

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-2" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
ITA.No.2795/Del./2019  
Assessment Year 2010-2011

Shri Gulshan Harbans Dhingra, H.No.1740, Shivpuri, Hapur. U.P. PIN 254 101 PAN ACNPD7348F	vs.	The Income Tax Officer, Ward – 3 (4), Hapur, Uttar Pradesh. PIN 254 101
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Saxena, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	08.07.2020
Date of Pronouncement :	09.07.2020

**ORDER**

This appeal by the Assessee has been directed against the Order of the Ld. CIT(A), Ghaziabad, Dated 31.01.2019, for the A.Y. 2010-2011, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.32,22,500/- on account of unexplained cash deposit in the Bank Account.

2. I have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that AIR information was available with the Department that assessee has deposited cash amounting to Rs.32,22,500/- with Bank of Baroda in his Savings Bank Account. Verification letters were issued to the assessee on 06.09.2016 and 09.01.2017 which were not complied by the assessee. The A.O. recorded the reasons for reopening of the assessment which are duly approved by the Pr. CIT, Ghaziabad. Notice under section 148 was issued on 30.03.2017 and sent through speed post on 31.03.2017 which was not complied with. There is no compliance to the statutory notices. The A.O, therefore, proceeded to make the ex-parte assessment in the absence of any explanation and documentary evidences on record to explain the cash deposit in the Saving Bank Account of the assessee. The A.O. made addition of Rs.32,22,500/- under section 69 of the I.T. Act, 1961. The A.O. passed the assessment Order

under section 144/147 of the I.T. Act, 1961 Dated 08.11.2017. The Ld. CIT(A) considering the explanation of assessee, dismissed the appeal of assessee.

4. Learned Counsel for the Assessee referred to PB 30 which is notice under section 148 of the I.T. Act dated 30.03.2017. PB 31 is proforma for recording reasons for initiation of reopening of the assessment and at page 32 reasons for belief that income has escaped assessment are recorded by the ITO, Ward-3(4), Hapur Shri Ram Suhawan i.e., the A.O. and the same reads as under :

“11. *Reasons for the belief that income has escaped assessment :*

*In this case, A.I.R. information for the F.Y. 2009-10 has been received that the assessee has deposited cash aggregating to Rs.32,22,500/- in a saving bank account with Bank of Baroda. To verify the AIR information, a query letters dated 06.09.2016 and 09.01.2017 were issued and duly served upon the assessee. In spite of various*

*opportunities provided, no compliance was made by the assessee. In the absence of any reply/documentary evidence, the source of cash deposits in saving bank account aggregating to Rs.32,22,500/- remains unexplained. I have therefore, reason to believe that that the income of Rs.32,22,500/- chargeable to tax has escaped assessment within the meaning of Sec. 147 of the Income tax Act,1961.”*

4.1. Learned Counsel for the Assessee referred to PB-1 which are the Order Sheet entries of the A.O. Dated 17.02.2016, 26.02.2016 and 08.03.2016. The same reads as under :

*“Gulsan Dhingra  
S/o. Harbans Lal Dhingra  
1740, New Shivpuri, Hapur.*

*Information received in respect of  
cash deposit of Rs.22,74,500/-.  
17.02.2016 Verification letter issued to the  
assessee fixing the date for  
compliance on 26.02.2016. Sd/-xxx*

*ITO*

*The assessee appeared and sought  
26.02.2016 adjournment for some time.  
Adjourned to 08.03.2016.*

*Sd/-xxx*

*Sd/-xxx*

*ITO*

*Assessee*

*The assessee Shri Gulsan Dhingra,  
S/o. Harbanslal Dingra appeared  
and file written submissions. A  
perusal of details filed by the  
08.03.2016 assessee it is found that the cash  
deposits were made from sale of  
shoes in different towns. In view of  
the details filed by the assessee the  
proceedings may be dropped, if  
kindly approved.*

*Sd/-xxx*

*ITO”*

4.2. Learned Counsel for the Assessee referring to the above submitted that prior to recording the reasons on 16.02.2017, the A.O. has issued letter of query to the assessee on 17.02.2016 and asked for the explanation of assessee. The assessee filed written submissions and the details to explain the cash deposit in the bank account on

which A.O. was satisfied and recommended that proceedings may be dropped against him. He has submitted that thereafter, A.O, without any justification has recorded the reasons for reopening of the assessment and did not mention these facts in the reasons as well. Mere cash deposit in the bank account would not give right to reopening of the assessment. Further the explanation of assessee was accepted with regard to cash deposit in the bank account. Hence, reopening of the assessment is wholly unjustified in the matter.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that order sheet dated 08.03.2016 (supra) shows that A.O. recommended for dropping of the proceedings, subject to approval by the higher authorities and later on the Addl. CIT and Pr. CIT have granted for approval for reopening of the assessment to the A.O. Therefore, A.O. has correctly reopened the assessment in the matter.

6. I have considered the rival submissions and perused the material on record. It is not in dispute that order sheet dated 17.02.2016 is recorded by the A.O. [ITO Shri Ram Suhawan] in which he has referred to information received against the assessee for cash deposit of Rs.22,74,500/- and verification letter was issued to the assessee for 26.02.2016. On 26.02.2016, assessee appeared before A.O. and sought adjournment, which was granted for 08.03.2016. On 08.03.2016, assessee appeared and filed written submissions and details and explained that cash was deposited from sale of the shoes in different towns. The A.O. was satisfied with the explanation of assessee and recommended that proceedings may be dropped, if kindly approved. Thereafter, there is no noting on any of the order sheet. These order sheet entries are reproduced above. The A.O. in the reasons recorded for reopening of the assessment have not mentioned these order sheet entries dated 17.02.2016, 26.02.2016 and 08.03.2016 (supra). The A.O. has referred the order sheet dated 06.09.2016 and 09.01.2017 in the reasons, copies of which are filed at page-

2 of the PB. These facts would clearly show that A.O. has recorded incorrect facts in the reasons for reopening of the assessment by concealing the order sheet entries dated 17.02.2016, 26.02.2016 and 08.03.2016. It is well settled Law that if the A.O. records incorrect facts in the reasons, reopening of the assessment would not be valid. It is also well settled Law that for examining the validity of the re-assessment proceedings, the reasons alone shall have to be considered. When the A.O. records wrong facts in the reasons, the proceedings under section 148 could not be justified. Since the ITO/A.O. was the same who has recorded the above order sheet entries prior to reopening of the assessment, therefore, he was bound by his facts recorded in the order sheet on dated 08.03.2016 (supra). When A.O. was satisfied that the cash deposit in the bank account pertain to sale proceeds of shoes by the assessee, the cash deposit *per se* in the bank account would not disclose escapement of any income from tax/assessment. Thus, the A.O. was not justified in reopening of the assessment in the matter. The reopening of the assessment



is wholly unjustified and bad in Law and is liable to be quashed. In view of the above discussion, I set aside the Orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act. Resultantly, the addition on merit stand deleted. In view of the above, there is no need to decide the remaining grounds raised in the appeal of assessee, which are left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 09<sup>th</sup> July, 2020

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.