

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.126/Ind/2024
Assessment Year:2015-16

Manish Kumar Jaisinghani 16/A, Prabhat Plaza, Rajwada Indore	<u>बनाम/</u> Vs.	ITO-1(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ABTPJ1429N		
Assessee by	Shri S.K. Porwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.01.2025	
Date of Pronouncement	27.01.2025	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 24.01.2024 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 29.03.2022 passed by learned National Faceless Assessment Centre, Delhi ["AO"] u/s 147 r.w.s. 144 and 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on following grounds:

"1. That on the facts and in the circumstances of the case and in law, the Ld CIT(Appeals) erred in passing ex-parte order without affording sufficient

opportunity of being heard; which is against the law of natural justice and deserves to be quashed.

2. *That on the facts and in the circumstances of the case and in law, the Ld Assessing officer erred in issuance of the notice under section 148 of the Act and the learned CIT(A) erred in confirming such issuance of notice, which is without proper sanction. Since, notice was issued within four year and original assessment order was passed under section 143(1) of the Act. Hence, permission ought to be obtained from the authorities as per section 151 of the Act but no such approval was provided to the appellant; which is wrong, illegal and bad in law.*

3. *That on the facts and in the circumstances of the case and in law the Ld Assessing officer erred in initiating the proceedings under section 148 of the Act and completing the assessment under section 143(3)/147 of the Act without following procedure laid down by various courts; which is without jurisdiction and therefore void ab-initio. The learned CIT(A) erred in mechanically confirming the same.*

4. *That on the facts and in the circumstances of the case and in law, the learned AO erred in passing and learned CIT(A) erred in confirming order passed under section 147 r.w.s. 143(3) of the Act without following the Standard Procedure issued by CBDT on 10.01.2018, for recording satisfaction u/s 147 of the Income Tax Act, 1961: which is totally wrong, illegal and bad in law.*

5. *That on the facts and in the circumstances of the case and in law, the Ld Assessing Officer erred in reopening the case of the appellant in the absence of any tangible material and live link of concealment of income that could lead to a formation of belief that income chargeable to tax has escaped from assessment. The learned CIT(A) erred in mechanically confirming the same.*

6. *That on the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in issuing a notice under section 148 of the Act without any reason to believe of his own and merely on the basis of information received from Investigation Wing and without independent application of mind which is neither legal nor proper. The assessment order so passed is thus void ab-initio and therefore requires to be quashed in toto. The learned CIT(A) erred in mechanically confirming the same.*

7. *That on the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in passing order under section 147 r.w.s. 143(3) of the Act who is different from the officer, who re- opened the assessment. The order has been passed by the AO without going the material relied for re- opening of the assessment; which is totally wrong, illegal and bad in law. The learned CIT(A) erred in mechanically confirming the same.*

8. *That on the facts and in the circumstances of the case and in law, the learned AO erred in passing order u/s. 147 r.w.s. 143(3) without mentioning any specific reason or provision of Expl. 2 to S. 147, which shows that the*

learned AO himself is not sure as to whether the amount of Rs. 1,64,14,710/- as allegedly given by the appellant to the society for purchase of At Par Cheques or DDs on commission basis is turnover of the appellant or undisclosed income or unexplained income and thus order so passed is without the authority of law and against the provisions of S. 144B(9) of the Act and therefore wrong, illegal and bad in law. That on the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in passing and learned CIT(A) erred in confirming ex-parte order so passed under section 144 r.w.s. 147 without going through submission made from time to time and mentioning wrong facts in the order, which is patently wrong, illegal and bad in law.

9. *That on the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in making additions relying on third party evidence and without affording cross-examination and without making available any related records on which the AO relied against the appellant; which is against the law of natural justice and therefore, deserves to be deleted in full. The learned CIT(A) erred in mechanically confirming the same. That on the facts and in the circumstances of the case and in Law, the Ld Assessing Officer erred in making additions and the learned CIT(A) erred in confirming such additions of Rs. 1,64,14,710/- as unexplained money; which is patently wrong, illegal and bad in law and therefore, deserves to be deleted in full.*

10. *That on the facts and in the circumstances of the case the Ld Assessing Officer erred in charging interest and leaned CIT(A) erred in confirming such interest under section 234A of Rs. 6,14,279 and 234B of Rs. 46,88,880, which is patently wrong, illegal and bad in law and therefore, deserves to be deleted in full."*

2. The brief facts leading to present appeal are such that the assessee-individual filed original return of income for AY 2015-16 on 21.03.2016 declaring total income of Rs. 3,06,750/- which was processed u/s 143(1) of the Act. Subsequently, on the basis of survey proceedings carried out by Income-tax Department in the case of one "Kanha Credit Co-operative Society Maryadit, Indore" on 20.11.2014 and assessment-proceeding done in the case of said society indicating that the assessee was one of the beneficiaries who made transactions of Rs. 1,64,14,710/- with said society for issuance of cheques in lieu of cash, the AO re-opened assessee's case u/s 147 through notice dated 31.03.2021 u/s 148 calling the assessee to

file return by 30.04.2021. The assessee did not file return by 30.04.2021 but, however, responded on 08.03.2022 saying that he was facing technical difficulty in filing return of income and requested to treat the original return as having been filed in response to notice u/s 148. The assessee subsequently filed return also on 10.03.2022. Then the AO issued notice u/s 143(2) on 11.03.2022. In the intervening period, the AO also issued notices u/s 142(1) but the assessee either did not respond or filed partial response [Para 4.1 & 4.2 of assessment-order]. The AO issued a draft assessment-order dated 22.03.2022 proposing to complete assessment u/s 144. In response, the assessee filed letter dated 26.03.2022 objecting to proposed assessment u/s 144 and also sought more time to submit the details. But the AO turned down assessee's request of more time stating that the assessment was getting time-barred by 31.03.2022 and providing more time to assessee was not feasible. Further, the AO noted that the delay in completing assessment was attributed to assessee's failure in making timely compliance of statutory notices [Para 8.0 & 8.1 of assessment-order]. Citing these reasons, the AO ultimately completed assessment u/s 144 and assessed the alleged sum of Rs. 1,64,14,710/- as unexplained money u/s 69A. Aggrieved, the assessee carried matter in first-appeal raising several issues of illegality in assessment-proceedings as well as challenging the merits of addition. But the CIT(A) dismissed assessee's appeal for non-prosecution. Now, the assessee has come in next appeal before us raising several grounds as mentioned in the beginning.

3. Thus, from the facts culled out from assessment-order as briefly narrated above, it is discernible that the assessee filed original return voluntarily u/s 139. Thereafter, in response to notice u/s 148 the assessee claims to have been unable to re-file return in time due to technical difficulty and therefore ultimately filed letter dated 08.03.2022 to AO informing about technical difficulty and also requesting to treat the original return as having been filed u/s 148. Subsequently, the assessee filed return also on 10.03.2022 and it is thereafter that the AO issued notice u/s 143(2) on 11.03.2022. However, the AO proposed to make assessment u/s 144 and issued draft assessment-order. In response to draft assessment-order, the assessee filed objection to AO and also requested to give more time to file details but the AO completed assessment u/s 144 citing non-feasibility to give more time. Thus, the assessee was not able to make sufficient filing/representation before AO at least against draft assessment-order. That apart, Ld. AR for assessee made a brief pleading about various legal and factual infirmities in the proceedings of re-opening initiated by AO as well as the assessment framed by AO u/s 144 which are also raised by assessee in the grounds of appeal. Ld. AR also submitted that the AO has made a hefty addition of Rs. 1,64,14,710/- without even providing any material to assessee. Considering entire conspectus, the bench proposed to remand this matter to AO for consideration afresh after hearing the assessee. Learned Representatives of both sides agreed to the proposal of bench. Therefore, this matter is remanded back to the file of AO for adjudication afresh after

giving necessary opportunities to assessee. Needless to mention that the AO shall supply the material required by assessee, judiciously consider entire submission of assessee and pass a fresh order without being influenced by his previous order. The assessee shall be entitled to make representation before AO on all aspects of legality or merits as thought fit. At the same time, the assessee is directed to extend full co-operation to the AO for a proper adjudication. Ordered accordingly.

4. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules,
1963 on 27/01/2025

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/01/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore