

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE
SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 7752/DEL/2018
Asstt. Year: 2010-11

ITO Ward-52(2) New Delhi.	Vs.	Gaurav Khullar A-301/6. Dr. A.P.J Kalam Marg, New Delhi – 110 011 PAN AAYPK9694G
(Appellant)		(Respondent)

Assessee by:	Shri Sudesh Garg, Advocate
Department by:	Ms. Anu Krishna Aggarwal, CIT(DR)
Date of Hearing:	13.05.2024
Date of pronouncement:	28.05.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 28.09.2018 of the Learned Commissioner of Income Tax (Appeals) [Learned "CIT(A)"] through which assessment order dated 30.12.2017 of the Learned Assessing Officer (Learned AO) making addition of Rs. 16,51,06,510/- was quashed.

2. Brief facts of the case are that assessee's case was reopened under section 147/148 of the Income Tax Act, 1961 (hereinafter referred to "the Act") on 29.03.2017 on the basis of the

information regarding cash deposit of Rs. 22,71,000/- in saving bank account, payment against credit card bills amounting to Rs. 39,25,346/- sale or purchase of motor vehicles amounting to Rs. 43,95,000/- & payment in cash for purchase of bank draft/cheques amounting to Rs. 89,46,000/- totalling to Rs. 1,95,37,346/- as per individual transaction statement during the Financial Year 2009-10. Accordingly notice under section 148 of the Act dated 29.03.2017 was issued and duly served upon the assessee requiring him to furnish a return of income in the prescribed form within 30 days from the service of the notice.

3. However, the assessee failed to comply with the notice u/s 142(1) issued on 01.06.2017 for 08.06.2017. Assessee submitted a letter on 14.06.2017 and requested to provide (1) Date & Place where notice has been delivered. (2) Details about the recipient of the notice (3) Delivery record such as Tracking Number Objection raised by the assessee has been duly removed vide letter dated 17.07.2017 and again required the assessee to comply notice u/s 148 but the assessee again failed to comply with the same. Further notice u/s 142(1) dated 08.08.2017 issued and served upon the assessee fixing the case for 11.08.2017, but on this date the assessee sent adjournment letter. The case was adjourned to 21.08.2017. On 21.08.2017 Sh. Sahil Muthreja, FCA & AR of the assessee requested for adjournment. On his request case was adjourned. Thereafter notices u/s 142(1) of the Act were issued on various date which were remained un-complied as tabulated below:-

S. No.	Notice u/s	Date of issue	Date of compliance	Remarks
1.	142(1)	15.09.2017	21.09.2017	None attended
2.	142(1)	28.09.2017	09.10.2017	None attended
3.	142(1) with non-compliance penalty u/s 271(1)(b)	27.10.2017	02.11.2017	None attended
4.	Penalty u/s 271(1) (b) has been imposed of Rs 10,000/-on 15.11.2017	-	-	-
5.	142(1) with non-compliance penalty u/s 271(1)(b)	17.11.2017	22.11.2017	None attended. AR filed letter in DAK on 23.11.2017 for adjournment for 3 to 4 weeks. Informed telephonically that this is not possible as the case is barred by limitation on 31.12.2017
6.	Summon u/s 131	04.12.2017	07.12.2017	None attended
7.	On 05.12.2017 assessee through AR filed another adjournment letter. On his request adjourned again for 07.12.2017.	05.12.2017	07.12.2017	Mr. Neeraj Arora, AR on behalf of the assessee filed letter for adjournment.
				On 08.12.2017 The AR of the another filed letter of adjournment for Tuesday ie. 12.12.2017 to enable him to comply and produced the document
8.			12.12.2017	None attended.

4. Considering non-cooperation from the assessee and final show cause notice under section 144 of the Act issued on 13.12.2017 through email and speed post.

5. On 15.12.2017 the Learned authorised representative through e-mail sought more time for two days. In response to notice under section 148 dated 18.12.2017 assessee e-filed return at 6.45 PM declaring total income of Rs. 5,92,260/- for the assessment year 2010-11 which was time barred for assessment on 31.12.2017. Further Learned authorised representative requested reasons for issuing of notice under section 148 just to buy some more time. Notice under section 142(1) and 143(2) of the Act were issued on 19.12.2017. On this date reply through e-mail was received in which assessee requested to provide details of bank deposits in which the transactions has been made by the assessee. The same was provided by return post along with ITS Detail and notice under section 142(1) issued for 20.12.2017 but none appeared nor any written submission received .

6. Another opportunity was offered and a show cause notice under section 144 of the Act was issued and sent through e-mail to assessee fixing the case for 25.12.2017 and also informed to authorised representative. After show cause notice assessee had requested through e-mail adjournment for two days. On 18.12.2017 assessee filed the income tax return for the assessment year 2010-11 in response of notice under section 148 and requested for the reasons. Reasons duly recorded along with notice under section 143(2) issued on 18.12.2017 to comply on 19.12.2017. However Learned authorised representative of the

assessee further sought adjournment for 2-3 days. On 19.12.2017 notice under section 142(1) was issued along with questionnaire for 20.12.2017.

7. From above it was evident that assessee is not interest in providing the details required by the office. In this context attention is invited to Rule 46A of the Income Tax Rules 1961 which provides that “The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer”. A final opportunity was offered to produce details and documents on or before 26.12.2017 at 11.00AM. Assessee submitted reply. After considering the same the Learned AO vide order dated 30.12.2017 made addition of Rs. 16,51,06,510/-

8. Assessee preferred an appeal before the Learned CIT(A) which was accepted vide order dated 29.01.2018.

9. Being aggrieved department of revenue preferred present appeal with following grounds:-

“(i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in quashing the assessment proceedings by observing that the Assessing Officer had issued notice u/s 148 of the Act, without any application of mind?”

“(ii) Whether the Ld. CIT(A) has erred in allowing the appeal of the assessee by overlooking the facts which was duly recorded in the reasons for initiation of assessment proceedings w/s 147/148 of the Act that the assessee failed to furnish any reply to the Assessing Officer who had issued a query letter to assessee on 20.02.2017 as per NMS data wherein it was clearly mentioned that assessee has not filed return of income for the Assessment Year 2010-11?”

- (iii) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee by overlooking the fact that the Assessing Officer had sufficient information in his possession about escapement of income to initiate the proceedings u/s 147/148 of the Act, which was not explained by the assessee even before the Investigation Wing when confronted to him?”*

10. Learned representative for the department submitted that three copies of ground of appeal duly signed and forwarded by ITO have been filed with application dated 04.04.2024. Learned authorised representative for assessee submitted that grounds of appeal vide Form 36 signed on 03.04.2024 are verbatim same as the authorisation issued by the Learned PCIT dated 03.12.2018. There is neither prayer to revise or modify the grounds of appeal nor the same was revised. In view of the fact that the appeal was filed with authorisation dated 03.12.2018 without Form 36. Form 36 signed by Shri Pavinder Singh, ITO on 03.04.2024 is verbatim as the authorisation issue's date is 03.12.2018. Therefore the application along with Form No. 36 is taken on record.

11. Learned representative for department submitted that Learned CIT(A) erred in overlooking the fact that assessment proceedings were initiated under section 147/148 of the Act as assessee failed to furnish any reply to the AO who had issued a query letter dated 20.02.2017 as per NMS data mentioned that assessee has not filed return of income for the assessment year 2010-11. Learned AO had sufficient information in his possession about escapement of income to initiate the proceedings under section 147/148 of the Act which was not explained by the assessee even before the Investigation Wing when confronted. So impugned order may be set aside.

12. Learned Representative for assessee submitted that the reopening of assessment on basis of erroneous assumption that return of income of the assessee was not filed is contrary to indisputable fact that return of income was filed. Reasons for reopening are mentioned on page No. 48 to 49 of Paper Book I, copy of ITR filed at page No. 74 to 95 and copy of ITR processed status as generated by Income Tax Department, e-filing portal is at page 96 of Paper Book. The reopening of assessment on wrong basis and incorrect fact was not maintainable. Hon'ble High Court of Delhi in the case of Deepak Wadhwa vs. ACIT decided on 04.03.2021 held –

“5.2. As far as the other aspect is concerned, in our view, since the proof put in place by the petitioner-assessee with regard to the acknowledgement of return filed for AY 2011-12 has not been disputed by the Revenue, as noticed above, the challenge to the impugned notice and the impugned order will have to be sustained.”

Hon'ble ITAT Delhi Bench in the case of Shri Sanjay Yadav vs. ITO [ITA No. 2644/Del/2018] dated 09.01.2024, Hon'ble ITAT Mumbai Bench in the case of ITO vs. M/s. Champaklal Mathurbhai Mehta [ITA No. 2253/Mum/2022] Mumbai Bench dated 25.11.2022 and Hon'ble Bombay High Court in the case of Dhiren Anantral Modi vs. ITO (W.P. No. 3224 of 2019) have held similarly.

13. Learned Representative for assessee submitted that it is well settled that the cash deposited in bank per se cannot be reason to believe that assessee's income has escaped assessment. Hon'ble ITAT New Delhi in ITA No. 6003/Del/2018 in the case of Shri Saurabh Saini vs ITO has held –

“Further the deposit in the bank account per se cannot be income of the assessee. It is mere suspicion of the assessing officer based on incorrect facts that income chargeable to tax has escaped assessment.”

14. Learned representative for assessee submitted that mechanical reopening without any application of mind and without due verification of record is not maintainable. Reliance is placed on PCIT vs. G&G Pharma India Limited (2017) 81 taxmann.com 109 (Delhi). So, appeal may be rejected.

15. From examination of record in light of aforesaid rival contention it is crystal clear that first para on page one of assessment order mentions –

“The case was reopened under section 147/148 of the Income Tax Act, 1961 (hereinafter referred to “the Act”) on 29.03.2017 on the basis of the information regarding cash deposit of Rs. 22,71,000/- in saving bank account, payment against credit card bills amounting to Rs. 39,25,346/- sale or purchase of motor vehicles amounting to Rs. 43,95,000/- & payment in cash for purchase of bank draft/cheques amounting to Rs. 89,46,000/- totalling to Rs. 1,95,37,346/- as per individual transaction statement during the Financial Year 2009-10 ...” Para 10 on page 21 of assessment order provides :- “As on the perusal of ITR of AY 2009-10 it is found that the total of balance sheet and other income of the assessee is NIL”

16. From above it is evident that the case was reopened on the basis of ITS Information that the assessee has made various deposits and payments in cash amounting to Rs. 1,95,37,346/-. AO recorded that on physical verification as well as from the ITD Database, it had been gathered that the assessee has not filed the return of income for AY 2010-11. On the contrary assessee had duly filed the return of income on 15.10.2010 which was

processed under section 143(1) of the Act by the CPC and the said information ought to have been available on the ITD Database available to the AO. The assessment order acknowledges filing of income tax return by the assessee. Accordingly the opening of reassessment proceedings were rightly held to be void and quashed by Learned CIT(A). In view of above material fact and well settled principle of law impugned order deserves to be upheld.

17. No other point was argued.

18. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 28th May, 2024.

sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

Dated: 28/05/2024

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Copy forwarded to -

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

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	