

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.1278/Del/2020  
(ASSESSMENT YEAR 2010-11)**

Raj Nandani Estates Pvt. Ltd. C/o Kapil Goel Adv. F-26/124, Sector-7 Rohini, Delhi-110085  PAN:AACCR5173Q	Vs.	Income Tax Officer Ward-2(2) Ghaziabad
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri. Kapil Goel, Adv.
Department by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	20/05/2024
Date of Pronouncement	26/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-7, New Delhi ["Ld. CIT(A)", for short], dated 27/08/2019 for Assessment Year 2011-12.

**2.** The brief facts of the case are, the Assessing Officer received Non PAN AIR information that assessee has purchased an immovable property for Rs.55,42,500/- during the Financial Year 2010-11 relevant to Assessment Year 2011-12. The Assessing Officer issued notice u/s 133(6) of the Income Tax Act, 1961 ('the Act' for short), and, in response, he has not received any reply. The Assessing Officer observed that since non receipt of any reply to the notice, the source of investment remained unexplained. After recording the reasons and prior approval from Pr. CIT, Ghaziabad, a notice u/s 148 of the Act was issued on 27/03/2018 and served on the assessee. Subsequently, 142 notices were issued to the assessee and no compliances were made. Finally show cause notice u/s 144 dated 22/10/2018 was issued and served on the assessee. In response, a letter dated 05/12/2018 was received by the Assessing Officer through post intimating that the jurisdiction of the assessee lies with the Circle-21(2), Delhi.

**3.** The Assessing Officer observed that the case of the assessee was selected on the basis of Non PAN AIR information received

from Registrar, Ghaziabad. The section 147 proceedings were initiated by the present Assessing Officer having jurisdiction. He further observed that as per section 124(3)(b) of the Act, jurisdiction of an Assessing Officer cannot be challenged after the expiry of time allowed u/s 148 or 142 (1) of the Act. He observed that the assessee has filed a letter at the fag end, received on 10/12/2018, therefore, the objection of the assessee was not accepted by the Assessing Officer. Since, the assessee has not furnished any detail or explanation to the source of investment for purchase of property of Rs.55,42,500/-, he proceeded to make the addition u/s 69 of the Act.

**4.** Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A). After filing the appeal before the Ld. CIT(A), the assessee has not complied to the various hearing notices issued by Ld. CIT(A)-7, New Delhi. Accordingly, the appeal filed by the assessee was dismissed.

**5.** Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

**“Assumption of jurisdiction u/s 147: Coram non judice**

1. That order passed by Ld AO dated 28.12.2018 and further order passed by ld CIT A dated 27.08.2019 are bad in law being based on wrong assumption of jurisdiction without any authority of law.

2. That order passed by Ld AO dated 28.12.2018 and further order passed by ld CIT A dated 27.08.2019 are bad in law in as much as when assessee jurisdiction lies with Circle 21(2) Delhi and due returns w/s 139 are filed as per law with correct jurisdiction, and while initiating proceedings u/s 148 and passing assessment order no cognizance is taken of even regular return filed u/s 139 with income of Rs 402,86,290 vis. a vis. alleged (non existing) escapement of Rs 55,42,500, accordingly all subsequent proceeding including orders passed by Ld AO and Ld CIT-A are void ab initio.

**Other grounds on merits qua addition of Rs 55,42,500**

3. That order passed by Ld AO dated 28.12.2018 and further order passed by ld CIT A dated 27.08.2019 are bad in law in as much as addition of **Rs.55,42,500/-** on a/c of alleged unexplained investment u/s 69 in property purchase which is perverse and preposterous when juxtaposed to audited final a/c placed with regular ITR filed u/s 139 of the Act.

4. That order passed by Ld AO dated 28.12.2018 and further order passed by Ld. CIT A dated 27.08.2019 are bad in law in as much as addition of Rs 55,42,500/- as in both orders basic document that is assessee's regular ITR on records has remained overlooked and is aborted from requisite consideration which if considered would not have led to this unlawful assessment on hypothetical income; so both the orders needs to be set-aside being passed without application of mind;

5. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

Humble Prayer:

i) To Annul/Quash the orders of Ld AO/CIT-A being bad on jurisdictional count &

ii) To set aside orders of Ld AO/CIT-A for want of application of mind to material on records

**iii) Any other appropriate relief”**

**6.** At the time of hearing, the Ld. AR submitted that the notice issued u/s 148 by the present Assessing Officer without having any jurisdiction. He has received certain information from

Registrar, Ghaziabad, based on the above information, he proceeded to complete the assessment u/s 147/144 of the Act. When the assessee intimated to Assessing Officer that his jurisdiction lies with Circle-21(2), Delhi, he should have passed on the information received from Registrar, Ghaziabad to the jurisdictional Assessing Officer in Delhi, therefore, the present order passed by the Assessing Officer is *non-est*. In this regard, he relied on the Hon'ble High Court of Rajasthan in the case of LMJ Services Ltd. vs. Pr. CCIT, Jaipur, D.B. Civil Writ Petition No.17890/2023.

**7.** On the other hand, the Ld. DR supported the findings of the lower authorities.

**8.** In the rejoinder, the AR submitted that the assessee had proper explanation and sources of the above said investment.

**9.** Considered the rival submissions and material placed on record, we observed that the Assessing Officer came across certain information of investment in the property through Registrar, Ghaziabad. It was noticed that the above property was registered without the PAN Number and it was flagged in Non PAN AIR

information. Accordingly, he issued notice u/s 133(6) to the available address collected from Registrar, since, no response received for the above notice, after proper approval he proceeded to issue the notice u/s 148 of the Act. Since, no response to the above said notice, he has issued notice u/s 144. Only against the above notice, the assessee has filed a letter intimating the Assessing Officer that the jurisdiction of the assessee lies with Circle-21(2), Delhi. Even though, the above information was submitted by the assessee at the fag end of the assessment, instead of passing the impugned order, the Assessing Officer should have passed on the information to the jurisdictional AO for proper verification/assessment, since, the present assessment order is passed by the Assessing Officer without having jurisdiction, the above said order is non-est.

**10.** For the interest of Revenue, we are inclined to remit this issue back to the file of jurisdictional Assessing Officer to verify the submissions of the assessee i.e. investment made by the assessee, as submitted before us, is already recorded and declared in the return of income regularly filed by the assessee. With the

direction, Jurisdictional Assessing Officer is directed to verify the same after giving proper opportunity of being heard to the assessee.

**11.** Accordingly, appeal filed by the assessee is allowed subject to verification of the above submissions made by the assessee.

**12.** In the result, the appeal filed by the assessee is allowed subject to above verification.

Order pronounced on 26<sup>th</sup> June, 2024.

Sd/-

**(SUDHIR PAREEK)  
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 26/06/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI