

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.777/Del./2019
Assessment Year 2010-2011

Shri Adarsh Agrawal, N-57, Naveen Shahdra, Delhi. PAN AACPA1775E	vs.,	The Income Tax Officer, Ward-61(1), Room No.2007, 20 th Floor, E-2 Block, Civic Centre, JLN Marg, New Delhi - 110002
(Appellant)		(Respondent)

For Assessee :	Shri Ashwani Kumar, C.A. Shri Rohit Jain, Advocate, Shri Deepesh Jain, C.A. And Shri Arpit Goel, C.A.
For Revenue :	Shri Ved Prakash Mishra, Sr. DR

Date of Hearing :	08.01.2020
Date of Pronouncement :	14.01.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 20.11.2018 for the A.Y. 2010-2011.

2. Briefly the facts of the case are that in this case information has been received from Central Circle, Jammu, Dated 09.04.2014 that during the course of search under section 132 of the I.T. Act, 1961 on 07.04.2011 in the case of Shri Naresh Sabharwal of New Delhi, loan agreement was found. As per the loan agreement assessee has given cash loan of Rs.1 crore to Shri Naresh Sabharwal on 17.02.2009 @ 24% interest per annum. Both the assessee as well as Shri Naresh Sabharwal has claimed that this loan was never advanced. However, as per the agreement it was clearly mentioned that loan has been given. Both the parties have denied the transaction as the same was not accounted for in the books of account. The A.O. on that basis reopened the assessment in the case of the assessee and questionnaire was issued seeking explanation of assessee. Assessee was directed to file return of income under section 147/148 of the I.T. Act. The assessee submitted that earlier return filed originally may be treated as return having been filed in response to notice under section 148 of the I.T. Act. The assessee at the re-assessment stage denied to have given

any cash loan to Shri Naresh Sabharwal. It was explained that assessee had agreed to arrange the loan for him through the Financer which was not materialised, therefore, original agreement was scrapped. It may be possible that photocopy have been retained by the said party. The A.O, however, did not accept the contention of assessee and made addition of Rs.1 crore on account of cash loan given to Shri Naresh Sabharwal as well as made addition on account of interest of Rs.6,96,774/-.

3. The assessee challenged the reopening of the assessment as well as addition on merit before the Ld. CIT(A). The detailed written submissions of the assessee is reproduced in the appellate order. The Ld. CIT(A), however, dismissed the appeal of assessee.

4. The assessee in the present appeal has challenged the reopening of the assessment as well as both the additions on merit.

5. We have heard the Learned Representatives of both the parties and perused the material on record.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-8 which is original return of income filed on 09.12.2010. PB-1 is notice under section 148 Dated 12.02.2015. PB-9 is letter of the A.O. extracting the reasons for notice under section 148. PB-10 is reply of the assessee denying giving any loan to Shri Naresh Sabharwal supported by the affidavit which was filed during the assessment proceedings in the case of Shri Naresh Sabharwal. PB-25 is copy of the loan agreement provided by the Department. PB-27 is assessment order in the case of Shri Naresh Sabharwal under section 153A r.w.s. 143(3) Dated 21.03.2014. PB-32 is reasons for reopening of the assessment. Learned Counsel for the Assessee submitted that since Shri Naresh Sabharwal as well as assessee have denied giving of any cash loan and that no evidence have been found giving loan by assessee to Shri Naresh Sabharwal, therefore, reopening of the assessment is bad in law. Further the loan agreement was found during the course of search in the case of Shri Naresh Sabharwal and

assessment under section 153A have been completed in his case, therefore, assessment in the case of assessee should have been made under section 153C only which is a special provision. Therefore, re-assessment in the matter is wholly unjustified, invalid and bad in law. In support of his contention, he relied upon the following decisions :

01.	ITO vs., Arun Kumar Kapoor [2011] 140 TTJ 249 [Amritsar-ITAT].
02.	Order of ITAT, Delhi D-Bench, Delhi in the case of Rajat Shubra Chatterji, New Delhi vs., ACIT, Circle 37(1), New Delhi in ITA.No.2430/Del./2015 Dated 20.05.2016.
03.	Order of ITAT, Delhi SMC-Bench, Delhi in the case of Sushil Gaur & Shelly Agarwal, New Delhi vs., ITO, Ward-2(3), Ghaziabad in ITA.No.1500 & 1501/Del./2017, Dated 08.08.2017
04.	Order of ITAT, Delhi SMC-Bench, Delhi in the case of Shri Girish Chandra Sharma, Bulandshahr vs., ITO, Ward-3(1), Bulandshahr in ITA.No.987/Del./2018, Dated 30.11.2018.
05.	Order of ITAT, Mumbai SMC-Bench, Mumbai in the case of M/s. Rayoman Carriers Pvt. Ltd., Mumbai vs., ACIT, Central Circle-12, Mumbai in ITA.Nos.3275 & 3276/Mum/2015, Dated 16.03.2018.
06.	Order of ITAT, Visakhapatnam Bench, Visakhapatnam in the case of G. Koteswara Rao vs., DCIT, Central Circle-1, Visakhapatnam [2015] 64 taxmann.com 159.

6.1. The Learned Counsel for the Assessee also submitted that since both the parties denied to have entered into loan transactions and there is no other corroborative

evidence on record, therefore, no addition could be made. In support of this submission, he has relied on the following decisions.

01.	Commissioner of Income Tax (Central)-1, New Delhi vs., Ved Prakash Choudhary [2008] 169 Taxman 130 [Delhi] [HC]
02.	Commissioner of Income Tax, Central-II, New Delhi vs., S.M. Aggarwal [2007] 293 ITR 43 [Del.] [HC].
03.	ACIT vs., Kences Foundation (P.) Ltd., [2007] 289 ITR 509 [Madras] [HC].
04.	Commissioner of Income Tax, Central-III vs., Suneet Verma [2007] 145 DLT 280 [DB] [Del.] [HC].
05.	Commissioner of Income Tax vs., Lubtec India Ltd., [2009] 311 ITR 175 [Del.] [HC].
06.	Order of ITAT, Delhi C-Bench, Delhi in the case of Amarjit Singh Bakshi (HUF) vs., ACIT [2003] 86 ITD 13 [Del.] [TM].
07.	Order of ITAT, Guwahati Bench, Guwahati in the case of M/s. Fantastic Buildcon Pvt. Ltd., Guwahati vs., ITO, Ward-2(1), Guwahati in ITA.No.104/Gau/2011 & SP.No.09/Gau/2011, Dated 07.02.2012.
08.	Order of ITAT, Mumbai D-Bench-T.M. Mumbai in the case of S.P. Goyal vs., DCIT [2002] 82 ITD 85 [Mum.].
09.	Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., Smt. P.K. Noorjahan [1999] 237 ITR 570 [SC].

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that re-assessment proceedings have been rightly initiated based on the agreement found during the course of search in the case of Shri Naresh Sabharwal.

8. We have considered the rival submissions. It is well settled Law that validity of the re-assessment proceedings are to be determined with reference to the reasons recorded for reopening of the re-assessment. Learned Counsel for the Assessee filed copy of the reasons recorded for reopening of the assessment as provided under RTI Act, copy of the same is filed at Page-32 of the Paper Book which reads as under :

“ANNEXURE- A

Sh. Adarsh Aggarwal (PAN-AACPA1775E) A.Yr. 2010-11

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147/148 AND FOR OBTAINING THE APPROVAL OF THE ADDITIONAL COMMISSIONER OF INCOME TAX : COMMISSIONER OF INCOME TAX / CENTRAL BOARD OF DIRECT TAXES :

Letter F.No.DCIT/CC/JMU/2014-15/5 dated 09/04/2014 was received from DCIT, Central Circle. Jammu intimating that during the course of search u/s 132 of the I.T. Act on 07/04/2011 in the case of Sh. Naresh Aggarwal, 8/11, Jangcura Extension, Hospital Road, Delhi, it was found that Sh. Adarsh Aggarwal s/o Sh. Murari Lal Aggarwal, R/o.N-57, Naveen

Shahdra, Delhi-32 has given a cash loan of Rs.1 crore to Sh. Naresh Sabharwal on 17/12/2009 at an interest of 24% per annum. Both Sh. Adarsh Aggarwal as well as Sh. Naresh Sabharwal have claimed that this loan was never advanced. However as per the agreement, which is placed on file, it is clearly mentioned that this loan has been given. Thus it is obvious that the parties are denying the transaction as the same has not been accounted for in the books of accounts.

In view of the information as above the case Explanation 2(b) to section 147 is applicable in the case, which lays down, "where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income..... "

In view of the above facts, I have the reason to believe that income to the tune of Rs.1 crore chargeable to tax has escaped assessment. Therefore, notice u/s. 148 of the I.T. Act is hereby issued.

*Sd/- P.K. Malik,
Income Tax Officer,
Ward-61(1), New Delhi".*

8.1. In the reasons A.O. has mentioned that search was conducted in the case of Shri Naresh Aggarwal [wrongly mentioned the name] and that during the course of search it was found that assessee has given cash loan of Rs.1 crores to Shri Naresh Sabharwal on 17.12.2009. Copy of the agreement is filed at page-25 of the PB. A.O. has also mentioned in the reasons that both the parties have denied to have given or taken any cash loan. Thus, Shri Naresh Sabharwal has never agreed that he has taken any cash loan from the assessee. Copy of the agreement is filed in the paper book which is signed by 02 witnesses, but, none have been examined by the A.O. to confirm the genuineness of the transaction in the matter. No original agreement have been brought on record or examined by the A.O. No report of hand-writing expert have been obtained by the A.O. before recording the reasons for reopening of the assessment. Thus, only photo copy have been taken on record without examining the validity of the same agreement. Since Shri Naresh Sabharwal has denied to have taken any loan from the assessee, therefore, before

recording the reasons, it is the duty of the A.O. to bring some concrete and corroborative material on record to justify his conclusion that there is escapement of income in this case. The Hon'ble Bombay High Court in the case of Indian Express Newspapers (Bombay) P. Ltd., & Another vs., Union of India & Others [2008] 300 ITR 351 [Bom.] held as under :

“Held that it was the contention of the Revenue that subsequent to the finalization of the assessment of the petitioners for the assessment year 1980-81, it was found that one P was paid interest. When questioned about this, the petitioners had initially denied having any transaction with the party. However, when the evidence pertaining to loans was pointed out to the petitioners and more particularly, they were confronted with the evidence of deduction of tax at source, the petitioners had nothing to say. Further, in the course of search and seizure operation at the premises of the Calcutta party, they had stated on oath that certain loans alleged to have been paid by the petitioners were

not genuine and the entries relating thereto were hawala entries. The reasons for the notice of reassessment as contained in the affidavit in reply filed at the stage of admission was based upon the statement of B who expired after retracting the statement. The documentary evidence indicated the existence of the loan and the payment of interest after deduction of tax deducted at source. As against this documentary evidence, the Revenue had relied upon the statement of B to the effect that these were only hawala entries There was no sufficient reason for reopening the assessment. The notice was not valid.”

8.2. Since Shri Naresh Sabharwal has retracted from the fact of taking any loan from assessee and genuineness of the agreement is itself in doubt which was found during the course of search and is not corroborated by any evidence or material on record, therefore, such photo copy of the agreement cannot be relied upon by the A.O. for the purpose of initiating the re-assessment proceedings in the case of the assessee. It is an admitted fact that in the

present case the agreement in question was found during the course of search in the case of Shri Naresh Sabharwal and proceedings under section 153A have been initiated against him. Therefore, the agreement in question have been transferred by A.O. of the person searched to the A.O. of the assessee for the purpose of taking remedial action in the matter. It is well settled Law that in the case of assessment made on assessee consequent to the search in another case, A.O. is bound to issue notice under section 153C and thereafter proceed to assess the income under section 153C and if A.O. had proceeded with re-assessment under section 147/148 of the I.T. Act and passed the Order under section 143(3)/148 of the I.T. Act, the same would be illegal and arbitrary and without jurisdiction. We rely upon the Order of ITAT, Visakhapatnam Bench in the case of G. Koteswara Rao (supra). In the case of ITO vs., Arun Kumar Kapoor [2011] 140 TTJ 249 (ASR-ITAT) [Paper Book at Page-71], the ITAT, Amritsar Bench held as under :

“On a perusal of section 153C, it would be clear that the provisions of this section are applicable,

which supersedes the applicability of provisions of sections 147 and 148. In the instant case, the documents were seized during the search under section 132 and the same were sent to the Assessing Officer of the assessee and, thus, the Commissioner (Appeals) has correctly observed that only the provision in which any assessment could be made against the assessee was section 153C, read with section 153A. It was also apparent from the record that the officer in the case of 'T' Ltd. had mentioned in his letter that the necessary action may be taken as per law under section 153C/148. Hence, notice issued under section 148 and proceedings under section 147 by the Assessing Officer were illegal and void ab initio. In view of the provisions of section 153C, section 147/148 stands ousted. In the instant case, the procedure laid down under section 153C has not been followed by the Assessing Officer and, therefore, assessment has become invalid.

The Commissioner (Appeals) was justified in following the ratio laid down by the Supreme court in the case of Manish Maheshwari v. Asstt. CIT [2007] 289 ITR 341 / 159 Taxman 258 wherein it has been held that if the procedure laid down in section 158BD is not followed, block assessment proceedings would be illegal. The Commissioner (Appeals) has correctly observed that the provisions of section 153C are exactly similar to the provisions of section 158BD in block assessment proceedings. Thus, considering the entire facts and the circumstances of the case, the Commissioner (Appeals) was fully justified in quashing the reassessment order.”

8.3. The other decisions relied upon by the Learned Counsel for the Assessee are on the same proposition. Considering the facts of the case in the light of above decisions, it is clear that loan agreement was found during the course of search in the case of Shri Naresh Sabharwal which is handed-over to the A.O. of the assessee and

addition is made only on that basis. Therefore, there was no justification for the A.O. to have been initiated proceedings under section 147/148 of the I.T. Act. The correct course of action would have been to proceed against the assessee under section 153C of the I.T. Act. Therefore, initiation of re-assessment proceedings under section 147/148 of the I.T. Act is wholly invalid, void and bad in Law. Since the correct procedure have not been adopted by the A.O. and there is no justification to initiate the re-assessment proceedings against the assessee, we set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stands deleted.

9. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th January, 2020

VBP/-

Copy to

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

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.