

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH' G': NEW DELHI****BEFORE,
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER****ITA No.3139/Del/2023
(ASSESSMENT YEAR 2010-11)**

Santosh Khunteta F-2, 189-190, Rohini, Delhi-110085 PAN-AIUPK0102B	Vs.	ITO Ward-29(5) Delhi
(Appellant)		(Respondent)

Appellant by	Shri Mayank Mohanka, CA
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	08/05/2024
Date of Pronouncement	13/06/2024

ORDER**PER YOGESH KUMAR U.S.JM:**

This appeal is filed by the Assessee against the order of Ld. CIT(A)/National Faceless Appeal Centre, Delhi ["NFAC" for short], dated 11/09/2023 for the Assessment Year 2010-11.

2. The Grounds of Appeal are as under:-

"1. Based on the facts and circumstances of the case, the appellant respectfully submits that:

(i) That the learned CIT(APPEALS), NFAC, Delhi has grossly erred both in law and on facts in upholding the unlawful and factually misconceived reassessment order u/s 147 being passed by the learned assessing officer for the AY 2010-11, and not appreciating the fact that as on the date of issue of notice u/s 148 of the Income Tax Act, on 29.3.2017, the Ld. AO was not having any material, information or evidence whatsoever, in order to form his independent reasonable belief that any income of the appellant had escaped assessment, as the information from ITO(I and C1.), Jodhpur, vide their letter no. ITO(I and CI)/JDH/2016-17/2166, which formed the sole basis for initiating the reassessment proceedings, had been received by the Ld. AO only on 30.3.2017, as acknowledged by the Ld. AO in his reasons for reopening the assessment, recorded u/s 147 of the Income Tax Act.

(ii) That the learned CIT (Appeals), NFAC, Delhi has erred both in law and on facts in upholding the unlawful and factually misconceived reassessment order u/s 147 being passed by the learned assessing officer for the AY 2010-11, and not appreciating the fact the Ld. AO has passed the impugned reassessment order u/s 147 of the Income Tax Act, for the AY 2010-11, without forming an independent reason to belief that income had escaped assessment and without any independent application of mind.

(iii) That the learned CIT (Appeals), NFAC, Delhi has grossly erred both in law and on facts in upholding the unlawful and factually misconceived reassessment order u/s 147 being passed by the learned assessing officer for the AY 2010-11, and not appreciating the fact that the competent Income Tax Authority has granted the mandatory sanction/approval for issuance of Notice u/s 148 to the AO, for the AY 2010-11, in a completely mechanical manner and without complying with the provisions of section 151 of the Income Tax Act, 1961.

iv) That the learned CIT (Appeals), NFAC, Delhi has grossly erred both in law and on facts in upholding the unlawful and factually misconceived reassessment order u/s 147 being passed by the learned assessing officer for the AY 2010-11 and not appreciating the fact that the exorbitant and unlawful additions being made by the Ld. AO on secondary grounds, are not legally sustainable, as the Ld. AO had not made any additions in respect of the primary ground of alleged unexplained sources of funds of Rs. 23,50,000/-, as per the reasons for reopening the assessment for the AY 2010-11, recorded u/s 147 of the Income Tax Act, 1961.

v) That the learned CIT (Appeals), NFAC, Delhi has erred both in law and on facts in remanding back the reassessment order u/s 147 to the Assessing Officer for fresh adjudication, in respect of the arbitrary and unlawful addition of Rs. 8,15,000/-, made by the Assessing Officer as undisclosed income u/s 56 of the Income Tax Act, on account of assuming the sale proceeds of equity shares as unexplained, contrary to the documentary evidences, being furnished and placed on record before the Ld. AO, and not appreciating the fact that all the relevant and applicable supporting documentary evidences in respect of the said addition had already been produced and placed on record by the appellant, during the re-assessment as well as appellate proceedings.

vi) That the learned CIT (Appeals), NFAC, Delhi has erred both in law and on facts in upholding the unlawful and factually misconceived addition of Rs. 22,38,000/- being made by the Assessing Officer, as undisclosed income u/s 56 of the Income Tax Act, in the reassessment order u/s 147 being passed by the learned assessing officer for the AY 2010-11, on account of assuming the refund received by the appellant from M/s Vekunth Dham CGHS Ltd, as unexplained, contrary to the documentary evidences, being furnished and placed on record before the Ld. AO.

(vii) That the learned CIT (Appeals), NFAC, Delhi has erred both in law and on facts in remanding back the reassessment order u/s 147 to the Assessing Officer, in respect of the arbitrary and unlawful addition of Rs. 20,70,000/-, being made by Assessing Officer as undisclosed income u/s 56 of the Income Tax Act, on account of assuming the bank account transfers of the appellant, as unexplained, contrary to the documentary evidences, being furnished and placed on record before the Ld. AO, and not appreciating the fact that all the relevant and applicable supporting documentary evidences in respect of the said addition had already been produced and placed on record by the appellant, during the reassessment as well as appellate proceedings.

The Appellant craves leave to add, alter, vary, or amend the above ground of appeal, at or before the time of hearing of appeal.”

3. Brief facts of the case are that, the assessee is a medical practitioner, filed his return for Assessment Year 2010-11 declaring an income of Rs. 5,46,080/-. The case was reopened u/s 147 of the Income Tax Act, 1961 ('Act' for short) and the A.O. vide assessment order dated 29/12/2017 made addition of Rs. 8,15,000/- u/s 56 which was routed through the Demat accounts and then claimed as Long Term Capital Gain, addition of Rs. 22,38,000/- made u/s 56 of the Act as the same was unexplained, further made addition of Rs. 20,70,000/- u/s 56 of the Act as income from other sources not disclosed to the Department. Aggrieved by the assessment order dated 29/12/2017, the assessee preferred an Appeal before the

CIT(A). The Ld. CIT(A) vide order dated 11/09/2023, sustained the additions of Rs. 8,15,000/- made by the A.O. as undisclosed income u/s 56 of the Act on the ground that the sale proceeds of equity shares are unexplained. Further, upheld the addition of Rs. 22,38,000/- made u/s 56 of the Act and also confirmed the addition of Rs. 20,70,000/- made as undisclosed income u/s 56 of the Act. Aggrieved by the order of the CIT(A) dated 11/09/2023, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ground No. 1 is regarding the legal/technical issue of defective notice issued u/s 148 of the Act. The Ld. Counsel for the assessee submitted that the issuance of notice u/s 148 of the Act dated 29/03/2017 by the A.O. without having any information, material or evidence in his possession so as to reason to believe that any income of the assessee for the Assessment Year 2010-11 had escaped assessment, so as to reopen the case of the assessee. The Ld. Counsel drawn our attention to the notice dated 29/03/2017 and also Reasons for reopening of the assessment wherein the A.O. received the information only on 30/03/2017, i.e. subsequent to the issuance of notice u/s 148 of the Act. Thus, the

Ld. Counsel for the Assessee submitted that A.O. as on the date of issuing the notice dated 29/03/2017 had no information or material in his possession to reason to believe that any income of the Assessee for the year under consideration had escaped assessment. The assessment u/s 147 of the Act for reopening of the assessment or reassessing the income can be exercised by the A.O. only on the information of a reason to believe that any income of the assessee has escaped assessment and in the absence of formation of such reason to believe by the A.O, provisions of Section 147 cannot be invoked. The Ld. Counsel has relied on following judicial pronouncement of Hon'ble Supreme Court and Hon'ble High Court.

- (i) Johri Lal (HUF) vs. CIT, 88 ITR 439 (SC).
- (ii) Sheo Nath Singh vs. AAC, 82 ITR 147 (SC).
- iii) Ganga Saran & Sons (P) Ltd. vs. ITO, 130 ITR 1 (SC).
- (iv) ITO vs. Lakhmani Mewal Das, 103 ITR 437(SC)
- (v) Commissioner of Income Tax v.G&G Pharma (2015) 384 ITR 147 (Del.)
- (vi) CIT vs Insecticides India Ltd 357 ITR 330, Delhi High Court.
- vii) CIT vs SFIL Stock Broking Ltd 325 ITR 285, Delhi High Court;
- (viii) Sarthak Securities Co. (P).Ltd vs ITO, 329 ITR 110, (Delhi HC);
- (ix) PCIT vs RMG Poly Vinyl (1) Ltd Delhi High Court;
- (x) Oriental Insurance Company Limited v. Commissioner of Income Tax 378 ITR 421 (Del).

5. Per contra, the Ld. Departmental Representative submitted that the notice dated 31st March, 2010 has been issued u/s 148 of the Act by rectifying the mistakes in issuing the notice dated 29/03/2010 and the subsequent notice dated 31/03/2010 was issued well within the limitation and mere by issuing the second notice, no prejudice was caused to the assessee and mistake or the error mentioning the date in the earlier notice was a technical defect, which has been corrected. Further submitted that it is not the case of the assessee that no notice was served and the assessee has availed the opportunity of being heard during the course of the assessment proceedings and the assessment order has been passed after hearing the assessee, therefore, the Ground No. 1 of the assessee deserves to be dismissed.

6. We have heard both the parties and perused the material available on record. As per the Page No. 1 of the paper book wherein the assessee produced the notice u/s 148 of the Act wherein the date of issuance of notice is mentioned as '29/03/2017' which is reproduced as under:-

Exhibit - 2 Exhibit - 1 (1)

SUSHIL JEETPURIA & CO.
CHARTERED ACCOUNTANTS

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 30(4), DELHI**

To, SANTOSH KHUNTETA 501, PADMA PLACE, 86, NEHRU PLACE, NEW DELHI-110019			
PAN: AIUPK0102B	AY: 2010-11	Dated: 29/03/2017	Letter No : ITBA/AST/S/148/2016-17/

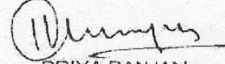
Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your income chargeable to Tax for the Assessment Year 2010-11 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the additional Commissioner/ Commissioner of Income Tax/ Chief Commissioner of Income Tax.


 PRIYA RANJAN
 WARD 30(4), DELHI

and - cc to -

29-3-2017

Copy of Acknowledgement of Receipt for A.Y. 2010-11 is enclosed.

*ITBA10000368702

The assessee has also produced reasons for reopening at Page 4 of the paper book. As per the reasons for reopening, the A.O. 'received information from ITD (I&CI) Jodhpur vide their letter No. ITO (I &CI)/JDH/2016-17, 2166 dated 30/03/2017 through e-mail'. The reasons for reopening is produced as under:-

Exhibit - 3

Name of the assessee/address	Sr./Smt. Santosh Khunteta 501, Padma Place, 86, Nehru Place, New Delhi-110019
PAN	AIUPK0102B
Assessment Year	2010-11
Status	Individual

Reasons recorded u/s 147 of the Income Tax Act, 1961.

In this case, an information is received from ITO(I&CI), Jodhpur vide their letter No. ITO(I&CI)/JDH/2016-17/2166 dated 30.03.2017 through e-mail. The brief fact of the information received is as under:

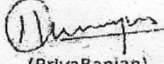
2. Smt. Santosh Khunteta had purchased two immovable property during the F.Y. 2009-10 amounting to Rs.1,14,77,500/- whereas source of investment was not clear and does not match with the profile of the assessee available with the Income Tax Department. In this case letter to call for information u/s 133(6) was issued by ITO(I&CI), Jodhpur to Santosh Khunteta, A-3, Sector -21, CFA, Jodhpur at the address mentioned in the list assigned for verification. On perusal of the reply concern ITO has noticed that Smt. Khunteta has shown as sum of amount of Rs.23,50,000/- as short term loans taken from friends and relative whose credit worthiness and genuineness could not be found

3. In view of the above peculiar facts i.e. non submission of any explanation by the assessee despite providing of adequate opportunity of being heard, the undersigned has reason to believe that the source of investment in immovable property made by the assessee are from unexplained sources.

4. It is also in accordance with the judicial principles laid down by the Hon'ble supreme court in the case of ACIT Vs Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC)(BCAJ) wherein issuance of notice u/s 148 has been validated under similar circumstances "As per our considered view, at the time of issue of notice. It is sufficient that prima-facie reasons and material should be with Assessing Officer that there is escapement of some income. At the time of issue of notice the Assessing Officer is not required to conclusively establish that there is escapement of income is sufficient for issue of notice u/s 148".

In present case, the undersigned has information as well as sufficient reason to believe that the income for A.Y. 2010-11 has escaped assessment as the assessee has invested in immovable property amounting to Rs.1,14,77,500/- during F.Y. 2009-10 was beyond his credit worthiness and financial limits. Further, despite given ample opportunity, the assessee has even failed to clarify/explanation with regard to the above investment in immovable property.

5. Considering the factual matrix, statutory provisions and legal principles, the undersigned has reasons to believe that the assessee has not disclosed fully and truly material facts necessary for assessment and there has been an escapement of income to the tune of Rs.23,50,000/- during A.Y. 2010-11 and hence it is a fit case for initiation of proceedings in terms of section 147 of the I.T. Act, 1961.


(Priya Ranjan)
Income Tax Officer
Ward-30(4), New Delhi

7. From the plain reading of the notice u/s 148 of the Act dated 29/03/2017 and the reasons recorded u/s 147, the inference can be drawn that, as on the date of issuance of notice u/s 148 of the

Act dated 29/03/2017, the Ld. A.O. was not having any information, material or evidence in his possession so as to form a Reason to Believe that any income of the assessee for the year under consideration had escaped assessment. It is the case of the Department that there was mistake in mentioning the date as '29/03/2017' in the notice issued u/s 148 of the Act, therefore, by rectifying the said error another notice was issued again on 31st March, 2017 replacing the notice that suffered from defect. The said contention of the Ld. Departmental Representative cannot be accepted as even the e-mail sent on 31st March, 2017 was having an attachment that of the very same notice dated '29/03/2017' which can be corroborated from the screen shot of the e-mail produced by the assessee along with the synopsis & the downloaded attachment of the notice. Furthermore, the Department has not produced any such notice issued u/s 148 of the Act dated 31/03/2010 which was claimed to have been issued to the assessee. Thus, it can be safely concluded that as on the date of issuance of notice u/s 148 of the Act dated 29/03/2017, the Ld. A.O. was not having any information, material or evidence in his possession as to form the reason to believe that any income of the

assessee for the subject Assessment Year had escaped assessment as the information itself has been received by the A.O. on 30/03/2017. Thus, in our opinion the reassessment proceedings initiated by the A.O. are erroneous. Accordingly, the Assessment Order and the order of the Ld. CIT(A) are hereby set aside by deleting the Ground No. 1 of the assessee. Since we have allowed the Ground No. 1 and set aside the assessment order and the order of the Ld. CIT(A) other Grounds raised by the Assessee are not adjudicated.

8. In the result, Appeal filed by the assessee is allowed.

Order pronounced in open Court on 13th JUNE, 2024

Sd/-

(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated: 13/06/2024

R.N, Sr.ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

