

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "SMC", NEW DELHI
BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No. 3985/Del/2017
(Assessment Year: 2007-08)**

Krishan Kumar C/p Kapil Goel, Adv. F-26/124, Sector-7 Rohini, New Delhi-110085 GIR/PAN: BXRPK4146E	Vs	ITO Ward No. 1 Narnaul
अपीलार्थी/(Applicant)		प्रत्यर्थी/(Respondent)

Assessee by : Sh. Kapil Goel, Adv.
Department by : Sh. Amit Jain, Sr. DR
Date of hearing : 25.10.2017
Date of pronouncement : 15.12.2017

ORDER

PER R. K. PANDA, AM :

1. This appeal filed by the assessee is directed against the order dated 30.12.2015 of Ld. CIT(A), Rohtak, relating to assessment year 2007-08.

2. The assessee in the grounds of appeal has challenged the validity of re-assessment proceedings as well as the addition of Rs. 36,26,500/- made by the AO and sustained by Ld. CIT(A).

2.1 Facts of the case in brief are that on the basis of AIR information, the AO issued notice u/s 148 of IT Act to the assess on 16.03.2012 after recording the following reasons.

"As per AIR information for F. Y. 2006-07 received in this office, the assessee has made cash deposits of Rs. 1900000/- in his bank account with PUNJAB

NATIONAL BANK, CIRCULAR ROAD, REWARI. A query notice was issued to the assessee on 24.01.2012, but no response has been received from the assessee.

I, therefore, have reason to believe that the assessee has deposited cash in his bank account out of his income from unexplained source. Accordingly, income to the extent of Rs. 1900000/- and any other income which subsequently comes to the notice of the undersigned has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Issue notice u/s 148 of the I. T. Act, 1961 for the assessment year 2007-08.

3. In response to the said notice, the assessee filed his return income declaring nil income on 26.12.2013. In response to notice u/s 143(2) alongwith questionnaire, the assessee filed certain details from time to time. From the details furnished by the assessee the AO observed as under:

3. The assessee has sold his agriculture land at Rs. 38,56,250/- i.e received Rs. 5,00,000 from 1/3 share in the land sold for Rs. 1500000/- on 11.05.2006, received Rs. 1406250/- 1/3 share in the land sold for 4218750/-, on 11.05.2006, and received Rs. 6,50,000/- half share received on agreement for sale of land to Sh. Dinesh Singh S/o Sh. Arjun Singh Padiyawas on 11.05.2006 and received Rs. 1300000/- received on agreement for sale of land to Amit Kumar S/o Sh. Gajender Padiyawas on 08.05.2006 totaling to Rs. 38,56,250/- .The assessee has claimed deduction u/s 54B at Rs. 17,96,500/- on account of proposed investment out of sale of agricultural land. The assessee has submitted that the consideration received on sale agreement were incurred on construction of house. The assessee was asked to furnish the proof of investment made in purchase of land.and the proof of investment made in the construction of house. In response to this, the assessee has submitted that agriculture land have been purchased in the name of himself and in the name of his mother. The assessee submitted he was only 22 years when agriculture was sold and being hindu by religion he is supposed to have interest in the life of his mother and all the purchase of land are jointly with his mother, father and brother. The assessee further submitted that as per section 54 B of the Act,there is no binding that the assessee should purchase the agriculture land in

his own name. The assessee has furnished the photocopy of the sale deed for purchase of agriculture land. Perusal of the photocopy reveals that the assessee has invested only Rs. 1,00,000/- i.e half share of the assessee for purchase of land for Rs. 2,00,000/- on 26.05.2006 from Sh. Sher Singh and Ram Avtar Sons of Lai Chand S/o Rati Ram Vill. Ruthal Ghari, Teh. Narnaul. The submission of the assessee is not acceptable as the land purchased in the name of mother is not an allowable deduction u/s 54B of the Act. Therefore, the assessee is not eligible for deduction u/s 54B of the Act, in-respect of purchase of land in the name of his mother and the same is disallowed and added to the total income of the assessee.

The assessee is entitled to deduction u/s 54 B of the Act at Rs. 1,00,000/- only and the same is allowed to the assessee.

The assessee has also not furnished any documentary evidence for construction of house and for investment made in the construction of house, therefore, the assessee is also, not entitled to deduction u/s 54 F of the Act.

The Calculation of capital gain is worked out as under:

Sale consideration	Rs. 38,56,250/-
Cost of acquisition claimed in return by the assessee	Rs. 1,29,750/-
Capital gain	Rs. 37,26,500/-
Deduction u/s 54B	Rs.1,00,000/-
Balance capital gain	Rs. 36,26,500/-

4. The AO accordingly made addition of Rs. 36,26,500/- to the total income of the assessee on account of capital gain. Further, the AO also made addition of Rs. 38,362/- on account of interest which was not disclosed by the assessee. Accordingly the AO completed the assessment on a total income of Rs. 36,64,860/-.

5. Before Ld. CIT(A), the assessee challenged the validity of the re-assessment proceedings as well as the additions on merit. However, Ld. CIT(A) was not satisfied with the arguments advanced before him and upheld the reopening of the assessment as well as the addition made by the AO on merit.

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

7. Ld. Counsel for the assessee at the outset, drew the attention of the bench to the reasons recorded by the AO for issue of notice u/s 148 and submitted that the reopening was made on account of cash deposit of Rs. 19 lakh in the bank account. However, in the order passed by the AO, he has made addition on account of capital gain and interest earned. Thus, nothing has been mentioned in the assessment order for which the assessment was reopened and some other addition has been made. Therefore, in view of the decision of Hon'ble Delhi High Court, in the case of Ranbaxy Laboratories Ltd., vs CIT, reported in 336 ITR 136, such addition is not permissible and the assessment order has to be quashed.

7.1. Referring to the decision of the Delhi Bench of Tribunal in the case of Mahavir Prasad vs ITO, ITA no. 924/Del/2015, order dated 09.10.2017, for the assessment year 2007-08, he submitted that under identical facts and circumstances, the Tribunal has quashed the re-assessment proceedings holding that there is no nexus between prima facie inference arrival in the reasons recorded and information. The Tribunal has held that the information was restricted to cash deposits in bank account but there was no material much less tangible, credible, cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee. Accordingly, the reopening was held to be invalid by relying on various

decisions. He accordingly submitted that this being a covered matter in favour of the assessee in view of the decision of the Tribunal as well as decision of Hon'ble Delhi High Court, the reassessment proceedings should be quashed.

8. Ld. DR on the other hand heavily relied on on the order of Ld. CIT(A). He submitted that the assessee had made cash deposit of 19 lakhs in the bank account. The AO, on the basis of AIR information received, reopened the assessment by issue of notice u/s 148 after recording reasons. Therefore, such reopening is absolutely valid as per law. Further, the AO after considering the submission of the assessee has made addition on account of capital gain and undisclosed interest income which has rightly been sustained by Ld. CIT(A). He accordingly, submitted that the order of Ld. CIT(A) be upheld and the grounds raised by the assessee should be dismissed.

9. I have considered the rival arguments made by both the sides, perused the orders of the AO and Ld. CIT(A) and the paperbook filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons recorded by the AO as reproduced by him in the assessment order shows that the reopening was made on account of cash deposit of Rs. 19 lakh in the bank account of the assessee. However, the AO in the assessment order has made addition of Rs. 36,26,500/- on account of capital gain and interest income. Thus, there is no addition on account of which the assessment was reopened by issue of notice u/s 148 of the I.T. Act. Hon'ble Delhi High Court in the case of

Ranbaxy Laboratory Ltd., vs CIT(supra) has held that the assessing officer has the jurisdiction to reassess the issues other than issues in respect of which proceedings were initiated. But he was not justified when the reasons for the initiation of those proceedings seized to survive. Since, in the instant case, there was no addition made in the assessment order on account of which the assessment was reopened but some other additions have been made by the AO, therefore, the AO does not have jurisdiction to make such other additions in absence of any addition made for which the assessment was re-opened in the light of the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratory Ltd. (supra). Therefore, the re-assessment proceedings have to be quashed.

10. Even otherwise, also the reopening was made on the basis of AIR information received that the assessee has made cash deposit of Rs. 19 lakhs. I find identical issue had come up before this bench of the Tribunal in the case of Mahavir Prasad (supra). The Tribunal vide ITA no. 924/Del/2015 order dated 09.10.2017 for assessment year 2007-08 had quashed such re-assessment proceedings by observing as under:

9. After going through the reasons recorded by the ITO, Ward-2, Rewari, am of the view that there is no nexus between the prima facie inference arrived in the reasons recorded and information; the information was restricted to cash deposits in bank account but there was no material much less tangible, credible, cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee; that even the communication dated 24.1.2012 could not be made a basis to assume jurisdiction in view of the fact that such an enquiry letter is an illegal enquiry letter and thus cannot be relied upon; that the proceedings initiated are based on surmises, conjectures and suspicion and therefore,

the same are without jurisdiction; that the reasons recorded are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income and these are merely presumption in nature; that it is a case of mechanical action on the part of the AO as there is non-application of mind much less independent application of mind so as to show that he formed an opinion based on any material that such deposits represented income. Keeping in view the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed.

11. In view of the above discussion, the reassessment proceedings initiated by the AO are held to be void. Since assessee succeeds on this legal ground i.e. validity of reassessment proceeding, therefore, grounds on merit become academic in nature and therefore are not being adjudicated.

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

Pronounced in the open court on 15.12.2017.

Sd/-

(R. K. PANDA)

ACCOUNTANT MEMBER

Date: **15.12.2017**

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