

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES,
NEW DELHI - [SMC]

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER,

ITA No. 5394/DEL/2016
[Assessment Year: 2008-09]

Shri Baby Yadav Alias Anita Yadav
B-7, Panchsheel Colony, Lalkua
Ghaziabad [U.P.]

Vs.

The I.T.O
Ward -5(1)
New Delhi

PAN : ANSPY 9836 B

[Appellant]

[Respondent]

Date of Hearing : 26.04.2017
Date of Pronouncement : 27.04.2017

Appellant by : Shri Anoop Sharma, Adv
Shri Sanjay Parashar, Adv

Respondent by : Ms. Bedobani Chaudary, Sr. DR

ORDER

This appeal of the assessee arises from the order of the CIT(A), Ghaziabad vide order dated 28/09/2016 for A.Y. 2008-09.

2. The Id. Counsel for the assessee, at the very outset, argued Ground No. 1, which is a legal one and the same is reproduced as under:

“1. That the Id. Commissioner of Income Tax (Appeals) erred in law, on facts and in the surrounding circumstances of the case in failing to examine, on her own, the validity of reassessment proceedings in as

much as the mere fact that cash deposits have been made in the bank account does not by itself, indicate that these deposits constitute an income, which has escaped assessment as per the settled law.”

3. The ld. Counsel for the assessee pointed out the reasons recorded by the AO at page 3 of the paper book, which are reproduced hereinbelow:

“On the basis of information received, it is found that Smt. Baby Yadav w/o Shri Bimlesh Kumar Yadav, the assessee deposited cash to the tune of Rs. 10,16,000/- in saving bank account held in her name, during the F.Y. 2007-08 relevant to A.Y 2008-09. Since no return of income has been filed by the assessee, the source of this cash deposit remains unexplained.

In view of the facts above, i have reasons to believe that cash deposit in saving bank to the tune of Rs. 10,16,000/- is out of undisclosed sources and the same is chargeable to tax as escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Hence notice u/s 148 of the Act is hereby issued.”

4. It was argued by the ld. AR that the cash so deposited by the assessee is not income of the assessee and nothing has been brought on record in the reasons by the AO that the said cash deposited is an income which has escaped assessment and, therefore, reassessment so made be directed to be quashed.
5. The ld. DR, on the other hand, relied upon the orders of the authorities below.

6. I have heard the rival contentions and perused the facts of the case available on record. It is not in dispute that cash to the extent of Rs. 10,16,000/- has been deposited in the savings bank account of the assessee and there is no material on record to form a belief that income has escaped assessment. Reliance has been placed on the decision of the ITAT Delhi 'A' Bench in the case of Bir Bahadur Singh Sijwali Vs. ITO in ITA No. 3814/DEL/2011 order dated 20th January 2015. The relevant operative part in paras 8 and 10 of the order is reproduced hereinbelow:

“8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100/- have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs 10,24,100 has escaped assessment of income because the assessee has Rs 10,24,100 in his

bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

10. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of I.T.A. No.: 3814/Del/11 Assessment year: 2008-09 the additions, in the impugned assessment proceedings, are rendered academic and infructuous.”

7. The said decision of the ITAT Delhi Bench has been followed by the ITAT Amritsar Bench [SMC] in the case of Gurpal Singh Vs. ITO vide ITA No. 631/ASR/2015 order dated 27.05.2016. The relevant operative paras 49 and 50 are reproduced hereunder:

“49. Now, in keeping with Bir Bahadur Singh Sijwali [supra], this information cannot form a valid basis for initiating assessment proceedings under section 147 of the I.T. Act. As observed in the Bir Bahadur Singh Sijawali [supra] the mere fact that the deposits had been made in the bank account does not indicate that these deposits

constitute income which has escaped assessment.

50. Thus, it was a mere suspicion of the AO, that prompted him to initiate assessment proceedings under section 147, which is neither countenanced, nor sustainable in law. Too, the AO proceeded on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee. That being so, in keeping with Bir Bahadur Singh Sijwali {supra), the reasons recorded to initiate assessment proceedings under section 147 of the Act and all proceedings pursuant thereto, culminating in the impugned order, are cancelled. Ground No.2 is, accordingly, accepted.”

8. Under the facts and circumstances of the present case, I am of the view that the AO has proceed on a fallacious assumption that the cash deposits in the bank constitute undisclosed income without bringing any material on record to substantiate that the income has escaped assessment which can fall u/s 147 of the Act. Therefore, the assessee does not acquire any jurisdiction to assess/reassess the present case and accordingly, the order passed u/s 147 of the Act is directed to be quashed.

9. Since the assessee succeeds on the legal ground, therefore the remaining issues on merits become academic in nature and, therefore, require no adjudication on my part.

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

The order is pronounced in the open court on 27.04.2017.

Sd/-
[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 27th April, 2017

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi