INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 6154/Del/2019
(Assessment Year: 2010-11)

Satish Kumar Bhiwani, Village Nathuwas PO Paluwas, Bhiwani, Haryana,	Vs.	ITO, Ward No. 2, Bhiwani
(Appellant)		(Respondent)
PAN: AXT[L7397N		

Assessee by :	Shri Subhash Chander Jindal, Adv
Revenue by:	Shri Manish Gupta, Sr. DR
Date of Hearing	21/05/2025
Date of pronouncement	16/07/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.6154/Del/2019 for AY 2010-11, arises out of the ld. Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 234/ROT/IT/CIT(A)-5/LDH/2018-19 dated 21.12.2017 against the order of assessment passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 10.11.2017 by the Assessing Officer, ITO, Ward-3, Bhiwani (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That the Learned CIT (A) has erred in law and on facts in dismissing the ground of appeal that the ITO not served the notice under section 148 of the Income Tax Act on the assessee in accordance with law and the assessment made consequent thereto is liable to be quashed. Service of notice is not only a procedural requirement that is a mandatory requirement for valid initiation. Therefore the assessment made by the ITO was bad in law.

2. That the Learned CIT (A) erred in not taking cognizance of the documents/letter produced. The Assessing Officer neither supply the reasons recorded for re-opening as sought by the assessee nor he dispose of the same by passing a speaking order, which is against law and principles of natural justice as well. Therefore, the order passed by the AO was nof valid.

3. That the Learned CIT (A) has gone wrong in applying mandatory provisions of section 44AF. The assessee has filed his income tax return u/s 44AF and shown the income @ 8.04 percent of the gross receipts of Rs.1963286.00. The learned CIT (A) erred in not considering the explanation of assessee regarding sale receipts which has been not denied even. The CIT (A) calculated the cash in hand out of cash deposited and withdrawals from bank, not as per the cash flow statement. So, the calculation of the CIT (A) is against the law and justice.

4. That the Learned CIT (A) has erred in confirming the addition of Rs.728071.00 as unexplained against the facts of the case as return filed under section 44AF which is dully explained. Therefore the addition made is liable to be deleted.

5. That the appellant has paid the appeal fee for Rs.10000/- and the appeal is being filed within the limitation of time.

6. The appellant crave leave to add or amend the grounds of appeal on or before the appeal is heard and dispose off."

3. We have heard the rival submissions and perused the material available on record. The ld AO based on the information available with AST System that assessee had made cash deposits of Rs. 27,99,000/- in his HDFC Bank account and had made commodity transaction through multi commodity exchange totaling to Rs. 2,85,02,850/- and in view of the fact that no return of income has been filed by him for AY 2010-11, proceeded to reopen the case of the assessee vide issuance of notice u/s 148 of the Act dated 27.03.2017. The

computation of income together with the return of income was furnished in response to notice u/s 148 of the Act. The assessee claimed that he is an agriculturist and has been doing agriculture activities with his father in the agricultural land measuring about 10 acres in the village which is canal as well as tube-well irrigated. In addition to the above, it was submitted that he was doing the business of sale and purchase of scrap of wheat, sarso, bajra, jawar and purchase and sale of buffalos and rearing of buffalo in the village. The assessee had filed his return of income u/s 44AF of the Act showing income from sale and purchase of crops, scrap and buffalos. He has shown gross receipts from the business of Rs. 19,16,285/- and had shown profit thereon of Rs. 1,57,929/- which worked out @8.40% as against 5% rate of profit prescribed u/s 44AF of the Act. The assessee submitted that he had started his crop business in the year 2007. The agriculture land was in his HUF capacity and therefore no agricultural income has been shown in the return of income filed in individual capacity. The assessee explained the source of cash deposit of Rs. 27.99 lacs made in HDFC Bank and gave the details along with letter filed before the ld AO on 09.10.2017. The assessee also furnished the cash flow statement. The ld AO however disbelieved the contentions of the assessee and made an addition of Rs. 27,99,000/- on account of cash deposits as his unexplained income.

4. The assessee preferred an appeal before the ld CIT(A), wherein, ground was raised challenging the validity of assumption of jurisdiction u/s 147 of the Act. It was specifically pointed out that no notice u/s 148 per se of the Act was served on the assessee. Further, on repeated issuance of notice u/s 142(1) of the Act calling for return of income during the course of assessment proceedings, the assessee had indeed furnished the return of income and sought for reasons recorded for reopening the assessment. The assessee had

filed a reply in response to notice u/s 148 of wherein he had stated that the original return filed on 29.06.2017 for AY 2010-11 be treated as return in response to notice u/s 148 of the Act. The assessee sought for reasons recorded for reopening in this letter. No reasons for reopening assessment was ever supplied to the assessee. This was also part of the written submission filed by the assessee before the ld CIT(A). The ld CIT(A) merely applied the provisions of Section 292BB of the Act regarding the objection of the assessee on non-furnishing of reasons recorded for reopening the assessment. Further, with regard to non supply of reasons for reopening the assessment by the ld AO, the ld CIT(A) observed that assessee had never sought for the reasons before the ld AO and accordingly dismissed the plea of the assessee. But this fact has been proved to be factually incorrect in view of the letter written by the Authorized Representative of the assessee to the ld AO which is enclosed at page 41 of the Paper Book wherein the assessee had duly filed a reply to the notice filed a reply to the notice u/s 148 of the Act and had indeed sought for reasons recorded. Admittedly, the reasons were not provided to the assessee. Now whether the non-furnishing of reasons recorded for reopening of the assessment would become fatal to the reassessment proceedings per se was subject matter of consideration by the Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics reported in 379 ITR 456 (Bom) wherein, it was held that where reasons were not furnished for reopening of assessment even when assessee sought for the same, the reassessment order could be bad in law. Respectfully following the same, we quash the reassessment proceedings framed in the hands of the assessee for the year under consideration as it is in violation of decision of the Hon'ble Supreme Court in the case GKN Drive Shaft India Ltd reported in 259 ITR 19 (SC). Since, the reassessment is quashed as

bad in law, other grounds raised by the assessee become academic in nature and they are left open.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/07/2025.

-Sd/-	-Sd/-
(VIKAS AWASTHY)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16/07/2025

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi