

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 272/Chd/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

Society For Education And Research C/O Rajiv Goel And Associates, 179, Bank Road-133001, Haryana	बनाम	The DCIT(E) Circle-2, Chandigarh
स्थायी लेखा सं. / PAN NO: AAGTS2455P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Dhruv Goel, C.A  
राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT, Sr. DR  
सुनवाई की तारीख/ Date of Hearing : 24/10/2024  
उदघोषणा की तारीख/ Date of Pronouncement : 26/11/2024

### आदेश/Order

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 19/01/2024 pertaining to Assessment Year 2012-13.

2. In the present appeal, the assessee has raised the following grounds of appeal:

1. That the learned CIT(A) NFAC has erred in law and on facts in confirming the additions u/s 68 amounting Rs. 34,50,350/- made by AO on account of cash deposits in bank.
2. That the learned AO has erred in law and on facts in reopening the assessment proceedings u/s 148 of the Act.
3. That the authorities below have erred in law and on facts in dismissing the appeal without providing adequate opportunity of being heard.
4. That the appellant craves leave to add, alter, amend or to substitute the above ground(s) of appeal either before or at the time of hearing of case.

3. Briefly the facts of the case are that the assessee filed its return of income on 29/09/2012 declaring total income as NIL which was assessed under section 143(3) by JCIT, Range – 2 (Exemption), Chandigarh vide its order dt. 30/03/2015. Subsequently, the case of the assessee was reopened and notice under Section

148 was issued by ITO, Ward-4, Yamuna Nagar on 11/03/2019. In response, the assessee submitted that the return of income filed earlier under section 139 may be treated as return filed in response to notice under section 148 of the Act. Thereafter, notice under section 142(1) was issued on 26/11/2019 followed by show cause on 04/12/2019 to explain the source of cash deposited in the bank account. In response, the assessee submitted that it has been running an Engineering College during the year and had received total fees amounting to more than Rs. 5 crore during the year and fees was mostly received in cash and was deposited in the bank account from time to time. It was accordingly submitted that the cash so found deposited which has been pointed out in the notice was part of the fees so received by the assessee and no adverse view should be taken in this regard.

4. The submission so filed by the assessee were considered but not found acceptable to the AO. As per the AO, the assessee has only stated that the cash deposit was made out of funds received from the students but it has not produced / filed any documentary evidence in support of its claim, therefore the amount of the cash deposit amounting to Rs. 34,50,350/- with Punjab National Bank, VPO-Jagadholi, Yamuna Nagar remained unexplained and the same was brought to tax invoking provision of Section 68 of the Act and as against the returned income of NIL, the reassessed income was determined at Rs. 34,50,350/-.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said findings and the appeal of the assessee has been dismissed. Against the said order, the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the AO has erred in law and facts in reopening the assessment proceedings under section 147 of the Act. In this regard, our reference was drawn to the reasons so recorded by the AO which are contained at page 21-22 of assessee's paperbook and it was

submitted that in para 2 of the said reasons, the AO has stated that no return of income has been filed by the assessee for A.Y. 2012-13. Thereafter, in para 6 again, the AO has stated that since no return of income has been filed, the source of cash deposit in the bank account remained unexplained. It was submitted that such reasons were factually incorrect as not only Income Tax return was filed but the same was also subject to the regular assessment proceedings u/s 143(3) as find mention in the order so passed by the AO itself and our reference was drawn to the copy of the assessment order passed under section 143(3) dt. 30/03/2015 placed as part of the assessee's paper book. It was further submitted that notice under section 148 was issued on 11/03/2019 and before that, an enquiry letter was issued by the ITO Ward-5, Yamuna Nagar on 15/02/2019 and in response to which, the assessee had filed response on 19/02/2019 informing the ITO Ward-5, Yamunanagar that the assessment has already been completed earlier under section 143(3) and copy of the assessment order was also submitted as part of its written submission. It was accordingly submitted that the AO has recorded incorrect factual findings while reopening the assessment proceedings that no return of income has been filed by the assessee and no response has been filed in response to enquiry conducted prior to issuance of notice. It was submitted that the same shows lack of application of mind on the part of the AO while recording the reasons and it is a settled position that where reopening has been done on incorrect or non-existent facts, the reassessment proceedings cannot be sustained and deserves to be set aside and in support, reliance was placed on the decision of Hon'ble Punjab & Haryana High Court in case of CIT vs. Atlas Cycle Industries(1989) 180 ITR 319, Coordinate Chandigarh Benches decision in case of Baba Kartar Sing Dukki Educational Trust (*ITA No. 444 to 446/Chd/2014 dt. 29/05/2015*) and in case of Gunjan Arora Vs. ITO (*ITA No. 450/Chd/2023 dt. 15/05/2024*).

7. It was further submitted that assessment for the impugned assessment year 2012-13 has been reopened by issuing notice under section 148 on 11/03/2019 i.e beyond 4 years from end of the relevant assessment year and as per the proviso to Section 147 where the assessment has already been completed under section 143(3), the AO was required to record satisfaction that income has escaped assessment due to failure of the assessee to disclose truly and fully material facts. It was submitted that in the instant case, there is no satisfaction which has been recorded by the AO as far as nature of failure on the part of the assessee to disclose which all facts are not true and correct. It was submitted that the same is again a jurisdictional defect and on this ground as well, the initiation of reassessment proceedings deserves to be set aside and in support reliance was placed on the decision of Hon'ble Punjab & Haryana High Court in case of Duli Chand Singhania Vs. Asst. CIT (2004) 269 ITR 192.

8. Per contra, the Ld. DR submitted that the AO was in receipt of non- PAN AIR information that the assessee had deposited cash amounting to Rs. 34,50,350/- in his bank account maintained with Punjab National Bank, Jagdholi, Yamuna Nagar. Further, the AO also referred to the information available in the AST Portal and wherein it was found that no return of income has been filed by the assessee for the impugned A.Y 2012-13. Thereafter, the AO sought information under section 133(6) from the PNB which confirms that the cash of Rs. 34,50,350/- has been deposited in the bank account maintained by the assessee with Punjab National Bank. Thereafter, the AO issued letter dt. 17/07/2018 seeking information under section 133(6) to the assessee to explain the source of cash deposit in its bank account. However, there were no response to the said letter, thereafter the AO based on tangible information in his possession that there were cash deposit in the bank account maintained by the assessee and the source of which has not been explained by the assessee by furnishing any documentary evidence and the fact that no return of income has been filed and which is apparent from the AST Portal, the AO recorded his

satisfaction that income to the extent of Rs. 34,50,350/- has escaped assessment and accordingly after seeking necessary permission for the Ld. PCIT under section 151(1), notice under section 148 was issued to the assessee on 11/03/2019. It was accordingly submitted that where the AO was in receipt of tangible information that there were cash deposit in the bank account maintained by the assessee and given that no return of income was filed and no explanation was submitted by the assessee in response to notice under section 133(6), the AO has rightly assumed jurisdiction under section 147 of the Act. Further, he relied on the orders of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. In the instant case, the action of the AO in acquiring jurisdiction u/s 147 has been challenged by the assessee on two counts. Firstly, it has been contended that the AO while recording the reasons has incorrectly stated that the assessee has not filed the return of income and hence, the deposits in the bank account couldn't be verified leading to escapement of income. In this regard, we find that the assessee has filed its original return of income on 29/09/2012 which has been selected for scrutiny by issuance of notice u/s 143(2) and the assessment order has been passed u/s 143(3) dated 30/03/2015. The copy of the return of income and the original assessment order passed u/s 143(3) has been placed as part of the assessee's paperbook. Further, the said fact has been duly acknowledged by the AO at the beginning of the reassessment order passed u/s 144 r/w 148 dated 21/12/2019 where the AO himself has stated that the assessee has filed its return of income on 29/09/2012 declaring NIL income which was assessed u/s 143(3) on 30/03/2015. We therefore agree with the contention advanced by the Id AR that while recording the reasons, the AO has wrongly recorded the fact that no return of income has been filed by the assessee whereas the return of income has been duly filed by the assessee and which was also subject matter of proceedings u/s 143(3) of the Act. It is a settled position that where the basis of recording such

reasons are found to be non-existent, the consequent assumption of jurisdiction u/s 147 cannot be sustained in the eyes of law and reference can be drawn to the recent decision of the Coordinate Bench in case of Gunjan Arora (*supra*) which has in turn followed the Hon'ble Punjab and Haryana High Court decision in case of Atlas Cycles Industries (*supra*) where it was held that where the ground on which reassessment notice were not found to exist or incorrect and in such a situation, the ITO doesn't get the jurisdiction to make reassessment.

10. Now, coming to the second contention, it is an admitted fact that the reassessment proceedings have been initiated by issuance of notice u/s 148 on 11/03/2019 after the expiry of four years from the end of the impugned assessment year 2012-13 and coupled with the fact that the original proceedings have been completed u/s 143(3), the condition specified in the proviso to section 147 also need to be satisfied before the AO assumes the jurisdiction u/s 147 of the Act. In other words, the AO besides having reasons to believe that the income chargeable to tax has escaped assessment, he must also have reason to believe that such escapement of income has occurred by reason of failure on the part of the assessee either to make the return of income under section 139/142(1)/148 (not relevant in the present case as we have noted above) or to disclose fully and truly all material facts necessary for his assessment. It is a settled position that both these conditions are cumulative and must co-exist and the satisfaction of the AO regarding these conditions having been fulfilled in the instant case must emerge from the reasons so recorded and the reasons alone need to be examined which cannot be supplemented by any subsequent findings of the AO and there cannot be a presumption in law which can be drawn that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. We find that similar matter came up for consideration before the Hon'ble Punjab and Haryana High Court in case of Duli Chand Singhania vs. Asst. CIT (*supra*) wherein it was held that the absence of a finding to this effect which is a

“*sine qua non*” for assuming jurisdiction under section 147 in a case falling under the proviso thereto, makes the action taken by the AO wholly without jurisdiction.

11. In the instant case, we refer to the reasons so recorded by the AO before issuance of notice u/s 148 of the Act and find that the AO has talked about the fact that the assessee has not filed its return of income which, as we have seen earlier, is an incorrect finding as the assessee has duly filed its return of income. Secondly, the AO has talked about the fact that the assessee has not responded to the notice u/s 133(6) seeking information about the source of cash deposit which again, as we have noted above, is factually incorrect as the assessee has duly responded to the notice vide letter dated 19/12/2019. We further note that the AO in the reasons recorded has stated that in this case, since no return has been filed and no assessment has been made, the only requirement to initiate proceedings u/s 147 is reason to believe that the income has escaped assessment which is again factually incorrect as the return filed earlier by the assessee has been assessed u/s 143(3) of the Act. We further note that the AO talked about the fact that since more than four years have lapsed from the end of impugned assessment year and necessary sanction to issue notice has to be obtained from Id PCIT u/s 151(1) which no doubt has been obtained but at the same time, he has failed to record any satisfaction, as can be seen from the reasons so recorded, that the conditions specified in the proviso to section 147 are attracted and have to be satisfied in the instant case.

12. Now, coming to the contention advanced by the Id DR that the AO based on tangible information in his possession that there were cash deposit in the bank account maintained by the assessee has recorded his satisfaction that income to the extent of Rs. 34,50,350/- has escaped assessment. As we have stated earlier, the AO besides having reasons to believe that the income chargeable to tax has escaped assessment, he must also have reason to

believe that such escapement of income has occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. In view of above, merely recording the satisfaction that cash has been found deposited in the bank account of the assessee is not sufficient enough to assuming jurisdiction u/s 147 as the second condition for assuming the jurisdiction that the income has escaped assessment due to failure on the part of the assessee to disclose truly and fully all material facts have not been satisfied in the instant case.

13. In light of the aforesaid discussion and in the entirety of facts and circumstances, we are of the considered view that the AO lacks the necessary jurisdiction to initiate the proceedings u/s 147 and the notice so issued under section 148 is hereby set-aside. In the result, ground no. 2 of the assessee's appeal is allowed.

14. The other grounds of appeal on merits of the case have thus become academic in nature and the same are thus dismissed as infructuous.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 26/11/2024

**Sd/-**

**परेश म. जोशी**  
(PARESH M. JOSHI)  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**विक्रम सिंह यादव**  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar