

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH-B : NEW DELHI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT AND  
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER

ITA Nos.4395/Del/2016, 4396/Del/2016, 5516/Del/2019 & 5517/Del/2019  
Assessment Years : 2007-08 & 2008-09

Shri Charanjit Singh,  
Prop. Pal Enterprises,  
M-24, 2<sup>nd</sup> Floor, Sham Nagar,  
New Delhi – 110 018.  
PAN : AUXPS3613A.  
(Appellant)

Vs. Income Tax Officer,  
Ward-45(4) & 45(3),  
New Delhi.

(Respondent)

Appellant by : Shri G.S. Kohli, CA.  
Respondent by : Ms. Harpreet Kaur, Senior DR.

Date of hearing : 07.08.2024  
Date of pronouncement : 09.08.2024

**ORDER**

**Per Saktijit Dey, Vice President :**

These are Appeals by the assessee against separate orders of learned Commissioner of Income-tax (Appeals)-15, Delhi. Out of these appeals, two arise out of quantum proceedings, whereas, the rest two arise out of penalty proceedings under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Appeals pertain to assessment years 2007-08 and 2008-09.

**ITA Nos.4395/Del/2016 & 4396/Del/2016 (Quantum Appeals)**

2. The grounds raised and issues arising in these appeals are common. Basically, two issues arise out of these appeals. The first one is a legal issue challenging the validity of reopening of assessment under Section 147 of the Act and the assessment orders passed consequent thereto, whereas, the second issue is on the merits of the additions sustained by learned first appellate authority. Insofar as the first issue is concerned, briefly, the facts are that the assessee is a resident-individual. Based on information available on record indicating that the assessee had deposited cash amounting to ₹16,99,648/- and ₹34,21,769/- in previous years relating to assessment years

2007-08 and 2008-09, respectively, in his bank account maintained with Punjab National Bank, Vikas Puri, New Delhi, whereas the assessee had not filed any return of income for the relevant assessment years, the Assessing Officer reopened the assessment under Section 147 of the Act. In course of assessment proceedings, the assessee claimed that cash deposits in the bank account were out of receipts from the business of trading in oil and lubricants. The Assessing Officer, however, was not convinced with the submissions of the assessee. He was of the view that the cash deposits were out of undisclosed sources. Accordingly, treating such deposits in the bank account as unexplained cash credit under Section 68 of the Act, he added them to the income of the assessee in the respective assessment years. Against the assessment orders so passed, assessee preferred appeals before learned first appellate authority. In course of the proceedings before learned first appellate authority, the assessee specifically pleaded that the notice issued under Section 148 of the Act on 8<sup>th</sup> July, 2014 is barred by limitation as it was not issued before expiry of six years from the end of the relevant assessment year. While deciding the issue, learned first appellate authority observed that notice under Section 148 was issued on 28<sup>th</sup> March, 2014 through speed post and the subsequent notice issued on 8<sup>th</sup> July, 2014 would not vitiate the assessment proceedings as the earlier notice was issued within the period of limitation. Accordingly, he rejected assessee's grounds.

3. Before us, learned Counsel appearing for the assessee reiterated the stand taken before the first appellate authority. He submitted that the notice dated 28<sup>th</sup> March, 2014 referred to by the first appellate authority was never served on the assessee. He submitted that the only notice under Section 148 of the Act served on the assessee was notice dated 8<sup>th</sup> July, 2014. Thus, he submitted that the notice under Section 148, having been served after expiry of six years, proceedings are barred by limitation.

4. Per contra, the learned DR submitted that notice under Section 148 was initially issued on 28<sup>th</sup> March, 2014 which is within the period of limitation. Therefore, the contention of the assessee is unacceptable.

5. We have considered rival submissions and perused materials on record. To factually verify the actual date on which notice under section 148

of the Act was issued and served on the assessee, the Bench had directed the Department to produce the assessment records. In terms with such direction, the assessment records were produced by the learned DR. In course of hearing, the Bench had the occasion to verify the assessment record. On factual verification, it was found that the notice under Section 148 dated 28<sup>th</sup> March, 2014 was issued on a wrong address. Noticing this fact, the Assessing Officer himself, in the body of the notice, had struck down the old address and mentioned the new address and directed to reissue the notice. However, the second notice issued on 28<sup>th</sup> March, 2014 (date overwritten) appears to have never been dispatched to the assessee. Subsequently, another notice under Section 148 of the Act was issued to the assessee on 8<sup>th</sup> July, 2014. Though learned first appellate authority has expressed doubts regarding the authenticity of the notice dated 8<sup>th</sup> July, 2014, however, the copy of the said notice is available in the assessment records. From the aforesaid facts, it is very much clear that there was no valid service of notice dated 28<sup>th</sup> March, 2014 on the assessee, which is a pre-condition under Section 148 of the Act. Notice dated 8<sup>th</sup> July, 2014 validly served on the assessee was certainly beyond the period of limitation prescribed in the Statute. That being the factual position emerging on record, we have no hesitation in holding that proceedings under Section 147 culminating in the assessment order passed under Section 144 read with Section 148 of the Act are invalid. Therefore, the impugned assessment orders deserve to be quashed. Accordingly, we do so.

6. Insofar as the issue on merits is concerned, though, in view of our decision on the legal issue it has become academic, however, since the parties were also heard on this issue, we deem it appropriate to render our decision on the issue.

7. As discussed earlier, certain cash deposits were found in the bank account of the assessee maintained with Punjab National Bank. Before the Assessing Officer, the assessee had stated that such receipts are out of his business of trading in oil and lubricants. Apparently, the Assessing Officer has disbelieved assessee's contention and treated the entries appearing in the bank account as unexplained cash credit under Section 68 of the Act. However, learned first appellate authority has accepted assessee's claim that

the receipts are from business. Therefore, he estimated the profit element at 25% of the receipts and sustained additions to the extent of ₹4,24,912/- and ₹8,55,442/- in assessment year 2007-08 and 2008-09, respectively. Before us, learned Counsel for the assessee has submitted that before the Investigation Wing, the assessee had computed his income from business for assessment years 2007-08 to 2011-12 at 3% of the receipts appearing in the bank account in respective assessment years. He submitted, since the assessee had not filed his returns of income for any of the assessment years starting from 2007-08 to 2011-12, he filed his return of income for assessment year 2011-12 declaring the entire income of all the assessment years computed at ₹5,49,320/- applying 3% net profit rate and also discharged the aggregate tax liability of ₹45,180/-. In this context, he drew our attention to the chart showing computation of profit for assessment years 2007-08 to 2011-12 stated to have been furnished before the Investigation Wing and also copy of the challan evidencing payment of ₹45,180/-. The assessee submitted that business profits for assessment year 2007-08 and 2008-09 having been already offered to tax, no further addition can be made.

8. The learned DR strongly relied on the observations of learned first appellate authority.

9. We have considered rival submissions and perused materials on record. The fact that the cash deposits appearing in assessee's bank account in different assessment years are receipts from his business activity has been accepted by the learned first appellate authority. However, he has estimated the income at 25% of the receipts. From the materials placed before us, it is observed that the assessee had not filed any return of income for assessment year 2007-08 to 2011-12. When the cash deposits were found in his bank account, the assessee came forward to disclose income from the profit derived from his business. However, by that time, the limitation for filing return of income had expired for assessment years 2007-08 to 2010-11. Therefore, the assessee offered the entire income for assessment years 2007-08 to 2011-12 by offering income of ₹5,49,320/- computed by applying 3% net profit rate on the receipts appearing in the bank account. The assessee had also discharged tax liability for the income declared by paying tax of ₹45,180/-. This is clearly discernible from the copy of the bank challan

and chart showing computation of profit placed in the paper book. Thus, the contention of the assessee that it has offered the profit from business to tax is believable. Once the assessee has offered the income to tax in a consolidated manner in assessment year 2011-12, no further addition can be made in the respective assessment years. Accordingly, the additions sustained by learned first appellate authority are hereby deleted.

**ITA Nos.5516/Del/2019 & 5517/Del/2019 (Appeals arising out of penalty proceedings)**

10. Since, while deciding the quantum appeals (supra) we have decided the issues in favour of the assessee and deleted the additions based on which penalties under Section 271(1)(c) of the Act were imposed, the penalties so imposed cannot survive. Accordingly, the penalties imposed are deleted.

11. In the result, all the appeals of the assessee are allowed.

Above decision was pronounced in the open Court on 9<sup>th</sup> August, 2024.

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

VK.

**Copy forwarded to: -**

1. Appellant : S 1/4, Top Floor, Near Tilak Nagar, Old Mahavir Nagar, New Delhi – 110 018.
2. Respondent : ITO, Ward-45(3) & 45(4), New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar