

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1135/Del./2018
Assessment Year 2012-13

Neel Kant Chaudhary C/o Chaudhary Nursing Home, Shahpur, Tehsil Budhana, Distt. Muzaffarnagar, Muzaffarnagar. PAN No. AFSPC4835L	vs.	ITO Ward 2(5) Khatauli.
(Appellant)		(Respondent)

For Assessee :	Shri Gaurav Bansal, CA
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	04.01.2021
Date of Pronouncement :	08.01.2021

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals), Muzaffarnagar dated 14.11.2017 for AY 2012-13, challenging the reopening of the assessment u/s 148 of the IT Act and addition of Rs. 18,78,400/- u/s 69A of the IT Act.

2. I have heard Ld. Representatives of both the parties through Video Conferencing and perused the material on record.

3. Briefly the facts of the case are that as per AIR Information, during the year under consideration, assessee had deposited cash amounting to Rs. 17,69,000/- in his saving bank account with ING Vysya Bank at Muzaffarnagar. The AO in order to verify the transaction issued a letter but assessee failed to explain the source of the cash deposits in the bank account. Assessee had filed return of income on 30.03.2014 at Rs. 1,79,300/- along with agriculture income at Rs. 2,60,000/-. The AO issued notice u/s 148 of the Act on 29.02.2016 which was served upon the assessee. The assessee explained that cash of Rs. 18,78,400/- was deposited in his two saving bank accounts on different dates from sale receipts of Popular trees (Agriculture Income) throughout the year. The AO did not accept the explanation of the assessee and made addition of Rs. 18,78,400/- u/s 68 of the Act. The Ld. CIT(A) dismissed the appeal of the assessee.

4. Ld. Counsel for assessee referred to reasons for issue of notice u/s 148 of the IT Act, copy of which is filed at page 4 of the PB and is reproduced as under: -

Reasons for issue of Notice u/s 148

Neel Kant Chaudhary, Chaudhary Nursing Home,

Shahpur M. Nagar AY 2012-13

As per AIR information available in this office that the assessee had deposited cash of Rs. 17,69,000/- in his saving bank account in ING Vysya Bank Ltd. at Muzaffarnagar. To verify the transaction verification letter dated 18.08.2015 was issued to the assessee regarding source of cash deposit in his bank

account. The assessee has filed reply dated 07.12.2015 but the assessee neither properly explained the source of cash deposit nor filed the statement of bank account. Further from the records of the office it is noticed that the assessee has e-filed his return of income for AY 2012-13 on 30.03.2014 at income of Rs. 1,79,300/-. As the assessee failed to explain the source of above cash deposit of Rs. 17,69,000/- proceedings u/s 147 is to be initiated for issuing notice u/s 148 for AY 2012-13. As the assessee has deposited cash of Rs. 17,69,000/- from undisclosed sources.

Thus, I have reasons to believe that the income assessed u/s 143(1) of the IT Act, 1961, has escaped assessment.

If approved, a notice u/s 148 of the IT Act may be issued to the aforesaid assessee.”

*Sd/-
(PANKAJ KANSAL)
Income Tax Officer
Ward 2(5), Khatauli*

5. He has submitted that prior to recording the reasons, AO issued a letter dated 18.08.2015 (PB1) seeking explanation of deposits of Rs. 17,69,000/- in the bank account of the assessee which fact is incorrect because the total deposits in his two bank accounts was of Rs. 18,78,400/- which AO has ultimately accepted and made addition of this amount. He has submitted that AO was having no authority to issue letter dated 18.08.2015 because no return was pending on the date of issue of this letter. Assessee filed reply before AO dated 07.12.2015 (PB2) in response to the query letter dated 18.08.2015 in which all these facts were explained. He has submitted that cash deposit in the bank account *per se* is not income of the assessee. The assessee has income from

profession and interest income as well as agricultural income and amounts were deposited on account of sale of Popular Trees. Therefore, AO recorded incorrect facts in the reasons, therefore, reopening of the assessment is bad in law and liable to be quashed.

6. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that AO on the basis of information received correctly recorded the reasons that income chargeable to tax in a sum of Rs. 17,69,000/- has escaped assessment.

7. I have considered the rival submissions. ITAT Delhi 'SMC' Bench (DB) in the case of Shri Dheeraj Yadav vs. ITO in ITA No. 6701/Del/2019 vide order dated 01.01.2021 decided the identical question and quashed the reopening of the assessment. The order is reproduced as under:

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.6701/Del./2019
Assessment Year 2011-2012

Shri Dheeraj Yadav, K1-31, New Palam Vihar, Gurgaon. Haryana PIN – 122 001. PAN AAYPY2157N	vs.	The Income Tax Officer, Ward-46(5), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Shantanu Jain, Advocate
For Revenue :	Mr. Sri Prakash Dubey, Sr.DR

Date of Hearing :	23.12.2020
Date of Pronouncement :	01.01.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-16, New Delhi, Dated 28.05.2019, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.11,07,160/-.

2. *We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.*

3. *Briefly the facts of the case are that proceedings under section 147 of the I.T. Act, 1961 was initiated on the basis of information that assessee had deposited cash amounting to Rs.11,07,160/- with ICICI Bank and also earned commission payment amounting to Rs.2,533/- from Karvat Healthcare Services Pvt. Ltd., in assessment year under appeal and no return have been filed. The A.O, therefore, proceeded to frame re-assessment for non compliance of statutory notice, non-cooperation attitude of the assessee and passed ex-parte assessment order under section 147/144 of the I.T. Act, 1961 and made additions of Rs.11,07,160/- on account of unexplained money under section 69A of the I.T. Act, 1961 and further made addition of Rs.756/- on account of interest earned. The income was computed at Rs.11,07,916/-. The Ld. CIT(A) dismissed the appeal of assessee.*

4. *Learned Counsel for the Assessee referred to the reasons recorded by the A.O. for reopening of the assessment, copy of which is filed at pages 2 and 3 of the PB. The same reads as under :*

“ANNEXURE-A

*“The assessee **is** an individual whose jurisdiction lies in this Ward. As per ITS. Retails, the Assessee has not filed any return of income.*

2. *Information has been received from ITO Ward-46(4) vide F.No.ITO/W-46(4)/2017-18/645, Dated 22.03.2018, received in this office on 22.03.2018.*

3. The department is having Information that during the F.Y. 2010-11 the assessee has deposited cash amounting to Rs.11.07.160/- with ICICI Bank Ltd., and received commission payments amounting to Rs.2,533/- from KARVAT HEALTH CARE SERVICES PVT LTD.

4. Since the assessee had not filed ROI for the year under consideration, the source of cash deposit made and commission payments received by the assessee amounting to Rs.11,09,693/- remains unexplained and also they exceeds the maximum amount which is not chargeable to tax and for filing the return for A.Y. 2011-12; I have reason to believe that assessee's income chargeable to tax has escaped assessment.

5. In view of the information as above, Explanation 2(a) to section 147 is applicable in the case which lays down that the following shall also be deemed to be case where income chargeable to tax has escaped assessment, "where no return of income has been furnished by the assessee although his total income in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax."

6. In view of the above fact, case, I have the reasons to believe that a sum of Rs.11,09,693/- on account of cash deposit in bank and commission payments received by the assessee during the year chargeable to tax has escaped assessment. Since, four years have lapsed but not more than six years have elapsed from the end of the relevant assessment year, It is therefore, proposed as per the provisions of section 149(1) (b) read with section 151(3) of the I.T Act, 1961 that approval for initiating action u/s 147 of income tax Act, 1961 may be granted in the case.

It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed in paragraph 4 above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case, more than four years but not more than six years have elapsed from the end of the relevant assessment year. Hence necessary sanction to issue notice u/s 148 is being obtained separately from Pr. Commissioner of Income Tax /Add./JCIT under the amended provisions of section 151 of the I.T. Act w.e.f. 01.06.2016.

Date : 23.03.2018

Place New Delhi

Sd/-
Subhash Chand
Income Tax Officer,
Ward-46(5),
New Delhi."

4.1. He has also referred to copy of the bank statement and bank flow statement to show that in ICICI Bank there are cash deposits of Rs.11,49,750/-, therefore, A.O. has recorded incorrect facts in the reasons for reopening of the assessment that there was a cash deposit of Rs.11,07,160/-. He has submitted that in the case of Shri Abrar Ahmad Qasimi, Delhi vs., ITO, Ward-46(5), New Delhi in ITA.No.3177/Del./2017, for the A.Y. 2007-2008, the ITAT Delhi SMC-Bench, Delhi vide Order Dated 01.06.2018 has held that "cash deposit per se cannot be income of the assessee and re-assessment proceedings have been quashed." The Order is reproduced as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3177/Del./2017
Assessment Year 2007-2008

Shri Abrar Ahmad Qasimi, Delhi – 110 066. C/o. M/s. RRA Tax India D-28, South Extension, Part-1, New Delhi - 110049. PAN AHGPA5521K	vs	The Income Tax Officer, Ward-46(5), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, Advocate
For Revenue :	Ms. Ashima Neb, Sr. D.R.

Date of Hearing :	21.05.2018
Date of Pronouncement :	01.06.2018

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A)-16, New Delhi, dated 06th March, 2017, for the A.Y. 2007-2008.

2. *Briefly, the facts of the case are that in this case notice under section 148 for reopening of the assessment was issued on 21.02.2014 after obtaining the approval of JCIT, New Delhi. The assessee in response to the notice, filed return of income declaring income of Rs.99,200/-. During the year, assessee had declared salary income only. The reasons for reopening of the assessment have been provided to the assessee. The assessee was asked to explain nature of source of entry of Rs.14,75,000/- in S.B. account of the assessee. The A.O. noted that assessee has not filed satisfactory explanation regarding cash deposit in Axis Bank, therefore, it was treated as unexplained deposit under section 69A of the I.T. Act and made the addition of Rs.14,75,000.*

3. *The assessee challenged the above addition before Ld. CIT(A) and it was submitted that assessee is Maulvi for Arabic Religious and Teacher and teaching Arabic in the Masjid. He has prestige in the society and trustworthy in the community. People coming to him for pious purposes, giving money for safe deposit and take back whenever required. The assessee deposited the amount in bank account which was later on withdrawn and returned to them. Assessee gets salary from Waqf Board, Delhi.*

4. *At the appellate stage, assessee was asked to produce lenders for their statements. The assessee produced some of the persons at the appellate stage. Their statements were recorded in which they have confirmed to have given amounts to the assessee. Ld. CIT(A), however, do not accept the contention of assessee because lenders are not having enough money and that they themselves have bank account, therefore, there were no reason to deposit amount in the bank account of the assessee. Appeal of the assessee has been dismissed.*

5. *The assessee in the present appeal challenged the reopening of the assessment as well as addition of Rs.14,75,000/-. Learned Counsel for the Assessee submitted that assessee obtained reasons for reopening of the assessment under RTI Act, 2005, copy of which is filed on record, in which, A.O. has recorded reasons for reopening of the assessment. The same reads as under :*

“As per information available in ITD System of the Income Tax Department, Sh Abrar Ahmad Qasimi during the financial year 2006-07 relevant to A.Y. 2007-08 has made cash deposit of Rs.14,75,000/- in saving bank account. The assessee has not filed Tax return for A.Y. 2007-08. After examination of information available in ITD system by independent application of mind, I have reason to believe that income of Rs.14,75,000/-for Financial Year 2006-07 relevant to Assessment Year 2007 -08 has escaped assessment with in meaning of sec 147 of Income Tax Act, 1961. The case for assessment year 2007 -08 is taken up for assessment u/s. 147 of I.Tax Act, 1961.”

5.1. *He has submitted that mere deposit of the cash in the bank account is not sufficient to believe that income chargeable to tax has escaped assessment, therefore, reopening of the assessment is bad in law. It was submitted that the issue is covered in favour of assessee by order of ITAT, SMC-Bench in the case of Shri Arvind Yadav vs. ITO, Ward-1(1), New Delhi ITA.No.1508/Del./2017 for the A.Y. 2008-2009, Dated 07.07.2017, in which the Tribunal on identical facts, set aside the orders of the authorities below and quashed the reopening of the assessment vide order dated 07.07.2017. Copy of the order is placed on record.*

6. *Ld. D.R. relied upon the orders of the authorities below.*

7. *After considering rival submissions, I am of the view that reopening of the assessment is bad in law. The A.O. merely noted in the reasons that since there is an information available on ITD System of the Department that assessee has made cash deposits of Rs.14,75,000/- in his Bank Account, therefore, income chargeable to tax has escaped assessment. The ITAT, Delhi Bench in the case of Shri Arvind Yadav (supra) considering the identical facts held that the deposit in the bank account per se cannot be the income of the assessee. This is a mere suspicion of the A.O. based on incorrect fact that income chargeable to tax has escaped assessment and accordingly, quashed the reopening of the assessment. The findings of the Tribunal in para 8 of the Order are reproduced as under:*

“8. In this case the Assessing Officer after obtaining the AIR information wanted to verify the same and issued a letter of enquiry to the assessee. The Assessing Officer thus did not apply his independent mind to the information received from AIR. Since no proceedings were

pending before the Assessing Officer when he issued a letter of enquiry to the assessee, therefore, such enquiry letter was not valid in eyes of law. Therefore, the assessee was not required to respond to invalid letter of enquiry issued by the Assessing Officer. The Assessing Officer in the absence of reply of the assessee presumed that cash deposited in the bank account has escaped assessment. The deposit in the bank account per se cannot be income of the assessee. It is mere suspicion of the Assessing Officer based on incorrect fact that income chargeable to tax has escaped assessment. The issue is therefore covered in favour of assessee by order of ITAT SMC Delhi Bench in the case of Tajendra Kumar Ghai (supra). In view of this matter, I am of the view that the Assessing Officer has wrongly assumed jurisdiction u/s 147 of the Income Tax Act for the purpose of reopening of the assessment. I accordingly set aside the orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly, the addition made in the reassessment would stand deleted.

8. In the result, the appeal filed by the assessee is allowed.”

7.1. The issue is, therefore, covered in favour of the assessee by the decision of the Delhi Tribunal in the case of Shri Arvind Yadav (supra). Following the reasons for decision for the same, I set aside the orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly, the addition made in the re-assessment would stand deleted and appeal of assessee is allowed.

8. In the result, appeal of the assessee is allowed.”

4.2. He has submitted that A.O. has not made any addition on account of commission payment in the re-assessment order, therefore, A.O. has recorded wrong facts in the reasons for reopening of the assessment and there was a complete non-application of mind. Therefore, the reopening of the assessment may be quashed. He has relied upon the Judgments of Hon’ble Delhi High Court in the case of Pr. CIT vs., G & G Pharma India Ltd., [2016] 384 ITR 147 (Del.), Pr. CIT vs., RMG Polyvinyl [2017] 396 ITR 5 (Del.).

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has correctly recorded reasons for reopening of the assessment because there was a cash deposit in the ICICI Bank Account of the

assessee, therefore, reopening of the assessment is justified in the matter.

6. *We have considered the rival submissions. It is well settled Law that validity of the reopening of the assessment is to be determined with reference to the reasons recorded for reopening of the assessment. The assessee has filed copy of the reasons recorded for reopening of the assessment in the paper book which is reproduced above in which the A.O. has mentioned that he has information that assessee has deposited cash amounting to RS.11,07,160/- with ICICI Bank Ltd., and also received commission of Rs.2,533/- and thus, there is an escapement of income to the tune of Rs.11,09,693/-. The assessee has filed copy of the reply filed before the Ld. CIT(A) in the paper book in which it is clearly explained that A.O. has wrongly assumed that entire cash deposited in the ICICI Bank account was income of the assessee as there are deposits and withdrawals multiple times throughout the year for business purposes. It was also explained that assessee in the business during the relevant year because assessee deals in Hardware, Sanitary and Sanitary-ware at Chawdi Bazar, Delhi. These facts clearly show that total cash deposited in the Bank Account of the assessee with ICICI Bank Ltd., per se may not be the income of the assessee. The ITAT, Delhi Bench in the case of Shri Abrar Ahmad Qasimi, Delhi vs., ITO, Ward-46(5), New Delhi (supra), following other decisions of the Tribunal has held that deposits in the bank account per se cannot be the income of the assessee. Thus, it was a mere suspicion of the A.O. based on incorrect facts that income chargeable to tax has escaped assessment. Further, Learned Counsel for the Assessee has filed details of the deposits in ICICI Bank to show that there are cash deposits in ICICI Bank at Rs.11,49,750/- as against Rs.11,07,160/- stated by the A.O. in the reasons for reopening of the assessment. Thus, wrong and incorrect facts are also recorded in the reasons recorded for reopening of the assessment. Thus, A.O. has recorded wrong and non-existing and incorrect facts in the reasons for reopening of the assessment. Thus, the A.O. would not get jurisdiction to reopen the assessment on such wrong facts recorded in the reopening of the assessment. The A.O. has also not applied his mind to the facts of the case and merely based on information without verifying the same recorded reasons for reopening of the assessment. Thus, the reopening of the assessment cannot be*

sustained in Law. We are fortified in our view by the Judgments of the Hon'ble Punjab & Haryana High Court in the case of CIT vs., Atlas Cycle Industries [1989] 180 ITR 319 [P&H], Judgment of Hon'ble Delhi High Court in the case of Pr. CIT vs., SNG Developers Ltd., [2018] 404 ITR 312 (Del.), Judgment of Hon'ble Delhi High Court in the case of Shamshad Khan vs., ACIT [2017] 395 ITR 265 (Del.) and Judgment of Hon'ble Bombay High Court in the case of Siemens Information Systems Ltd., vs., ACIT & Others [2007] 293 ITR 548 [Bom.]. It may also be noted here that though A.O. has referred to the commission earned by the assessee in assessment year under appeal, but, no addition have been made in the re-assessment order. Considering the above facts in the light of above Judgments and Order of the Tribunal in the case of Shri Abrar Ahmad Qasimi, Delhi vs., ITO, Ward-46(5), New Delhi (supra), it is clear that A.O. has recorded incorrect, wrong and non-existing reasons for reopening of the assessment and also failed to verify the information received by him before recording the reasons for reopening of the assessment. Thus, there was clearly non-application of mind on the part of the A.O. to initiate the re-assessment proceedings. The A.O. would not get assumption of jurisdiction legally to frame the re-assessment under section 147/148 of the I.T. Act, 1961. In view of the above, we set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. The other issues on merit are left with academic discussion only. Accordingly, the appeal of the Assessee is allowed.

*7. In the result, appeal of the Assessee allowed.
Order pronounced in the open Court.*

8. It is well settled law that validity of reassessment proceedings is to be judged in the light of the reasons recorded for reopening of the assessment. In the case of Dheeraj Yadav (supra) it is held that cash deposit in the bank account of the assessee *per se* may not be income of the assessee. It was also held that if AO recorded incorrect, wrong and non existing reasons for reopening of the assessment and failed to verify

the information received by him before recording the reasons for reopening of the assessment, it would be clearly non application on the part of the AO to initiate the reassessment proceedings. In the present case, assessee explained to AO before recording the reasons of reopening of the assessment that total cash of Rs. 18,78,400/- deposited in his two bank accounts out of the sale proceeds of Popular Trees. Still AO has mentioned incorrect amount of Rs. 17,69,000/- in the reasons. Ultimately AO accepted that the figure of Rs. 17,69,000/- mentioned in the reason is incorrect because he made addition of Rs. 18,78,400/- in the reassessment order. The assessee also explained that he has several source of income and sale proceeds of Popular Trees were deposited in cash in bank account. Thus, the cash deposit *per se* may not be income of the assessee. Thus, it is clear that AO has not verified information so recorded. The AO in the reasons also mentioned another incorrect fact that he has reasons to believe that income assessed u/s 143(1) has escaped assessment because income assessed u/s 143(1) was at Rs. 1,79,300/- only. AO never mentioned in reasons u/s 148 that he has reasons to believe that income of Rs. 17,69,000/- chargeable to tax had escaped assessment. The reasons are therefore, incorrect and based on no belief of AO. The ingredients of section 147 of IT Act are, therefore, not satisfied. The AO did not apply mind to information. The issue is,

therefore, covered by order of ITAT Delhi Bench in the case of Dheeraj Yadav (supra). Following the same, I set aside the orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted.

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

Order pronounced in the open Court on 08.01.2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 08.01.2021

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.