

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 1500/DEL/2017
A.Y. : 2007-08

SUSHIL GAUR,
C/O DR. RAVI GUPTA, ADVOCATE,
E-6A, LGF, KAILASH COLONY,
NEW DELHI - 110 048
(PAN: AOZPG7675N)

vs. ITO, WARD 2(3),
GHAZIABAD

AND

I.T.A. No. 1501/DEL/2017
A.Y. : 2007-08

SHELLY AGARWAL,
C/O DR. RAVI GUPTA, ADVOCATE,
E-6A, LGF, KAILASH COLONY,
NEW DELHI - 110 048
(PAN: AEFPA3529M)
(Appellant)

vs. ITO, WARD 2(3),
GHAZIABAD
(Respondent)

Assessee by : Sh. Rajesh Jain, CA & Ms. Chandrima
Chaudhury, Adv.
Department by : Sh. T. Vasanthan, Sr. DR

ORDER

These are the appeals filed by the separate assesses against the respective order of the Ld. CIT(A), Ghaziabad both dated 23.12.2016 and pertains to assessment year 2007-08. Since the issues involved in these appeals are common and identical, hence, the same were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 1500/Del/2017 (AY 2007-08).

2. The grounds raised in the Assessee's appeal (ITA NO. 1500/DEL/2017) (AY 2007-08) read as under:-

1. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/s. 147/ 148 are invalid and illegal as the reasons recorded do not reflect any tangible material on the basis of which the Assessing Officer could have reasons to believe that any income has escaped assessment. .

2. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/ s 147/148 are invalid and illegal as the reasons recorded do not reflect any satisfaction of the Assessing Officer regarding escapement of income but are based upon borrowed satisfaction of the Investigation Wing of the department.

3. That the Ld. CIT (A) has erred in not appreciating that the proceedings could not be as assessment could have been made only under section 153C on the basis of the documents /Information found during the course of a search.

4. That the Ld. CIT (A) has erred in not appreciating that the assessment is invalid and illegal as it has been made after the limitation period.

5. That the Ld. CIT (A) has erred in holding that it was the burden of the appellant to establish that no amount of capitation fees has been paid to M/s. Santosh Medical College.

6. That the Ld. CIT (A) has erred on facts and in law in upholding the addition of Rs. 25,50,000/- on account of alleged payment to M/s. Santosh Medical College.

7. That the Ld. CIT (A) has erred in holding that merely because the appellant has attended the assessment proceedings it can be presumed that the information on the basis of which the addition has been made was confronted to the appellant.

8. That the Ld. CIT (A) has erred in not appreciating that the assessment is invalid and illegal as the principles of natural justice have been completely violated and no opportunity of cross examination was provided to the appellant.

9. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

10. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.

3. The grounds raised in the Assessee's appeal (ITA NO. 1501/DEL/2017) (AY 2007-08) read as under:-

1. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/s. 147/ 148 are invalid and illegal as the reasons recorded do not reflect any tangible material on the basis of which the Assessing Officer could have reasons to believe that any income has escaped assessment. .

2. That the Ld. CIT (A) has erred in not appreciating that the proceedings initiated u/ s 147/148 are invalid and illegal as the reasons recorded do not reflect any satisfaction of the Assessing Officer regarding escapement of income but are based upon borrowed satisfaction of the Investigation Wing of the department.

3. That the Ld. CIT (A) has erred in not appreciating that the proceedings could not be as assessment could have been made only under section 153C on the basis of the documents /Information found during the course of a search.

4. That the Ld. CIT (A) has erred in not appreciating that the assessment is invalid and illegal as it has been made after the limitation period.

5. That the Ld. CIT (A) has erred in holding that it was the burden of the appellant to establish that no amount of capitation fees has been paid to M/s. Santosh Medical College.

6. That the Ld. CIT (A) has erred on facts and in law in upholding the addition of Rs. 25,50,000/- on account of alleged payment to M/s. Santosh Medical College.

7. That the Ld. CIT (A) has erred in holding that merely because the appellant has attended the assessment proceedings it can be presumed that the information on the basis of which the addition has been made was confronted to the appellant.

8. That the Ld. CIT (A) has erred in not appreciating that the assessment is invalid and illegal as the principles of natural justice have been completely violated and no opportunity of cross examination was provided to the appellant.

9. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

10. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.

4. The brief facts of the case are that in this case proceedings u/s. 148 of the Income Tax Act, 1961 (hereinafter referred as the Act) initiated by the AO based on the information that assessee has invested a sum of Rs. 25,50,000/- towards admission to MS ENT course during the assessment year 2007-08. The assessee has furnished return of income in response to notice u/s. 148 of the Act declaring NIL income. The assessee was required to furnish the source of payment made to Maharaja Education Trust for the above mentioned course. After considering the reply of the assessee, the AO made an addition of Rs. 25,50,000/- being unexplained cash invested in payment of fee. The income of the assessee was assessed at Rs. 25,50,000/- vide order dated 11.03.2015 passed u/s. 147/143(3) of Income Tax Act, 1961. Aggrieved with the assessment order dated 11.3.2015, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.12.2016 has dismissed the appeal of the Assessee by confirming the action of the AO.

5. Aggrieved with the Ld. CIT(A)'s order, assessee appealed before the Tribunal.

6. At the time of hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 22 in which the Assessee's counsel has attached the written submissions; copy of reasons recorded and the copy of the order of the ITAT, New Delhi in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016. He contended that the action taken by the Assessing Officer under sec. 147 is not tenable for the simple reason that provisions of sec. 153 C of the Act are applicable in this case and not the provisions laid down under sec. 147 of the Act. He further submitted that it is an admitted position of the fact as it is also evident from the assessment order that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found during the course of search from the premises of Santosh Medical College run by Maharaja Education Trust. The Learned AR contended that provisions of sec. 153C provides that persons relating to whom some material is found in search of some other person should be assessed under sec. 153C of the Act. The provisions of section 153-C are non-obstantive provisions and specially excludes the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147, instead of 153C of the Act. If action under sec. 147 is permitted on the basis of material found in the course of search, then the provisions of sec. 153 would be redundant. In this regard, he placed reliance on the following decisions to support his above contentions that no action under sec. 147 is permissible on the basis of material found in search:

- i) ACIT vs. Arun Kapur - 140 TTJ 249 (Amritsar);
- ii) Cargo Clearing Agency vs. JCIT - 307 ITR I(Guj.);
- iii) Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016.

7. On the contrary, Ld. DR relied upon the orders of the authorities below and has tried to justify the action of the Assessing Officer in initiating reopening proceedings.

8. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the

notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is

accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.

9. In the result, both the appeals filed by the different Assesseees stand allowed in the aforesaid manner.

Order pronounced in the Open Court on 08/08/2017.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date:- 08/08/2017

SRBHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches