

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' : NEW DELHI**

**BEFORE SHRI G.C. GUPTA, VICE PRESIDENT
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No. 5170 /Del/2010
Assessment Year: 2004-05

Sh. Inder Mohan Kohli,
J-51, First Floor,
Kirti Nagar, New Delhi
(PAN:ANEPK9941K)
(Appellant)

Vs.

Income Tax Officer,
Ward 27(2), New Delhi

(Respondent)

Assessee by : S/sh. V.K. Sabharwal & Anil Verma, Advocates
Department by: Sh. T. Vasanthan, Sr. DR

Date of hearing: 07.05.2015

Date of pronouncement: 10.06.2015

ORDER

PER INTURI RAMA RAO, A.M.:

This is an appeal filed by the assessee company for the assessment year 2004-05 impugning the order of learned CIT(A) dated 19th July, 2010 raising the following grounds of appeal:

- i. That the initiation proceedings u/s 147 of the Act, by the A.O., and consequently upheld by the CIT(A) are against the law and to the facts of the case, because of based only upon the general information received from the investigation wing and without the support of any cogent material either collected or placed upon records having nexus to his believe.
- ii. That the orders passed by the A.O. and further upheld by CIT(A) are further not tenable because the A.O. has never proved that any cash was paid / exchanged against the receipt and credit of any amount in his bank account, which claimed to be the gifts received.
- iii. That the orders passed by A.O. and upheld by CIT(A), are further not legal under the law, because the A.O. never opined, held or ever ruled out that the documents filed by the assessee in support of credit of receipts in his bank account, were either not correct, or the assessee ever fails to

- establish its nature, sources or their creditworthiness thereof of the persons from whom the gifts were received and credited to his account, which warranted him to make additions in his income.
- iv. That the CIT(A) was further not correct to go beyond the conclusion drawn by the A.O., while passing the order while making illegal and impugned additions in the declared income of the assessee.
 - v. That the illegal and impugned additions made and further upheld by the CIT(A) is frivolous and vexatious because of not supported with any evidence that cash has ever been paid on the receipts of gifts from various persons.
 - vi. That the A.O. was further not credit to hold that the assessee has ever furnished its inaccurate particulars of his receipts, for which liable for penalty u/s 271 (1)(c) of the Act.
 - vii. That the interest charged u/s 234-8 may please be deleted.
 - viii. That the assessee assails his right to amend, alter or change any grounds of appeal at any time even during the course of hearing of this instant appeal.

2. Briefly stated the facts of the case are that the appellant is an individual.

For the assessment year 2004-05, the original return of income was filed disclosing income of Rs. 1,30,000/-. The said return was processed under the provisions of section 143(1) of the Income-tax Act, 1961 (for short 'the Act').

Subsequently, a notice under Section 148 of the Act was issued by the Income Tax Officer, Ward -3, Gurgaon, based on the strength of information received from Investigation Wing of the Department that the appellant had obtained accommodation entries for Rs. 20,02,700/- on 01.05.2003, 17.05.2003, 10.05.2003, 14.05.2003 and 22.05.2003 from Shri. Rajan Jassal, Shalini Mukhija, Surinder Pal Singh, Preeti Arora and R.D. Associates respectively. In response to said notice, the appellant has submitted vide its letter dated 30th April, 2008, that the appellant was regularly assessed to income tax at New Delhi by Income Tax Officer, Ward 27(2), New Delhi, since his place of residence falls within the territorial jurisdiction of the said officer. Accordingly,

the Income Tax Officer, Ward-3, Gurgaon vide his letter dated 16.06.2008 has transferred the said case to the Income Tax Officer, Ward 27(2), New Delhi and finally the Income Tax Officer, Ward 27(2), New Delhi, completed the assessment vide his order dated 17th December, 2008 under Section 143(3) read with section 147 of the Act at a total income of Rs. 21,32,700/- by making addition of Rs. 20,02,700/- on the ground that the appellant's undisclosed income should have been routed through the accommodation entries. Being aggrieved by this addition, the appeal was filed before the CIT(A) wherein, inter alia, the appellant contested on the legality of the reassessment proceedings apart from on the merits of the addition. However, the learned CIT(A) vide detailed order, dismissed the grounds of appeal. Hence, the appellant is before us with the present appeal.

3. It was argued on behalf of the appellant that the reassessment proceedings were invalid, inasmuch as, the notice under Section 148 was issued by the Income Tax Officer, Ward -3, Gurgaon, who is not vested with the jurisdiction over the appellant. In support of this proposition, he relied upon the decision of the Honøble Calcutta High Court in the case of Smt. Smriti Kedia Vs. Union of India and Others, [2011] 339 ITR 37 (Cal.) and on the decision of a co-ordinate bench of Mumbai in the case of Indorama Software Solution Ltd. Vs. Income Tax Officer, [2013] 29 taxmann.com 78 (Mumbai). Therefore, he prayed that applying the ratio laid down in the above two cases, the reassessment order passed should be declared as null and void.

4. On the contrary, the learned DR submitted that since the appellant had challenged the re-assessment proceedings without challenging the same before the Income Tax Officer, New Delhi, at this belated stage, the appellant should be estopped from agitating on the jurisdictional issue. Further, he relied on the order of the CIT(A) on this issue.

5. We have heard the rival submissions of the parties and perused the material available on record. Undisputedly, in this case the notice under Section 148, dated 13th March, 2008, was issued by the Income Tax Officer, Gurgaon. Obviously, this Officer had no jurisdiction over the appellant. This is evident from the fact that the Income Tax Officer, Gurgaon, himself had transferred the case to the Income Tax Officer, Ward ó 27(2), New Delhi, vide his letter dated 16th June, 2008. However, the Income Tax Officer, Ward ó 27(2), New Delhi, without issuing fresh notice under Section 148, had proceeded with the framing of the assessment. It was held by the Honøble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction for the assessee is invalid. The notice under Section 148 of the Act issued by the Income Tax Officer, Gurgaon, is non est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act. Now, the question is whether the action of the Income Tax Officer, New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Gurgaon, who had no

valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Honøble Apex Court in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratapsingh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.

6. Since we have quashed the reassessment proceedings, we find it not necessary to adjudicate the grounds relating to the merits of the addition.

6. In the result, the appeal is allowed.

The decision is pronounced in the open court on 10th June, 2015.

Sd/-
(G.C. GUPTA)

VICE PRESIDENT

Dated: 10th June, 2015.

RK/-

Copy forwarded to:

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi