

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA NO. 2686/DEL/2023 (AY 2012-13)

ITA NO.2687/DEL/2023 (AY 2014-15)

AND

ITA NO. 2697/DEL/2023 (AY 2013-14)

Sh. Bakul Matta, H.No. 1507, Sector-12, HUDA, Panipat Panipat, Haryana – 132103 [PAN : BONPM1102H]	Vs.	Income Tax Officer, Ward-3, Panipat Haryana
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Adv., Sh. Somil Agarwal, Adv. & Sh. Deepesh Garg, Adv.
Revenue by	Sh. Raghunath, Sr. DR.

Date of hearing:	01.10.2024
Date of Pronouncement:	04.10.2024

ORDER

PER SHAMIM YAHYA, AM :

These 03 appeals have been filed by the Assessee are directed against the separate orders of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi relating to Assessment Years 2012-13, 2014-15 & 2013-14 respectively.

2. Since the issues are common and appeals are inter-connected, hence, the same are being disposed of by this common order.

3. For the sake of convenience, we are taking the facts of ITA No.2686/Del/2023 relevant to Assessment Year 2012-13 as lead case, wherein the following common grounds of appeal have been raised by the assessee.

1. That having regard to the facts and circumstances of the case, assumption of jurisdiction in initiating the proceedings u/s 147 and passing the impugned order u/s 143(3)/147 and that too without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act. 1961, is bad in law and against the facts and circumstances of the case.

2. That in any case and in any view of the matter, assumption of jurisdiction u/s. 147 and passing the impugned order u/s 143(3)/147, is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned reassessment order passed by Ld. AO u/s. 143(3)/147 on the ground that no notice u/s 143(2) has been issued so accordance with law.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred, in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.99,81,948/- by treating it as alleged unexplained cash credits u/s 68 and that too by recording incorrect facts and findings and without observing the principles of natural justice and without considering/appreciating the facts and circumstances of the case and without any basis, material and evidence available on record.

5. That in any case and in any view of the matter, action of Ld. CIT(A) confirming the action of Ld. AO in making aggregate addition of Rs.99,81,948/- by treating it as alleged unexplained cash credits u/ s 68, is bad in law and against the facts and

circumstances of the case and the same is not sustainable on various legal and factual grounds.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in deciding the appeal of assessee without providing the adequate opportunity of being heard.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the ex-parte assessment order passed u/s 144 and that too without any basis and without appreciating the facts and circumstances of the case.

8. That having regard to the facts and circumstances of the case, Ld. CTT(A) ought to have accepted the revised return filed by the assessee.

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld, AO in charging interest u/s 234B of the Income Tax Act, 1961.

10. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

3. Similar grounds have been raised by the assessee in other Appeal Nos.2687 & 2697/Del/2023 (AY 2014-15 & 2013-14).

4. Briefly stated facts are that as per information available with the AO, the assessee has deposited cash amounting to Rs.99,81,948/- in his saving bank account No. 001005003934 maintained with The Panipat Urban Co-Op Bank Ltd, GT Road, Panipat during the year under consideration. Proceedings u/s 147 of the Income-tax, Act, 1961 were initiated after recording reasons and notice u/s 148 of the Income-tax Act, 1961 was issued to the assessee on 30.01.2017. AO noted that in the absence of any reply and in spite of various / sufficient opportunities afforded, he passed the exparte

assessment order u/s. 144 of the Act on the basis of facts and material available on record and accordingly an amount of Rs. 90,81,948/- was considered as income from undisclosed sources and the same was taxed under the provisions of section 68 of the Act as unexplained cash credit by assessing the total income at Rs. 1,01,64,250/-. Aggrieved by the aforesaid order, assessee preferred appeal before the CIT(A) who vide his order dated 26.07.2023 dismissed the appeal of the assessee on account of non-prosecuting and on merit too.

5. At the outset, Ld. counsel for the assessee submitted that the assumption of jurisdiction in initiating the proceedings u/s. 147 of the Act and passing the impugned reassessment order u/s. 143(3)/147 dated 26.12.2017 is bad in law in as much as that the assessee admittedly had raised the objection challenging the validity of reopening of assessment u/s. 147 of the Act, however, the AO has not disposed off the objections independently by way of separate and speaking order before completion of the reassessment proceedings u/s. 143(3)/147 of the Act. He further drew our attention towards Paper Book Page no. 13 which are the objections against the reopening of assessment filed before the AO during the assessment proceedings and noted by the AO in para 4 and 4.2 at page no 5 of the reassessment order. In order to support this contention, he relied upon the following judicial decisions wherein, it has been held that when objections to the reopening are not disposed off by the AO by a speaking order, the said reassessment order becomes nullity and deserves to be quashed.

- Pr. CIT vs. Tupperware India (P) Ltd. (2008) 284 CTR 0068 (Del.)
- Tata Consultancy Services Ltd. (upon merger of CMC ltd. with Tata Consultancy Services Ltd.) vs. ACIT ITA no. 4528/2008, dated 06.02.2020 (Mum)
- Shri Vipin Sharma vs. ACIT, ITA No. 7027/2014, dated 28.8.2023 (Del.)

- Shri Chand Singh vs. DCIT, ITA nos. 3860-3861/2016 dated 05.7.2021 (Del.)
- ITO vs. Shri Umesh Upadhyay, ITA no. 4054/2015 dated 19.3.2019 (Del.)

6. On the other hand, Ld. DR could not controvert the aforesaid proposition that objections to the reopening has not been disposed off by a separate order.

7. We have heard the rival submissions and perused the materials on record. Before us, Learned AR is challenging the reassessment proceedings. It is an undisputed position that the assessee had objected to the reassessment proceedings. It is also an undisputed fact that no separate speaking order disposing of the objections raised by the assessee has been passed by the AO and he has proceeded to pass the reassessment order u/s 147 r.w. 143(3) vide order dated 26.12.2017. We find that Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. vs. ITO (2003) 259 ITR 19 has held that when a notice u/s 148 of the Income Tax Act has been issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. Thus the procedure that was required to be followed by the AO was to dispose of the assessee's objections by passing a speaking order. In the present case it is an undisputed fact that there was a failure by the AO to comply with the mandatory requirement of disposing of the objections raised by the assessee to the reopening of assessment in terms of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. (supra). We further find that Hon'ble Delhi High Court in the case of Pr. CIT vs. Tupperware India (P) Ltd. (Supra), has observed that when there was failure

by AO to comply with the mandatory requirement of disposing of objections of assessee to reopening in terms of law explained by Hon'ble Supreme Court in the case of DKN Driveshafts (India) Ltd. (Supra), the assessment would not be valid. We, therefore, relying on the aforesaid decisions hold that since the procedure required to be followed has not been followed the entire assessment proceedings are vitiated and therefore we hold the reassessment order passed by the AO to be bad in law and thus set it aside. Since we have set aside the reassessment order the other grounds raised on merits require no adjudication as they have been rendered academic. Thus the Appeal of the assessee is allowed.

8. As far as A.Yrs. 2014-15 & 2013-14 are concerned, both the parties before us have submitted that the issue involved in A.Y. 2012-13 is identical to that of A.Yrs. 2014-15 & 2013-14. We have hereinabove, while deciding the appeal for A.Y. 2012-13 have allowed the appeal of the assessee. We for similar reasons also allow the appeals of assessee for A.Yrs. 2014-15 & 2013-14.

9. In the result, all the 03 appeals of the assessee are allowed in the aforesaid manner.

Order pronounced on 04/10/2024.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

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

Assistant Registrar