

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.2740/Del./2018
Assessment Year 2011-2012

Shri Inder Jeet, Sohna, Gurgaon, PAN AIWPJ1144N C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi-085.	vs.	The Income Tax Officer, Ward – 2 (5), Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

ITA.No.1384 & 2647/Del./2018
Assessment Year 2008-2009

Shri Ashok Kumar, Ghaziabad. U.P. PAN BVSPK8805K C/o.M/s. Sanjeev Anand & Associates, 77, Navyug Market, Ghaziabad-201001.	vs.	The Income Tax Officer, Ward – 1 (1), Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Aggarwal, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	08.11.2018
Date of Pronouncement :	03.12.2018

ORDER

I have heard the Learned Representatives of both the parties and perused the material available on record. The issues are common in all the appeals. Therefore, all appeals are decided through this consolidated order as under.

ITA.No.2740/Del./2018 (Shri Inder Jeet) :

2. This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 15.03.2008, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 148 of the I.T. Act, 1961 and addition of Rs.39 lakhs on account of cash deposited in the bank account.

3. Briefly facts of the case are that A.O. received information that the assessee had deposited cash in his bank account. The Assessing Officer accordingly recorded reasons and issued notice under section 148 of the I.T. Act, 1961. There was no compliance to the notice issued by the Assessing

Officer. Thereafter the Assessing Officer provided number of opportunities through issue of notice under section 142(1) but there were no compliance. Final notice issued under section 142(1) was received back with the comments 'refused'. The Assessing Officer, therefore, treated it to be deemed service and completed the assessment under section 144/147 of the I.T. Act, dated 01.02.2016, thereby making addition of Rs.39,00,000/-on account of unexplained cash deposit in the bank account.

3.1. The assessee challenged the above addition before Ld. CIT(A) and it was contended that no notice have been received by the assessee. The assessee also raised the additional ground of appeal challenging the reopening of the assessment under section 148 of the I.T. Act. It was contended that mere cash deposit in bank account cannot be treated as undisclosed income as a reason for income escaping assessment. There is no nexus between the prima facie inference arrived in the reasons recorded and information

available with the Assessing Officer. The reasons recorded were highly vague, far-fetched and cannot be any stretch of imagination lead to a conclusion of escapement of income and there were merely presumption in nature. The Ld. CIT(A), however, did not admit the additional ground of appeal. However, the Ld. CIT(A) proceeded to decide the additional ground of appeal on merit as well. The Ld. CIT(A) noted that assessee has not filed return of income and has no valid source of income to prima facie explain source of the cash deposited in the bank account. Therefore, reopening of the assessment was found valid. The Ld. CIT(A) held that A.O. was fully justified in initiating the proceedings under section 147/148 of the I.T. Act, 1961. On merit also addition was confirmed. The appeal of assessee was accordingly dismissed.

4. Learned Counsel for the Assessee as regards reopening of the assessment submitted that the reasons do not disclose escapement of income and that mere cash deposit in bank account is not sufficient to presume that it is a case of

escapement of income. He has relied upon the Order of ITAT, Delhi Bench in the case of (1) Shri Bhajan Lal, Delhi vs. ITO, Ward-2, Narnaul, Haryana in ITA.No.3984/Del./2017, Dated 20.09.2018, (2) Order of ITAT, Delhi Bench in the case of Smt. Swati Verma, New Delhi vs. ITO, Ward 3(4), Noida in ITA.No.42/Del./2018, Dated 01.08.2018 and (3) Order of ITAT, Delhi Bench in the case of Shri Jagat Singh, Noida vs. ITO, Ward-1(3), Ghaziabad, Dated 04.09.2018.

5. On the other hand, Ld. D.R. produced the assessment record and filed copy of the reasons recorded under section 148 on record and relied upon the Orders of the authorities below.

6. I have considered the rival submissions and perused the material available on record. The A.O. in this case recorded the reasons for reopening of the assessment under section 147/148 of the I.T. Act on 25.03.2015 which reads as under :

“Reasons for initiating proceedings under section
147/148 of the Income Tax Act, 1961.

As per information available with this office that assessee has deposited cash Rs.10,00,000/- and above in his saving bank account during the financial year 2010-11 . The assessee has to filed return of income for the assessment year 2011-12 as per provisions of section 139(1) of the I.T. Act. As per record, assessee has not filed return of income for the Assessment year 2011-12. The above income is chargeable to tax under the provisions of the Income Tax Act 1961. Therefore ,the income amounting to Rs. 10,00,000/- which is chargeable to tax under the provisions of I.T. Act and any other income subsequently comes to the notice of the AO during course of assessment proceedings which is chargeable to tax has escaped assessment.

*Notice under section 148 of the Income Tax Act, 1961
is being issued.*

*Sd/-
(Shamsher Singh)
Income Tax Officer
Ward 2(5), Gurgaon.”*

6.1. The ITAT, Delhi Bench in the case of Shri Bhajan Lal, Delhi vs. ITO, Ward-2, Narnaul, Haryana (supra), on identical facts in paras 3 to 8 held as under :

3. Notice u/s 148 for A.Y. 2007-08 was issued to the assessee on 16.03.2012 by the Income Tax Officer, Ward-2, Rewari having territorial jurisdiction to the assess the income of the assessee after recording the following reasons:

“As per AIR information for the F.Y. 2006-07 received in this office the assessee has made cash deposits of Rs.19,00,000/- in his bank account with PUNJAB NATIONAL Bank REWARI. A query notice was issued to the assessee on 24.01.2012. But no response has been

received from the assessee. I, therefore, have reason to believe that the assessee has deposited cash in his bank account out of his income from unexplained sources. Accordingly income to the extent of Rs.19,00,000/- and any other income which subsequently comes to the notice of the undersigned has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Issue notice u/s 148 of I. T. Act, 1961 for the assessment year 2007-08."

Sd/- (O. P. Punia)
Income-tax Officer,
Ward-2, Rewari."

In response to notice u/s 148, no return of income was filed by the assessee. Again notice u/s 142(1) was issued on 17.08.2012 asking the assessee to file his return of income but no return was filed in compliance to this notice also and only power of attorney of the advocate was filed. Later on the jurisdiction of the case was assigned to the Income

Tax Officer, Ward-2, Narnaul by the Joint Commissioner of Income Tax, Rewari Range, Rewari vide office order dated 04.02.2013. Notice u/s 142(1) calling the return of income along with query letter was issued for 15.02.2013 and in response to this assessment proceedings were attended by the counsel of the assessee but no return of income was filed. But afterwards return of income declaring Nil income was filed as well as written replies were filed by the assessee's counsel. The Assessing Officer observed that as per information available on record, the assessee made cash deposit of Rs. 12,50,000/- on 08.05.2006 and Rs. 6,50,000/- on 11.05.2006 in his bank account maintained with branch office Ateli. The assessee was asked a query dated 06.02.2013 as to explain the source of these cash deposits with documentary evidence. The assessee vide reply dated 11.03.2013 submitted that the deposit in the bank account was out of the cash received from the

agreement to sale. The Assessing Officer rejected the plea of the assessee on the ground that no sale deeds of the land 4 ITA No. 3984/Del/2017 was executed till date for which alleged agreements were made. The Assessing Officer observed that as per material available on record during the F.Y. 2006-7 relevant to A.Y. 2007-08, the assessee sold his share of agricultural land situated in the revenue estate of VII-Padiyawas for Rs. 19,06,250/-. The Assessing Officer held that the land sold by the assessee is covered in the definition of capital assets in view of the Notification issued by CBDT on 06.01.1994 F.No. 164/03/87ITAI, hence land in question is liable to capital gain. Thus, the Assessing Officer made an addition of Rs. 18,17,621 as capital gain of the assessee.

4. *Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.*

5. *The Ld. AR submitted that on identical i.e. exact wordings the reasons recorded in the present case has been dealt by the Tribunal in case of Krishan Kumar vs. ITO (ITA No. 3985/Del/2017 A.Y. 2007-08 dated 15.12.2017) wherein the appeal of the assessee is allowed as reassessment proceedings initiated by the AO are held to be void. Therefore, the Ld. AR submitted that on the legal ground itself the appeal be allowed.*

6. *The Ld. DR relied upon the Assessment Order as well as the order of the CIT(A), but could not distinguish the facts of the case decided by the Tribunal in case of Krishan Kumar (supra).*

7. *We have heard both the parties and perused all the relevant material available on record. It is*

pertinent to note here that the facts of the case in case of Krishan Kumar (Supra) and in the present case are identical in nature. In fact, the figures of amount, Bank name and the notice issuing date are exactly the same as well as the Assessment Year is also the same. The Ld. DR also could not point out any distinguishing factor with the order of the Tribunal in case of Krishan Kumar and in present assessee's case. The Tribunal held as under:

“9. I have considered the rival arguments made by both the sides, perused the orders of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons recorded by the AO as reproduced by him in the assessment order shows that the reopening was made on account of cash deposit of Rs. 19 lakh in the bank account of the assessee. However, the AO

in the assessment order has made addition of Rs.36,26,500/- on account of capital gain and interest income. Thus, there is no addition on account of which the assessment was reopened by issue of notice u/s 148 of the I.T. Act. Hon'ble Delhi High Court in the case of Ranbaxy Laboratory Ltd., vs CIT(supra) has held that the assessing officer has the jurisdiction to reassess the issues other than issues in respect of which proceedings were initiated. But he was not justified when the reasons for the initiation of those proceedings seized to survive. Since, in the instant case, there was no addition made in the assessment order on account of which the assessment was reopened but some other additions have been made by the AO, therefore, the AO does not have jurisdiction to make such other additions in absence of any addition made for which the assessment was re-

opened in the light of the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratory Ltd. (supra). Therefore, the re-assessment proceedings have to be quashed.

10. Even otherwise, also the reopening was made on the basis of AIR information received that the assessee has made cash deposit of Rs. 19 lakhs. I find identical issue had come up before this bench of the Tribunal in the case of Mahavir Prasad (supra). The Tribunal vide ITA no. 924/Del/2015 order dated 09.10.2017 for assessment year 2007-08 had quashed such re-assessment proceedings by observing as under :

"9. After going through the reasons recorded by the ITO, Ward-2, Rewari, am of the view that there is no nexus between the prima facie inference

arrived in the reasons recorded and information; the information was restricted to cash deposits in bank account but there was no material much less tangible, credible, cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee; that even the communication dated 24.1.2012 could not be made a basis to assume jurisdiction in view of the fact that such an enquiry letter is an illegal enquiry letter and thus cannot be relied upon; that the proceedings initiated are based on surmises, conjectures and suspicion and therefore, 7 ITA no. 3985/Del/2017 the same are without jurisdiction; that the reasons recorded are highly vague,

far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income and these are merely presumption in nature; that it is a case of mechanical action on the part of the AO as there is non-application of mind much less independent application of mind so as to show that he formed an opinion based on any material that such deposits represented income. Keeping in view the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed".

11. In view of the above discussion, the reassessment proceedings initiated by the AO are held to be void. Since assessee succeeds on this legal ground i.e. validity of reassessment proceeding, therefore, grounds on merit become academic in nature and therefore are not being adjudicated.

12. In the result, the appeal filed by the assessee is allowed."

Thus, the issue contested herein is identical in the present appeal. Thus, the assessee succeeds in the legal ground regarding validity of reassessment proceeding, therefore, we are not adjudicating the grounds on merit as the same becomes academic in nature. The appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 20th September, 2018".

6.2. The ITAT, Delhi Bench in the case of Arvind Yadav, New Delhi vs. ITO, Ward-1(1), New Delhi in ITA.No.1508/Del./2017, Dated 07.07.2017 in paras 6 to 8 held as under :

6. I have considered the rival submissions. It is well settled law that the validity of the reassessment proceedings is to be determined on the basis of the reasons recorded by the Assessing Officer. The copy of the reasons is filed at page 1 of the paper book and the same reads as under: -

*“Name & address of the assessee : Sh. Arvind Kumar Yadav
S/o Sh Harish Chander, Ghaziabad.*

Assessment Year 2008-09 PAN - NA

Reasons for issue of notice u/s 148 of I.T. Act, 1961

16.03.2015: In this case Non PAN AIR Information has been received the assessee has deposited cash of Rs.41,00,000/- in his S.B. A/c during F.Y. 2007-08. Since, the PAN of the assessee is not known and also the return the A.Y. 2008-09 is not available on record,

to verify the transaction, q letters were issued to the assessee to furnish, the particulars of PAN, 1TR etc. to explain the source of cash deposit in bank account. However, no response has been received from the assessee till date. Thus, the cash credited to the I account of the assessee remains unexplained.

Therefore, I have reason to believe that on account of failure on the part the assessee to furnish his return of income/to disclose his correct and income, the income chargeable to tax for the assessment year 2008-09 escaped assessment within the meaning of section 147 of the I.T. Act, 1961.

*ITO, W -1(l),
GZB”*

7. The Id. counsel for the assessee relied upon the order of the ITAT Delhi SMC Bench in the case of Tejendra Kumar Ghai vs. ITO (supra) in which on identical issues, reassessment has been quashed.

The order up to the para 10 is reproduced as under:-

“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH -‘SMC’ NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
ITANos. 970,971/Del/2017
ASSESSMENT YEARS: 2011-12, 2012-2013

*Tajendra Kumar Ghai
C/o M/s. RRA Taxindia,
D-28, South Extension Part-1
New Delhi - 110 049
PAN ALUPG5605N (Appellant)*

Vs.

*ITO- 1(5)
Rudrapur (Respondent)*

Per BHAVNESH SAINI, Judicial Member

ORDER

Both the appeals by the same assessee are directed against different orders of Ld. CIT(A) dated 3rd November, 2016 for asstt. Year 2011-12 and dated 16th November, 2016 for asstt. year 2012-13. Ld. Representatives of both the parties mainly argued in asstt. year 2011-12 and have submitted that issues are same in

both the appeals. Therefore for purpose of disposal of both the appeals I decide the appeal of assessee for asstt. year 2011-12 as under :-

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

3. In this appeal assessee challenged the assumption of jurisdiction u/s 147 to 151 of the I.T. Act and additions of Rs.13,91,657/-.

4. Briefly the facts of the case are that assessee filed return of income declaring income at Rs.2,37,940/- on 29th March, 2013. The AO noticed that there were total cash deposits of Rs.63,27,996/- in assessee's saving bank account with Punjab National Bank, Corporation Bank and Axis Bank, Rudrapur. The assessee was asked to explain the cash deposits within the time. However no reply is filed. The Assessing Officer thereafter recorded the reasons for the opening of the assessment and issued a notice u/s. 148 of the I.T. Act on 16th March, 2014. No

assessee did not explain the source of the cost deposit in the bank accounts. The AO as per information obtained u/s 133(6) from the aforesaid banks calculated peak of the said accounts and made the addition of Rs. 13,91,657/- treated the same as income from business for year under consideration.

5. The assessee challenged the reopening of the assessment as well as addition on merit before Ld. CIT(A). However the Ld. CIT(A) dismissed both the grounds of appeals of the assessee in principle, however, AO was directed to compute the income of a assessee after giving credit to the turn over already disclosed u/s 44 AD of the I.T. Act. The appeal of assessee was thus partly allowed.

6. Ld. Counsel for assessee referred to the reasons recorded for reopening of assessment as are reproduced in para 3 .3 of the appellate order the same reads as under :

“In this case on AIR information was received that assessee has been entered into transaction worth Rs. 63,27,996/- in his bank account.

In order to verify the genuineness and correctness of this AIR information a verification was issued on dated 16.1.2014 and 17.2.2014 to the assessee which were duly served up on the assessee itself. Through this verification letter the assessee was required to furnish following information

- (i) Details of cash deposit of Rs. 63/27,996/ - during the F.Y. 2010-11. Also produced other details of investment other than mentioned above effected during the year with full details.
- (ii) Produce your statement of all Bank Account in your name or in name of your dependent family members. Also give detailed narration of each credit and debit entry reflecting in Bank Statement explaining the source/purposes thereof.
- (iii) If you are farmer, furnish copy of khasra-khatuni evidencing ownership proof and also the proof of selling of agriculture produce relating to the period under consideration.

(iv) If you are assessed to tax, then furnish your PAN, copy of relevant years ITR, whether it was shown or not, copy of capital a/c, balance sheet, P & L a/c as the case may be.

(v) You are required to furnish the details within one week of receipt of this letter. Please note that non-compliance of this letter may attract the penal action as per the provision of the Income Tax Act, 1961. It is to be mentioned in the verification letter itself that non-furnishing of information may constitute the reasons for initiating the proceedings to tax these transaction in the hand of the assessee by presuming that these are not disclosed to Income Tax Department. The assessee even after receiving the letter himself, did not tendered any reply till date and till now. This is sufficient fact to establish that these transaction/deposits are not disclosed in the regular return of income of assessee.

Therefore, it is clear that amount of Rs. 63,27,996/- has not been brought to tax by the assessee. Accordingly, I have reason to believe that income to that tune of Rs. 63,27,996/ - has been escaped assessment.

Accordingly notice u/s 148 is being issued for initiating the proceeding of the I. T. Act, 1961.”

7. *Ld. Counsel for assessee submitted that no proceedings were pending before AO when AO issued the letter of enquiry. The inquiry letter is not valid in eyes of law. The assessee is not under obligation to respond to this invalid and non est so-called letter of enquiry. The AO merely in the absence of reply of the assessee formed the opinion for reopening of the assessment. The deposit in the bank account by itself would not give reasons to the AO to believe income has escaped assessment. Mere deposit in the bank account would not prima facie makes out a case of reopening of the assessment. He has further submitted that the AO in the reasons recorded incorrect fact of deposits of Rs. 63,27,996/ - despite the total deposits were only to the tune of Rs. 41.15 lacs. This fact is considered favourably by Ld. CIT(A) and his findings are in para 5.3 of the appellate order. Therefore wrong facts are*

recorded in reasons for reopening of assessment. Therefore assumption of jurisdiction u/s 147 of I.T .Act is bad in law.

He has relied upon following orders :

1. *Order of ITAT Amritsar Bench in the case of Amrik Singh vs. ITO 1591TD 329 (Amritsar) in which it was held as under :*

“When the assessment proceedings u/s 147 are initiated 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, the proceedings is neither countenanced, nor sustainable in law.”

2. *Order of IT AT Delhi Bench in the case of Smt. Rajni vs ITO and others in ITA No. 854/Del/2016 dated 6.11.2017 in which in para 12 it was held as under :-*

“12. With the assistance of the Ld. Representatives, I have gone through the record carefully. Section 147 of the Act

contemplates that “if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assessee or re-assess such income ’ A perusal of this section would show that in order to harbor a belief that income has escaped assessment , the Assessing Officer ought to have formed an opinion on the basis of the material possessed by him exhibiting the facts that income has escaped assessment. A perusal of the reasons extracted above would indicate that the Ld. AO has basically not made reference to any material possessed by him except the AIR communicated to him. It is pertinent to observe that he has not analysed the information in right perspective and he sought to reopen by conceiving a fact that the assessee failed to respond to the query raised about this investment. As noticed in the submissions of Ld.Counsel for the assessee, I am of the view that there was no proceedings pending before the AO when he sought the clarification of the assessee vide alleged query notice

dated 23rd January, 2012. The ITAT Amritsar Bench has dealt with this issue elaborately and recorded a finding that under the income tax Act, there is no such procedure to conduct an enquiry for collecting the information without pendency of assessment proceedings. If this reasoning is being excluded from the copy of the reasons given by the AO, then, nothing will remain with the AO except the information' transmitted by AIR Wing. Apart from the above, it is to be seen that in the reasons the AO has nowhere alleged escapement of income. The thrust of the reasoning would show that he want to make an enquiry about the investment. No doubt, for reopening of an assessment, he has to just form a prima facie opinion and not to arrive at a firm conclusion, but, the formation of a prima facie opinion should also depict escapement of income. It is also pertinent to observe that when all these pleas were raised before the first appellate authority, then, the Ld. First appellate authority has not dealt with a single proposition and rather dealt with the issue in an altogether different manner whether notice u/s 148 was served or not, copy of reasoning was provided or not, the

procedure contemplated through the decision of the Hpn'ble Supreme Court in the case of GKN Driveshaft was followed or not. The Ld. CIT(A) has not addressed the contention of the assessee that reopening of assessment in itself is bad. because there is no nexus between reasons vis-a-vis formation of belief "exhibiting the escapement of income. Taking into consideration all these aspects, I am of the view that the AO is not justified in reopening of the assessment afresh. I allow this ground, of appeal and quash the assessment. As far as other issues are concerned, since reopening of assessment has been held as bad aqd not. in accordance with the law, therefore, I deem it not necessary to deal with the other grounds of appeal as they have become infructuous. ”

3) *Order of ITA Delhi Bench in the case of Raj Kumar Dugar (HUF) vs. ITO 12 DTR 16 in which it was held as under :-*

“Reason recorded by the AO that assessee had not filed IT return for asstt. year 1998-99 being based on incorrect

facts because assessee had in fact filed IT return for the said year, issuance of notice under section 148 and consequent assessment could not be sustained; further, assessment could not be reopened in the absence of any fresh material to show that income has escaped assessment and reopening for making fishing inquiry was not valid. ”

8. On the other hand Ld. DR submitted that prima facie case was made out for reopening of the assessment. Therefore AO correctly reopened the assessment and relied upon decision of the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. 236 ITR 34.

9. I have considered rival submissions. It is not in dispute that assessee filed return of income prior to issue of notice u/s 148 of the I.T. Act. The notice u/s 148 was issued on 16th March 2014. It is well settled law that validity of the reassessment proceedings is to be

determined on the basis of the reasons recorded by the AO. The reasons are reproduced above in which AO mentioned that as per AIR information it was found that assessee deposited cash of Rs.63,27,996/- in his bank accounts. However the assessee contended before Ld. CIT(A) that the total aggregate deposits in bank accounts were only 41.15 lacs and not Rs. 63,27,996/-. The contention of the assessee was found correct by the Ld. CIT(A). It is therefore clear that the AO while recording the reasons for reopening of the assessment recorded in correct facts in the reasons for reopening of assessment. Therefore reopening of the assessment u/s 147 is clearly invalid and bad in law. I rely decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atlas Cycle Industries 180 ITR 319. Further the AO after obtaining the AIR information wanted to verify the same and issued a letter of enquiry to the assessee. The AO thus did not apply in his

independent mind to the information received from AIR. Since no proceedings were pending before AO when he issued the letter of enquiry to the assessee, therefore such enquiry letter was not valid in eyes of law. The assessee was not required to respond to this invalid and non est letter of inquiry issued by the AO. The AO in the absence of reply from the assessee presumed that income to the extent of deposits had escaped assessment. The deposit in the bank accounts per se cannot be the income of assessee. It was mere suspicion of the Assessing Officer based on incorrect facts, that income chargeable to tax has escaped assessment. According to Section 147 of the I.T. Act the AO shall have reason to believe that any income chargeable to tax has escaped assessment. Therefore, the belief of the A.O. should be based upon some specific and tangible material for the purpose of reopening of the assessment. The course adopted by

the AO was wholly unjustified in recording the incorrect facts in the reasons for reopening of the assessment. The decision cited by the Ld. Counsel for assessee would clearly support the contention of the assessee that reopening of the assessment is bad in law. In this view of the matter I am of the view that AO has wrongly assumed jurisdiction u/s 147 of -the I.T. 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 order would stand deleted and need not to be adjudicated on merit.

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

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 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

authority below and quash the reopening of the assessment in the matter. Resultantly, the addition made in the reassessment would stand deleted.”

6.3. Considering the facts of the case in the light of above decisions, it is clear that the A.O. in this case recorded in the assessment order that as per information available on record, assessee has made cash deposit of Rs.39 lakhs in his bank account and on that basis, A.O. recorded reasons for reopening of the assessment reproduced above. Further, in the reasons, A.O. has recorded about information available with him of cash deposit of Rs.10 lakhs only. Thus, there is a contradiction in the statement recorded in the assessment order as well as in the reasons above. The A.O. without verifying the information has recorded the reasons for reopening of the assessment. Thus, the A.O. has not applied his independent mind to the information received in this regard. The deposit in the bank account per se cannot be income of the assessee. It is mere suspicion of the A.O. based

on an incorrect fact that income chargeable to tax has escaped assessment. In the similar circumstances, the ITAT, Delhi Bench in the cases of Shri Bhajan Lal, Delhi vs. ITO, Ward-2, Narnaul, Haryana in ITA.No.3984/Del./2017, Dated 20.09.2018, and Arvind Yadav, New Delhi vs. ITO, Ward-1(1), New Delhi in ITA.No.1508/Del./2017, Dated 07.07.2017 did not approve reopening of the assessment in the matter. Following the above decisions, I am of the view that the A.O. has wrongly assumed jurisdiction under section 147 of the I.T. 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 additions made in the re-assessment would stand deleted.

7. In the result, ITA.No.2740/Del./2018 of the Assessee is allowed.

ITA.No.1384/Del./2018 (Shri Ashok Kumar, Ghaziabad) :

8. This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, Noida, Dated 23.01.2018, for the A.Y. 2008-2009, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961, and addition of Rs.27,49,400/- on account of cash deposited in the bank account.

9. In this case also, A.O. noted that PAN of assessee is not available on record and information have been received that an amount of Rs.48,24,200/- has been deposited in the bank account of the assessee. Query letter was issued to the assessee to explain the deposit in the bank account, but, no compliance to the query letter was made. The A.O, therefore, framed the re-assessment and made addition of Rs.48,24,200/-. The assessee challenged the reopening of the assessment and above addition before Ld. CIT(A). The Ld.

CIT(A) confirmed the reopening of the assessment in the matter, however, restricted the addition to Rs.27,49,400/-.

10. After considering the rival submissions, I am of the view that the issue is same as have been decided by me in ITA.No.2740/Del./2018 in the case of Shri Inder Jeet, Delhi, hereinabove. In this case, the A.O. recorded the following reasons for reopening of the assessment.

<i>Name & Address of the Assessee</i>	<i>Shri Ashok Kumar, Vill. & P.O. Harsaon, Ghaziabad.</i>
<i>Assessment Year</i>	<i>2008-09</i>
<i>PAN</i>	<i>NA</i>

Reasons for issue of notice u/s. 148 of the I.T. Act, 1961.

16.03.2015 : In this case, Non PAN AIR information has been received that the assessee has deposited cash of Rs.48,24,200/- in his S.B. A/c during the F.Y. 2007-08. Since, the PAN of the assessee is not known and also the return for the A.Y. 2008-09 is not available on record, to verify the transaction, query letters were issued to the

assessee to furnish' the particulars of PAN, ITR etc. and to explain the source of cash deposit in bank account. However, no response has been received from the assessee till date. Thus, the cash credited to the bank account of the assessee remains unexplained.

Therefore, I have reason to believe that on account of failure on the part of the assessee to furnish his return of income/to disclose his correct and true income, the income chargeable to tax for the assessment year 2008-09 has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.

*Sd/-
ITO W-1(1), GZB.”*

10.1. The issue is, therefore, covered by the Order of this Bench in the case of Shri Inder Jeet, Delhi vs. ITO, Ward 2(5), Gurgaon in ITA.No.2740/Del./2018 (supra). Following the reasons for decision in the same, I set aside and quash the reopening of the assessment under section 148 of the I.T. Act. The addition stand deleted. Appeal of Assessee is allowed.

11. In the result, ITA.No.1384/Del./2018 of the Assessee is allowed.

ITA.No.2647/Del./2018 (Shri Ashok Kumar, Govindpuram, Ghaziabad, U.P.) :

12. This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Ghaziabad, Dated 19.02.2018, for the A.Y. 2008-2009, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

13. The A.O. levied the penalty on account of addition made of unexplained cash deposit of Rs.48,24,000/-. Since the re-assessment have been quashed and addition have been deleted, therefore, penalty proceedings would not survive. I, accordingly, set aside the Orders of the authorities below and cancel the penalty.

14. In the result, ITA.No.2647/Del./2018 of the Assessee is allowed.

15. To sum-up, all the appeals of the Assessees are
Allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd December, 2018

VBP/-

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.