

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.2428/Del/2023

निर्धारणवर्ष/Assessment Year: 2011-12

Saroj Sangwan C/o The Tax Chambers, Advocates & Legal Advisors, C-177, Defence Colony, LGF, New Delhi.	बनाम Vs.	ITO, Ward-4(1), Gurgaon, Haryana.
PAN No.AWZPS4877N		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by	Ms. Swati Talwar, Adv.
राजस्वकीओरसे / Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	05.03.2024
उद्घोषणाकीतारीख/ Pronouncement on	17.05.2024

आदेश /ORDER

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - NFAC, Delhi dated 28.06.2023 for the AY 2011-12.

Assessee raised the following grounds: -

1. *"That on the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre dated 28.06.2023 (hereinafter referred to as 'impugned appellate order') is erroneous, arbitrary, without jurisdiction, illegal and bad in law.*
2. *That the Ld. CTT(A) has grossly erred in law and on facts of the case in confirming the addition made by*

Income Tax officer, Ward 4(1), Gurgaon (hereinafter referred to as "Ld. AO" or "Jurisdictional AO") u/s 143(3)/144 of the Income Tax Act in case of the Appellant amounting to Rs.12,50,000/-on account of cash deposit made during the impugned financial year being treated as unexplained money.

- 3. That on the facts and circumstances of the case the assessment order passed by the Ld. AO and confirmed by Ld. CIT(A) is in violation to the principles of natural Justice. The Ld. AO passed the order in an arbitrary manner without mentioning any section under which addition for unexplained money and disregarded the return of income and responses filed by the Appellant.*
- 4. The Reassessment proceedings and the impugned order passed by Ld. AO and confirmed by CIT(A) is void-ab-initio and not sustainable at the threshold itself on the touchstone of section 148.*
- 5. There is no valid assumption of jurisdiction by the Ld. AO as required for issue of notice under Section 148 and hence the necessary ingredients for exercise of jurisdiction under Section 147/148 of the Act have not been duly satisfied with. The notice u/s 148 and impugned order is thus liable to be quashed on this ground itself as it is done without complying with legal requirements of the provisions of section 147.*
- 6. On the facts and circumstances of the case, the Ld.CIT(A) has erred in confirming the reopening of the assessment proceedings u/s 148 of the Act as a valid proceeding though the notice u/s 148 of the Act was issued by the Assessing Officer who did not hold jurisdiction (either territorial or class of person) over the appellant.*
- 7. That the notice is 148 of the IT Act dated 30.03.2018 issued by Income Tax Officer - Ward 69(1), Delhi is bad in law and without jurisdiction in as much as there was no cogent material or evidence on record to*

form reason to believe that any income of the assessee for the concerned assessment year has escaped assessment. The information received (AIRICIB information) was insufficient and could not be cogent material to assume a valid jurisdiction u/s 147/148 of IT Act. The Ld. CIT(A) has erred in law and on facts in confirming Ld. AO's order making additions amounting to Rs.12,50,000/- which was passed solely relying upon information (AIR) about cash deposits made by the appellant and not bringing any evidence contrary to documents on record.

- 8. The satisfaction recorded by the Additional Commissioner of Income Tax (ACIT), Range 69, Delhi dated 29.03.2018 and Principal Commissioner of Income Tax (PCIT), Delhi-23 dated 30.03.2018 is mechanical and without application of mind and such approval vitiates the assessment. Such mechanical sanction cannot be considered as sanction satisfying the mandatory requirements as prescribed under Section 151 of the Act.*
- 9. That the Ld. Commissioner of Income tax (A) further erred in law in deciding the appeal on merits only without appreciating the fact that notice u/s 143(2) of the Act was neither issued nor served on the assessee whereas it is being a mandatory requirement before passing any order u/s 143(3)/147 of the Act, assessment order passed without issue of such notice deserves to be quashed as failure to issue notice u/s 143(2) render the reassessment void.*
- 10. That on the facts and circumstances of the case, the notice u/s 148 dated 30/03/2018 issued by Ld. AO, Ward 65(5), New Delhi is invalid and without jurisdiction as the said notice was issued by non-jurisdictional Assessing OOfficer. The Ld. AO, Ward 65(1), New Delhi did not have jurisdiction over the assessee as per provisions of the law and the related Notification No. 70/2014 dated 13/11/2014 (applicable from 15/11/2014) and thus, the assessment order framed u/s 144/147 of the Act*

pursuant to such invalid notice is bad in law and void-ab-initio and liable to be quashed.

11. That the Ld. AO has grossly erred in law and on facts of the case in invoking provisions relating to unexplained money.

12. That the action of the Ld. AO is based on gross negligence on his part, thereby creating a demand of Rs.6,34,970/- against the appellant as reflecting on income tax portal. Therefore, the demand as raised by Ld. AO by simply treating AIR information of cash deposits as unexplained money is not tenable, illegal, unwarranted and uncalled for.

13. That the Ld. AO has grossly erred in law and on facts of the case in initiating penalty proceedings u/s 271(1)(c). “

2. The Ld. Counsel for the assessee, at the outset, referring to ground no.5 of grounds of appeal submits that there is no valid assumption of jurisdiction by the Assessing Officer to issue notice u/s 148 of the Act for reopening of assessment and, therefore, the reassessment framed by the Assessing Officer who is having jurisdiction over the assessee is bad in law. Ld. Counsel for the assessee submits that the notice u/s 148 dated 30.03.2018 issued by the ITO, Ward 69(1), New Delhi is bad in law and without jurisdiction in as much as there was no cogent material or evidence on record to form reason to believe that any income of the assessee has escaped assessment. Ld. Counsel submits that after issue of

notice u/s 148 of the Act by ITO, Ward 69(1), New Delhi the case was transferred to the jurisdictional Assessing Officer i.e. ITO, Ward 4(1), Gurgaon, who has completed the reassessment. Ld. Counsel submits that as the assumption of jurisdiction by the non-jurisdictional Assessing Officer for issue of notice u/s 148 of the Act is bad in law the consequential assessment made pursuant to such notice is also bad in law. Reliance was placed on the following decisions: -

1. *Ballu Singh v. ITO, Ward 65(5) in ITA no. 799 & 800/Del/2020 dated 15.05.2023*
2. *Nishi Kapoor v. ITO in ITA no. 1556/Del/2019 dated 02.09.2019*
3. *Udesh Sharma v. ITO in ITA no. 7579/Del/2017 dated 29.03.2022*

3. On the other hand, the Ld. DR submits that in the case of the assessee the notice u/s 148 of the Act was issued by ITO, Ward 69(1), New Delhi and subsequently by letter dated 12.11.2018 the file was transferred to the ITO, Ward 4(1), Gurgaon who has jurisdiction over the assessee and ITO, Ward 4(1), Gurgaon who had completed the reassessment and, therefore, the reassessment completed is a valid reassessment as the ITO, Ward 69(1), Delhi

followed the procedure of transfer of the file to the concerned Assessing Officer.

4. Heard rival contentions, perused the orders of the authorities below and the case laws relied on.

5. On perusal of page 7 of Paper Book it is observed that notice u/s 148 of the Act dated 30.03.2018 was issued by ITO, Ward 69(1), Delhi for reopening of assessment of the assessee. Later on the case was transferred to the ITO, Ward 4(1), Gurgaon, by way of letter dated 12.11.2018 by ITO, Ward 69(1), New Delhi for completion of reassessment. It is very much clear that at the time of issue of notice u/s 148 of the Act by ITO, Ward 69(1), New Delhi he has no jurisdiction over the assessee as the jurisdiction over the assessee was vested with ITO, Ward 4(1), Gurgaon, therefore, it can be safely concluded that the assumption of jurisdiction by ITO, Ward 69(1), New Delhi for reopening of assessment by issue of notice u/s 148 of the Act is bad in law. There is nothing on record to suggest that the Assessing Officer who has jurisdiction over the assessee i.e. ITO, Ward 4(1), Gurgaon, had issued any notice u/s 148 of the Act. The assessment was completed u/s 143(3) read with section 147 of the Act on 28.12.2018 by ITO, Ward 4(1), Gurgaon on the basis of notice issued u/s 148 of the Act by ITO, Ward 69(1),

New Delhi who had not validly assumed jurisdiction to initiate reassessment proceedings.

6. In the case of Nishi Kapoor Vs. ITO (supra) the Delhi Bench considered a similar issue and following the decision of the Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. Vs. ACIT (307 ITR 115) quashed the reassessment on identical facts observing as under: -

“4. He has submitted that these reasons are recorded by ITO, Ward 2(3), Noida and thereafter, he has written a letter dated 07.09.2017 PB 10 to the Assessing Officer (ITO, Ward 2(1), Faridabad) stating therein that the notice u/s 148 of the Act was issued on 30.03.2017. As per acknowledgement of return for assessment year submitted by the assessee on 07.09.2017, assessee comes under the jurisdiction of ITO, Ward 2(1), Faridabad. The ITO, Ward 2(3), Noida therefore, transferred this case to ITO, Ward 2(1), Faridabad. Ld. Counsel for assessee submitted that the ITO, Ward 2(3), Noida who has recorded reasons for reopening of the assessment was not having jurisdiction over the case of assessee and that the ITO, Ward 2(1), Faridabad who has further issued notice u/s 148 and 142(1) of the Act and completed the reassessment order who was having jurisdiction over the case of the assessee did not record reasons for the reopening of the assessment. Therefore, initiations of reassessment proceedings are illegal, bad in law and liable to be quashed. In support of which contention he has relied upon order of ITAT Agra Bench in the case of S.N. Bhargawa Vs. ITO 147 ITD 306 in which it was held us under:

“IT: Where Assessing Officer, Agra initiated reassessment proceedings against assessee and subsequently he transferred case to Assessing Officer,

Mathura, who was having jurisdiction over assessee, and thereupon Assessing Officer, Mathura, without recording fresh reasons and on the basis of reasons recorded by Assessing Officer, Agra issued on assessee a fresh notice u/s 148. Assessing Officer, Mathura had not validity assumed jurisdiction to initiate reassessment proceedings against assessee."

5. *On the other hand, Ld. DR relied upon the orders of the authorities below. Vide order sheet dated 26.08.2019 Ld. DR wan directly to intimate, if any, other reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR produced the assessment record and submitted that no separate reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR, however, submitted that AO was having jurisdiction to proceed with the matter on transfer of the case from ITO, Noida.*

6. *I have considered the rival submissions. It is not in dispute that reasons for reopening of the assessment have been recorded in this case by ITO, Ward 2(3), Noida, who was having no jurisdiction over the case of the assessee. When assessee filed letter before ITO, Ward 2(3), Noida on 07.09.2017 stating therein that return filed originally may be treated as return having filed in response to notice u/s 148 of the Act and is also supported by copy of acknowledgment of return filed originally, the ITO, Ward 2(3), Noida transferred this case to ITO, Ward 2(1), Faridabad, vide letter dated 07.09.2017 (PB 10). The AO while completing the assessment in this case has taken the shelter of provisions of section 129 of the Act. However, the said provision is not applicable because it is a matter of assumption of valid jurisdiction in the matter or to validly initiate the reassessment proceedings against the assessee. It is not a case of succession to exercise jurisdiction by one ITO to another ITO. Since, reasons have been recorded for reopening of the assessment by ITO, Noida who was not authorized to do so, therefore, mere recording of reasons for reopening of the assessment by him is of no consequence and has no value under the law. The AO who has jurisdiction over the case of assessee i.e. ITO, Faridabad admittedly did not record any reasons for reopening of the assessment. Therefore, the issue is*

covered in favour of the assessee by order of ITAT Agra Bench in the case of S N Bhargawa (supra). It is, therefore, clear that assumption of jurisdiction by the AO is illegal and bad in law. The AO at Faridabad had not validly assumed jurisdiction to initiate reassessment proceedings against the assessee. This view is further supported by judgment of Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 in which it is observed that AO recorded reasons for reassessment and AO issued a notice u/s 148 must be the same person. Successor AO cannot issue notice u/s 148 on the basis of reasons recorded by predecessor AO. The Hon'ble Gujarat High Court held as under:

"Held, (i) that so far as the assessment years 1990-91 and 1991-92 were concerned, the officer who had issued the notice under section 148 of the Act, was different from the officer who had recorded the reasons and hence, the notices for both these years were invalid and deserved to be quashed on this ground alone."

7. In view of the above discussion, I am of the view that the assumption of jurisdiction u/s 147/148 of the Act is illegal and bad in law and, as such, liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment u/s 147/148 of the Act. Resultantly the entire addition stands deleted."

7. This decision squarely applies to the facts of the assessee's case. Thus, respectfully following the said decision, the reassessment made by the ITO, Ward 4(1), Gurgaon on the basis of notice issued u/s 148 of the Act by non-jurisdictional Assessing Officer i.e. ITO, Ward 69(1), New Delhi, is hereby quashed. Ground nos. 5 & 6 are allowed.

8. As the reassessment was quashed on the legal issue the other grounds are not adjudicated as it would become only of academic in nature at this stage.

9. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 17/05/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 17.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi