

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.634 & 637/Ind/2024
(Assessment Year: 2017-18)

Bajrang Lal, 32, Income Tax Colony, Ved Nagar, Ujjain Rishi Nagar, Ujjain	Vs.	Assessment Unit, NFAC, Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ACFPL4677B		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	25.02.2025	
Date of Pronouncement	27.02.2025	

ORDER

This appeal by the assessee is directed against the order dated 28.06.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for A.Y.2017-18 which is arising from the assessment order u/s 147 r.w.s. 144B of the Act dated 15.03.2023 framed by Assessing Officer, Assessment Unit.

2. Assessee has raised following grounds of appeal:

ITA No.634/Ind/2024

"1. That on the facts and in the circumstances of the case and in law, notice dated 27-07-2022 issued under section 148 of the Act by the Local Assessing Officer i.e. Ld ITO WD-2(2), Kota even when after 29-03-2022, re-assessment under section 147, 148 and 148A of the Act was required to be conducted through automated allocation and in a faceless manner as per Binding Hon'ble CBDTs Notification dated 29-03-2022 (Notification No. 18/2022) and therefore. proceedings initiated under section 147 of the Act in the case of the appellant for Assessment Year 2017-18 on the basis of the said notice is also bad in law.

2. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant for Assessment Year 2017-18 even when there was no income represented in form of asset which has escaped assessment.

3. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant even in absence of any information which suggested that income chargeable to tax had escaped from assessment and merely for verification of cash deposits in the bank accounts of the appellant.

4. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant for Assessment Year 2017-18 vide issuance of notice under section 148 of the Act on 27-07-2022 i.e. after three years from the end of relevant assessment year even when the correct amount of alleged income chargeable to tax did not exceeded Rs. 50 Lakhs.

5. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant without obtaining proper sanction from competent authority as mandated by the provisions of section 151 of the Act.

6. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs. 11,00,000/- made by the Ld Assessing Officer to the total income of the appellant on account of cash deposits in the bank account of the appellant by treating it as unexplained money under section 69A r.w.s. 115BBE of the Act without properly appreciating the facts of the case and submissions made before him/her

even when the appellant during the course of assessment proceedings categorically explained the source of cash deposit made by him.

7. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs. 11,00,000/- made by the Ld Assessing Officer to the total income of the appellant on account of cash deposits in the bank account of the appellant by treating it as unexplained money under section 69A r.w.s.115BBE of the Act even when the appellant was not liable to maintain books of accounts and therefore, provisions of section 69A of the Act was not applicable.

8. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him."

ITA No.637/Ind/2024

1. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant for Assessment Year 2017-18 merely for verification of source of cash deposited in the bank account of the appellant which tantamount to making roving and fishing inquiries in the garb of reassessment proceedings which is grossly unjustifiable.

2. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant in absence of any tangible material and live link of concealment of income without independent application of mind.

3. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the Ld Assessing Officer in reopening the case of the appellant without obtaining proper sanction as mandated by the provisions of section 151 of the Act.

4. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs. 11,00,000/- made by the Ld Assessing Officer to the total income of the appellant on account of cash deposits in the bank account of the appellant by treating it as unexplained money under section 69A r.w.s. 115BBE of the Act without properly appreciating the facts of the case and submissions made before him/her even when the appellant during the course of assessment proceedings categorically explained the source of cash deposit made by him.

5. That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition of Rs. 11,00,000/- made by the Ld Assessing Officer to the total income of the appellant on account of cash deposits in the bank account of the appellant by treating it as unexplained money under section 69A r.w.s. 115BBE of the Act even when the appellant was not liable to maintain books of accounts and therefore, provisions of section 69A of the Act was not applicable.

6. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him."

First we take up ITA No.637/Ind/2024.

3. At the outset Ld. Counsel for the assessee submitted that the assessment order dated 16.03.2022 deserves to be quashed on the ground that fresh reassessment proceedings were initiated by issuance of notice u/s 143(1) of the Act on 27.02.2022 for the reason that the issuance of notice issued u/s 148 of the Act dated 31.03.2021 served to the assessee on 1.04.2021 was barred by limitation. He also referred to the affidavit filed by the assessee mentioning both these facts.

4. On the other hand Ld. Departmental Representative was fair enough to accept that since fresh assessment proceedings were initiated for Assessment Year 2017-18 by issuance of notice u/s 148 of the Act dated 27.02.2022, the previous assessment

proceedings carried out by issuance of notice u/s 148 of the Act dated 31.03.2021 deserves to be quashed.

5. I have heard rival contentions and perused the records placed before us. Admittedly the assessee did not file its return of income for Assessment Year 2017-18. Based on the information about the deposit of cash of Rs.11,00,000/- in the bank account of the assessee maintained with M/s Baran Kendriya Sahakari Bank Limited, notice u/s 148 of the Act was issued on 31.03.2021 but served on 1.04.2021. But thereafter in view of the judgment of Hon'ble Apex Court in the case of *Union of India v. Ashish Agarwal dated 04.05.2022* dealing with the validity of notice issued u/s 148 of the Act between 1.4.2021 and 30.06.2021, Ld.A.O issued fresh notice u/s 148 of the Act in light of the judgment of Hon'ble Apex Court in the case of *Union of India v. Ashish Agarwal (supra)*. Accordingly fresh reassessment proceedings were initiated and assessment was framed on 15.03.2023 after the issuance of notice u/s 148 of the Act on 27.07.2022. In the given facts and circumstances of the case since the fresh proceedings for Assessment Year 2017-18 have been completed on 15.03.2023 the

previous assessment proceedings for the very same assessment year 2017-18 completed on 16.03.2022 which was carried out by the issuance of notice u/s 148 of the Act on 31.03.2021 deserves to be quashed. Accordingly finding of the Ld. CIT(A) is set aside and the assessment order dated 16.03.2022 is quashed. The legal ground raised in the appeal No.637/Ind/2024 are allowed. So far as on merits of the case are concerned the same will be dealt in other appeal of the assessee for Assessment Year 2017-18 ITA No.634/Ind/2024. Accordingly appeal No. 637/Ind/2024 for the Assessment Year 2017-18 is allowed as per terms indicated above.

Now we take up appeal No.634/Ind/2024.

6. At the outset Ld. Counsel for the assessee requested for not pressing legal issues raised in Grounds No. 1,2,3,4 & 5 of this appeal challenging the validity of notice issued u/s 148 of the Act as well as validity of the assessment proceedings. Accordingly Ground No. 1 to 5 are dismissed not pressed.

7. The only surviving issue challenged by the assessee is in Ground No. 6 & 7 is against the addition of unexplained cash

deposit of Rs.11,00,000/- made by the Assessment Officer u/s 69 r.w.s. 115BB of the Act.

8. Ld. Counsel for the assessee stated that the source of alleged cash deposit is withdrawal made by the assessee during the financial year 2013-14 from his bank account. The amounts withdrawn from the bank were utilized for giving advance to Mr. Heeralal Meena for purchase of land but subsequent to his death and also the death of his son namely Hansraj Meena the registry of the immoveable property could not be carried out in favour of the assessee therefore the advance of Rs.9,00,000/- given by the assessee on 28.03.2014 was returned back by wife of late Hansraj Meena. Ld. Counsel of the assessee submitted that cash of Rs.8,99,000/- which was withdrawn from the bank account in the year 2013-14 is the major source of the alleged cash deposit and therefore the same should not be treated as unexplained.

9. On the other hand Ld. Departmental Representative supported the order of the lower authorities.

10. I have heard rival contentions and perused the records placed before us. The dispute in the instant case has arisen on account of the reason that cash of Rs.11,00,000/- was deposited by the assessee in cash in his bank account. Ld. A.O was not satisfied by the explanation given by the assessee. On going through the documents filed before this Tribunal as well as lower authorities I notice that the assessee is maintaining the bank account with M/s Baran Kendriya Sahakari Bank Limited for past many years and during the financial year 2013-14 Rs.8,99,000/- has been withdrawn. The assessee is claimed to have been engaged in business of medicines for past many years and also filing the income tax return and for the year under appeal income of Rs.1,49,590/- has been declared in the return filed on 25.09.2021. In support of the documents it is noticed that the assessee gave advance of Rs.9,00,000/- to Mr. Heeralal Meena at the closure of financial year 2013-14 for purchase of agriculture land located at Gram Siswali, Tehsil Mangrol, Dist. Baara, Rajasthan. But prior to the land being transferred in the name of assessee Mr. Heeralal Meena expired on 4.12.2014 and his son Mr. Hansraj Meena who was supposed to execute the registry but unfortunately he also

died on 10.7.2015. Due to these reasons the registry could not be executed. Later on wife of Mr. Heeralal namely Smt. Hema Meema refunded Rs.9,00,000/- to the assessee during month of April, 2016. All the above facts have been reiterated in the affidavit given by Smt. Hema Meena as well as the assessee. The facts mentioned in the affidavit of Smt. Hema Meena stands uncontroverted by the department as no further enquiry has been carried out. Merely there is a general observation of the revenue authorities that the story of the giving advance during the year 2013-14 and receiving it back during the year 2015-16 is a cooked story but there is no verification by the revenue authorities of the details furnished by the assessee.

11. Under the given facts and circumstances of the case, considering the affidavit of Smt. Hema Meena duly supported with the bank statement about the withdrawal of cash from the bank account by the assessee during the year 2013-14 amounting to Rs.9,00,000/- along with explaining the source of remaining amount of Rs.2,00,000/- from the accumulation of past savings and income declared by the assessee, I find that the assessee has

successfully explained the source of alleged cash deposit of Rs.11,00,000/-. No addition u/s 69A r.w.s. 115BB of the Act is called for. The finding of Ld. CIT(A) is set aside and the impugned addition of Rs.11,00,000/- made u/s 69A is deleted. Effective grounds of appeal raised in Ground No.6 & 7 on merits are allowed. Ground No.8 is general in nature and needs no adjudication.

12. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 27.02.2025.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, 27.02.2025
Dev/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