

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No.3843/DEL/2019 [A.Y. 2010-11]

Shri Manoj Bhalothia
VPO, Kasani Kalan, P.O.
Mandholi Kalan, Loharu
Bhiwani, Haryana

Vs.

The I.T.O
Ward - 2
Bhiwani

PAN - ASGPB 3606 F

(Applicant)

(Respondent)

Assessee By : Shri Vaid Jain, Adv
Shri Aman Garg, CA
Ms. Shrashti Agarwal, CA

Department By : Shri Anshul, Sr. Dr

Date of Hearing : 25.07.2024

Date of Pronouncement : 07.08.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A), Ludhiana dated 22.02.2019 pertaining to A.Y. 2010-11.

2. Though the assessee has raised as many as 13 revised grounds of appeal, but the challenge to the assumption of jurisdiction to frame order u/s 147 of the Income-tax Act, 1961 [the Act, for short] goes to the root of the matter, therefore, we decided to adjudicate the same first.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. The bone of contention is the validity of reassessment order made by the Assessing Officer u/s 147 of the Act.

5. Briefly stated, the facts of the case are that as per the information available in ITS statement on AST, the assessee made cash deposits worth Rs. 1,82,35,770/- in his Savings Bank Account maintained during the year under consideration. Notice u/s 148 of the Act was issued by the ITO, Ward 3(5), Jalandhar on 30.03.2017 after

obtaining approval from the CIT-2, Jalandhar requiring the assessee to file ITR. As the assessee did not file his return of income by the stipulated time, notice u/s 142(1) of the Act was issued to the assessee on 05.05.2017 which was received back undelivered with the remarks "Left". Finally, the reassessment order was passed by the ITO Ward -2, Bhiwani considering the cash deposits of Rs. 1,82,35,770/- to be income from undisclosed /unexplained sources and added the same in the hands of the assessee.

6. Aggrieved, the assessee went in appeal before the ld. CIT(A) but without any success. Now the assessee is in appeal before us.

7. Before us, the ld. counsel for the assessee vehemently stated that the ld. CIT(A) did not appreciate the fact that the reopening of the assessment u/s 147 of the Act and its consequent re-assessment were made without complying with the statutory conditions and the procedure prescribed in the law and is therefore bad in law and liable to be quashed. The

ld AR of the assessee argued that the notice u/s 148 was issued by the ITO, Ward 3(5), Jalandhar but the reassessment was made by ITO Ward -2, Bhiwani. The ld. counsel for the assessee further submitted that the reassessment has been made by the Assessing Officer not having jurisdiction over the assessee. It was reiterated that the Assessing Officer has passed the assessment order in the absence of valid assumption of jurisdiction rendering the reassessment order bad and void ab initio.

9. Per contra the ld DR argued that since the assessee participated in the reassessment proceedings, he cannot challenge the jurisdiction u/s 124 of the IT Act. The ld DR has relied on the decision of the hon'ble Supreme Court in the case of CIT V Laxman Das Khandelwal in Civil Appeal no 6261 dated 13.08.2019 for the proposition that where the assessee has participated in the proceedings, service of notice would be considered as valid and proper.

10. In its rejoinder, the ld AR of the assessee stated that the issue is not challenge of jurisdiction u/s 124 but the challenge is to the assumption of jurisdiction by the AO u/s 127 of the IT Act.

11. From the factual matrix of the case, we find that the challenge before us is to adjudicate on the validity of re-assessment order made by the ITO Ward-2, Bhiwani. From the facts of the case, we are called upon to decide whether the reassessment order u/s 147 r.w.s 148 of the Act was passed by Assessing Officer having jurisdiction over the assessee.

12. To determine the answer to this question, we looked onto the materials on record. We find that the Income Tax Officer, Ward 3(5), Jalandhar recorded the reasons for reopening on 25.03.2017 and issued the notice u/s 148 dated 30.03.2017. Thereafter, the case was transferred from Jalandhar to ITO Ward-1, Bhiwani on 22.08.2017. Finally, the reassessment order was made by ITO Ward-2, Bhiwani.

13. To ascertain the factual position on compliance with statutory provisions of law, we enquired from the ld DR to provide us the order passed u/s 127 for transferring the jurisdiction on the assessee from Jalandhar to Bhiwani to enable the ITO, Ward-2, Bhiwani to pass the reassessment order. Several opportunities were provided to the ld DR to furnish any evidence with regard to the transfer of jurisdiction but no such order/evidence were made available. In absence of any order u/s 127, we can only conclude that the transfer of the jurisdiction from Jalandhar to Bhiwani were made without any order u/s 127 from the competent authority. Therefore, in view of the above factual position, we are of the considered opinion that assumption of jurisdiction by the ITO Ward-2, Bhiwani was without any statutory compliance of law.

14. The reliance of the DR on the case of Laxman Das Khandelwal is distinguishable. The Hon'ble Supreme Court was dealing with the effect of provision of section 292BB on the improper service of notice. The question in the instant

case is assumption of valid jurisdiction in absence of any order u/s 127.

15. In the light of the above discussion, we are of the considered view that the reassessment order passed by the ITO Ward-2, Bhiwani is without assumption of valid jurisdiction and is therefore bad in law and deserves to be quashed. Since we have quashed the re-assessment order, we do not find it necessary to dwell into the merits of the case.

16. In the result, the appeal of the assessee in ITA No. 3843/DEL/2019 is allowed.

The order is pronounced in the open court on 07.08.2024.

Sd/-

**[VIKAS AWASTHY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 07th August, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	
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