

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F+SMC": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6809/Del/2018
(Assessment Year: 2009-10)

Simmi Sethi, H No. 122/8, Shivaji Colony, Rohtak, Haryana PAN: APYS2747H	Vs.	ITO, Ward-4, Rohtak
(Appellant)		(Respondent)

Assessee by :	Shri Gautam Jain, Adv Shri Lalit Mohan, CA
Revenue by:	Shri S. L. Anuragi, Sr. DR
Date of Hearing	23/07/2019
Date of pronouncement	22/10/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A), Rohtak dated 30.08.2018 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-
 - "1. The Ld. CIT(A) has erred in law and on facts in upholding the reopening of the assessment u/s 147/148. which is bad in law and liable to be quashed.
 2. The Ld. CIT(A) has erred in law and on facts in not appreciating the fact that Principle of Natural Justice not followed by the Ld AO.
 3. The Ld. CIT(A) has erred in law and on facts in upholding the addition of Rs. 398521/-, ignoring the facts on merits of the case and statutory provisions of the Act.
 4. The Ld. CIT(A) has erred in law and on facts not following binding judgments of the Hon'ble Apex court and Jurisdictional High court & Tribunal on similar facts.
 5. The appellant craves leave to add, amend or alter any of the grounds of appeal at the time of hearing of the appeal, if deemed necessary, in the interest of justice and equity.
3. Brief facts of the case shows that the Assessee is an individual who filed her original return of income on 07.07.2009 declaring income of Rs. 183110/-. The assessment was reopened by issue of recording the reasons,

assessee has earned profit from client code modification creating non genuine loans of Rs. 39852/-. Hence, notice u/s 148 was issued. The assessee did not furnish any return of income in response to that notice. Subsequently, notice u/s 142(1) as well as 143(2) was issued. The Assessee has shown the profit of Rs. 186954/- whereas, the total income of the assessee was assessed at Rs. 675211/-. The assessee challenged the same before the Id CIT(A), she challenged the reopening of the assessment as well as the addition on the merits of the case. The Id CIT(A) dismissed the appeal of the Assessee. The assessee is in appeal before us.

4. The Id AR submitted detailed paperbook and stated that the assessee has filed the objections before the Id AO on 23.12.2016 which is placed at page No. 14 to 16 of the paper book against the reopening of the assessment. He submitted that the Id AO without disposing off these objections has proceeded to pass the assessment order. He further submitted that the reasons recorded by the Id AO are without any application of mind but is a borrowed satisfaction as the action has been taken mechanically on the basis of communication from Investigation Wing only. He further submitted that the date of return of income has also been wrongly mentioned by the assessee as it was originally filed on 27.03.2010 but the AO mentioned it as 07.07.2009. He further stated that income was recorded at Rs. 183110/- by the Id AO whereas, the Assessee filed the return of income at Rs. 276690/-. He further stated that the working of the figure of Rs. 398521/- was also not provided to the Assessee. Thus, he stated that these reasons clearly show that reassessment is not sustainable. He further stated that the Assessee has not claimed any loss but infact has declared the profit of Rs. 186954/-. Therefore, the reasons recorded stating that the assessee has contrived the loss is not correct. He relied upon the series of decisions on various ground to support his contentions. He further submitted that the approval granted by the approving authority is also mechanical. Thus, he submitted that contesting the reopening of the assessment submitted a note containing 40 pages stating that reassessment is invalid.
5. The Id DR vehemently supported the order of the Id AO and the Id CIT(A) who held that reopening has been correctly initiated, with due application of

mind, properly approved hence, correctly initiated. It was further submitted that there is no evidence submitted by assessee.

6. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, in this case the assessee has filed her return of income on 27.03.2010 whereas the ld AO has mentioned that same was filed on 07.07.2009. The assessee has filed her return of income for Rs. 276689/- whereas the ld AO has stated the income of Rs. 183110/-. Thereafter, the ld AO proceeded on same information received from Office of Pr. Director of Income Tax that Assessee is a beneficiary who contrived loss, who shifted out through client code modification. The AO further recorded that the Assessee has created non genuine loss amounting to Rs. 398521/-. However, infact the Assessee has shown the profit of Rs. 186954/-. Thus, on all these composite discrepancies recorded in the reasons recorded, it is apparent that the ld AO on receipt of information has not at all looked at the return of income filed by the assessee. Thus, the issue is squarely covered by the decision of the Hon'ble Delhi High Court in 396 ITR 5 PCIT Vs. RMG Polyvinyl (I) Ltd. In this case the specific information such as date of return, amount of income returned and whether the escapement of income is provided or loss has not at all been verified by the ld AO. In view of this on the above reasons recorded by the ld AO, we do not uphold the reassessment proceedings initiated by the ld AO thus, on the issue of reopening u/s 147 of the Act, we reverse the finding of the lower authorities and allow ground NO. 1 of the appeal.
 7. As we have already allowed the appeal of the assessee on jurisdictional issue we do not adjudicate other grounds of appeal.
 8. Accordingly, appeal of the assessee is allowed.
- Order pronounced in the open court on 22/10/2019.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 22/10/2019
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi