

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1766/Del/2019
Assessment Year: 2009-10

Rohtash, S/o Inder Singh,
Jind Hansi Kanchi Chowk,
Ward-13, Kissan Colony,
Barwala, hisar.

Vs. ITO,
Ward-3,
Haryana.

PAN: ABUPR7379C

(Appellant)

(Respondent)

Assessee by	:	Shri Akshat Sharma, Advocate
Revenue by	:	Shri Om Parkash, Sr. DR
Date of Hearing	:	03.02.2022
Date of Pronouncement	:	18.02.2022

ORDER

This appeal by the assessee is directed against the order dated 28th January, 2019 of the CIT(A), Hisar, relating to Assessment Year 2009-10.

2. The grounds of appeal raised by the assessee read as under:-

“On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in:

1. Upholding the validity of assessment which is without jurisdiction;
2. confirming the addition amounting to Rs.25,85,000/- on account of unexplained cash deposited in bank account of the assessee without passing the speaking order on Grounds of Appeal submitted before the Commissioner of Income tax (Appeals), Hisar

3. Initiating proceeding u/s 147 of the Act, without, there being any reason to believe that income has escaped assessment.

4. Upholding the validity of assessment without service of notice u/s 148 of the Act.

The above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”

3. Facts of the case, in brief, are that the assessee was earning commission income from sale/purchase of immovable property during the year under consideration. An AIR information was received that cash deposit amounting to Rs.30,67,919/- have been made by the assessee into saving bank account maintained with the ICICI Bank ltd., Hisar. From perusal of the records, it was noticed that no return of income for the A.Y.2009-10 was filed by the assessee. Hence, proceedings u/s 147 of the Income Tax Act, 1961 were initiated after recording of reasons. Statutory notice u/s 148 of the IT Act, 1961 was issued and served upon the assessee. Notice u/s 142(1) along with questionnaire was issued on 08.06.2016. In response to notice u/s 148, the assessee filed his ITR on 05.12.2016 declaring total income of Rs. 1,00,640/-. Notices u/s 143(2) and 142(1) of the IT Act, 1961 were issued on 05.12.2016 and served upon the assessee. Sh. Prem Rajpal, Advocate, Counsel of the assessee, attended the assessment proceedings from time to time with whom the case was discussed by the AO. Requisite information/documents/evidence were also furnished which were examined by the AO. After considering the submissions, the AO made

addition of Rs.25,85,000/- on account of failure of assessee to substantiate the genuineness and creditworthiness of the creditors.

4. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings on the ground that the notice u/s 148 was not served on the assessee. However, the ld.CIT(A) dismissed the same by holding that the AO has issued notice u/s 148 within the time prescribed as per the provisions of section 149 of the Act. He noted that the notice u/s 147 has been issued on 26th March, 2016 and sent through registered post No.RH204057712IN on 28.03.2016 which makes it clear that the provisions of the Act has been complied by the AO. So far as the merit of the case is concerned, he also dismissed the same on the ground that the assessee could not discharge the onus cast on him to prove the identity of the payer and genuineness of the transaction.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. I have heard the rival arguments made by both the sides and perused the record. The ld. Counsel for the assessee submitted that on his plea that no notice u/s 148 was ever served on the assessee, the earlier Bench had called for the assessment records and comments of the AO. Accordingly, the ld. DR produced the assessment records today. A perusal of the record shows that although the AO had issued notice u/s 148 of the Act to the assessee on 26th March, 2016, vide

speed post No. RH204057712IN on 28.03.2016, however, the same was never served on the assessee and was returned back by the Postal Authorities and the same was available in the case record. A perusal of the order sheet entries also shows that no effort was made by the AO to serve the notice u/s 148 on the assessee.

7. The provisions of section 148 read as under:-

“Issue of notice where income has escaped assessment.

148. (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :

Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared t0

hat nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.”

8. A perusal of the above provisions clearly shows that before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner. However, in the instant case, although a notice has been issued by the AO, however, the same has not been served on the assessee since the notice issued by the AO through speed post was returned by the Postal Authorities unserved and there is no other evidence on record to show that the AO has made any other effort such as sending the Ward Inspector to serve the notice personally or through affixture. Therefore, the reassessment proceedings finalised by the AO without serving the notice u/s 148, in my opinion, is invalid. I, therefore, set aside the order of the CIT(A) on this

issue and allow the jurisdictional ground raised by the assessee challenging the validity of the reassessment proceedings. Since the assessee succeeds on this legal ground, the ground challenging the addition on meirt becomes academic in nature and, therefore, the same is not being adjudicated.

9. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 18.02.2022.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th February, 2022

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi