. Ld. AO failed to examine the relevance of the information received. Whether the information received is correct and whether it pertains to or is relevant to the assessee are material issues which have been conveniently side-tracked. Information received is accepted as Gospel's truth without any independent application of mind. The reasons are therefore "reasons to suspect" and not "reasons to belief". It is now well-settled law that the satisfaction formed by the AO must be his own independent*

*satisfaction. There must further be independent application of mind by the officer issuing notice to the material available with him. Without independent application of mind information received from Investigation Wing cannot be made the basis for an AO to initiate reassessment proceedings. Delhi High Court in the case of G & G Pharma reported in 384 ITR 147(Del) was required to opine upon a situation in which section 148 notices were issued by the AO premised upon information received from Investigation Wing. In this regard it was held by the Hon'ble High Court as under:*

*"In the present case, after setting out four entries, stated to have been received by the assessee on a single date i.e., 10th February, 2003, from four entities which were terms as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date of which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a refer to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November, 2004 and was processed under section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme*

*Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee has escaped assessment is missing in the present case."*

*Similarly Hon'ble Apex Court in the case of ACIT vs Dhariya Construction reported in 328 ITR 515(SC) held as under:*

*"Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the DVO. Opinion of the DVO per se is not an information for the purposes of reopening assessment under s. 147 of the IT Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the civil appeal. The Department was not entitled to reopen the assessment."*

*In the present case, it is respectfully submitted that the Appellant has never made any time deposit of Rs. 22,00,000/- and to substantiate the same, a copy of bank statement was filed before the AO which was not considered during assessment proceedings and the assessment order dated 12.12.2018 was passed ex-parte. Further, it is trite that once the reasons recorded are factually incorrect the reasons to believe are without any foundations. In support, kind reference is invited to the following precedents of the Jurisdictional High Court and various Tribunals: -*

- i. Artech Infosystems reported in 206 Taxman 432 (Del.)*
- ii. CIT V. Narain Das Taneja order dated 18.12.2014 in ITA No. 769/2014.*
- iii. Baba Kartar Singh Dukki Educational Trust V. ITO [2015] 63 Taxmann.com 112.*
- iv. Mitul Gems V. ACIT [2015] 62 Taxmann.com 66.*
- v. CIT V. Atlas Cycle Industries 180 ITR 319. (P&H).*

*Further, the coordinate bench of this Hon'ble Tribunal in the case of Shark Packaging (P.) Ltd. V. ITO in ITA No. 8309/Del/2019 categorically held that reassessment initiated on the basis of incorrect facts depicts non-application of mind on the part of AO and liable to be quashed. The relevant portion is reproduced below:-*

*"That where the information relieved upon by the Assessing Officer for initiating proceedings w/s. 147 of the Act did not indicate the source of alleged unexplained credit and it is not clear that the transactions were taken place with whom in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of the fact in view of said preposition initiation of proceedings u/s. 147 of the Act and issuance of notice u/s. 148 of the Act has to be held as not valid and sustainable being bad in law resulting in to inevitable invalidation of assessment order. Thus, we are inclined to hold that the Assessing Officer proceeded to initiate reassessment proceedings only on the basis of vague report of Investigation Wing without applying his mind to the report and other alleged documentary evidence and thus we have no hesitation to hold that the Assessing Officer proceeded merely on basis of borrowed satisfaction and he had no factual information in his hand to have reason to believe that income had escaped assessment. Held that the Assessing Officer had recorded reasons based on incorrect facts and without any verification, examination and evaluation of report of Investigation Wing and other material before him at the time of recording reasons. Therefore, we hold that the Assessing Officer proceeded initiate reassessment proceeding and notice u/s. 148 of the Act without application of mind to the relevant material while recording reasons and forming reason to believe and thus he proceeded on the basis of borrowed satisfaction and thus he did not assure valid jurisdiction to initiate reassessment proceeding u/s. 147 of the Act and to issue notice w/s. 148 of the Act.*

*Thus, it is respectfully prayed that this Hon'ble Tribunal may be pleased to set aside the assessment order dated 12.12.2018 as well as impugned CIT(A) order and remand the matter back for limited verification of fact qua the time deposit of Rs. 22,00,000/-. It is also respectfully prayed that Ld. AO may be directed to drop the reassessment proceedings if it is found that no time deposit of Rs. 22,00,000/- has been made by the appellant during FY 2010-11 (relevant to AY 2011-12).”*

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee had not filed her return of income. The Assessing Authority had some information about the investment made by the assessee. Therefore, so far assessment is concerned, the AO is justified in re-opening the assessment to verify the source of investment by the assessee. It is contended on behalf of the assessee that the information regarding time deposit by the assessee, assessee is factually incorrect. This fact ought to have been brought to the notice of the AO and he could have verified the correctness of such claim. However, before the Assessing Authority, there was no effective representation on behalf of the assessee. Looking to the facts of the present case, we are of the considered view that the AO should have given adequate opportunity to the assessee or otherwise, made independent inquiry about the investment made by the assessee. Since no effective inquiry was made by the AO and purely proceeded in making the addition based upon ITS data. This approach is contrary to the settled legal position. We therefore, considering the totality of the facts and to

sub-serve the principle of natural justice, hereby set aside the impugned order and restore the assessment to the file of AO to frame it afresh after making verification and giving opportunity to assessee for explaining the source of investment. If the AO finds that contention of the assessee that she had made no time deposits of INR 22,00,000/- during the year under appeal. He would delete the addition as such the assessment re-opened on the basis of incorrect facts cannot be sustained. We hold accordingly. Thus, the Grounds raised by the assessee are accordingly, allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30<sup>th</sup> April, 2024.

**Sd/-**

**(DR.B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
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