IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'SMC-I', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

ITA NOS. 6908 & 6909/DEL/2019

A.YR. : 2010-11

RAM NIWAS JAIN, A-3/65, SECTOR-5, ROHINI, DELHI – 110 085 (PAN: AGAPJ9481A)	Vs.	ITO, WARD 38(2), NEW DELHI
(Appellant)		**(Respondent)**

Assessee by : Mr. V.K. Sabharwal, Advocate

Department by : Mr. Prakash Dubey, Sr. DR.

ORDER

PER H.S. SIDHU, JM

These appeals are filed by the assessee against the respective impugned orders both dated 28.6.2019 passed in the quantum appeal as well as in penalty appeal relating to assessment year 2010-11 by the Ld. CIT(A)-13.

2. The grounds raised in the Quantum appeal No. 6908/Del/2019 read as under:-

> *"1. That the order passed u/s 147/143(3) of the Income Tax Act, 1961 on 10.11.2017 and upheld by the Ld. CIT(A) on 28.06.2019, was perverse to the law and to the facts of the case, because no notice if any was ever issued u/s*

143(2) prior to complete the assessment proceedings, therefore, the assessment framed becomes barred by limitation.

2. That the order passed u/s 143(3)/147 of the Income Tax Act 1961, was further illegal against the law and to the facts of the case, therefore, not tenable, because of getting and granting approval u/s 151 of the Income Tax Act in a mechanical manner as putting "Yes only" by the Pr. CIT.

3. That the order passed was further wrong, because the appellant has already disclosed the bank account, in which total cash was deposited of Rs. 44,96,955/- in his ITR filed on 03.03.2011, which has already been accepted as correct by the Deptt.

4. That the order passed u/s 143(3)/147 was fundamentally wrong, because the appellant has already produced, filed and placed upon records the necessary evidence with regard to the deposit of entire cash of Rs. 44,96,955/-, which has not been taken into consideration by the Assessing Officer and by the Ld. CIT(A) while upholding the additions of Rs. 7,45,118/- vide her order dated 28.06.2019.

5. That the orders passed were further wrong as not tenable under the law and to the facts of the case, because the appellant is filing his ITR regularly as eligible u/s 44AF of the I.T. Act 1961, therefore, in the preceding year i.e. 31.03.2009, he has disclosed his sundry debtors of Rs. 7,50,000/- which has also been accepted as correct by the Deptt.

6. That prior to make and hold the additions of Rs. 7,45,118/- by the Assessing Officer and by the Ld. CIT(A), the appellant was not afforded the proper and reasonable opportunity of being heard.

7. That the orders passed by the Ld.CIT(A) on 28.06.2019 was further perverse to the law and to the facts of the case, because the copy of remand report received from the Assessing Officer was only supplied on 21.06.2019 and the case was fixed for 24.06.2019, on this date the

adjournment requested as the counsel was out of India, which was turned down as rejected, without any reasons, therefore, the appellate order so passed was against the law and natural justice.

8. That the order passed as upheld by the Ld. CIT(A) was further not correct under the law and to the facts of the case, because of not adjudicating properly the documents produced and placed upon records with regard to the receipt and deposit of cash of Rs. 7,50,000/- from sundry debtor, which has already been accepted as correct by the Deptt.

9. That the interest charged u/s 234B and initiation of penalty proceedings u/s 271(l)(c) of the Act, are further illegal as against the law and to the facts of the case.

10. That the appellant 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.

PRAYER:-

It is, therefore, prayed:

1. That the order passed u/s 143(3)/147 of the Act, may please be quashed or alternatively the illegal and impugned additions made of Rs. 7,45,118/- may please be deleted / quashed.

2. That the interest charged u/s 234B and penalty proceedings initiated u/s 271(l)(c) of the Act, may also be waived being consequential to the illegal and impugned additions made and relief claimed therefrom.

3. That any other relief which this Hon'ble Court may please be deemed fit and proper on the facts and in the circumstances of the case.

It is prayed accordingly."

3. Later on the assessee has also filed the following additional grounds:-

"*1. That the order passed u/s. 147/143(3) of the I.T. Act, 1961, on 10.11.2017 for the assessment year 2010-11 was further perverse to the law and to the facts of the case because of getting and granting approval u/s. 151 of the Income Tax Act in a mechanical manner as putting "Yes Only" by the Pr. CIT.*

2. That the assessment order passed u/s. 147 /143(3) of the Income Tax Act, 1961 on 10.11.2017 for the Assessment Year 2010-11 was illegal and bad in law because no notice if any has ever been issued or to have been served u/s. 143(2) of the Income Tax Act, 1961

4. The grounds raised in penalty appeal No. 6909/Del/2019 read as under :-

1. That the penalty order passed on 21.05.2018 u/s 271(l)(c) of the Act, is perverse to the law and to the facts of the case, therefore, not tenable, because of initiating the same in a routine manner without specification of any charge as contained at Page No. 2 of the assessment order passed on 10.11.2017, even in the notice issued, does not contain the initiation of any specific charge.

2. That the penalty order passed on 21.05.2018 becomes infructuous as the ITAT set aside the quantum of additions made vide order reference no. ITA/5932/Del/2018 dated 01.04.2019.

3. That the penalty order passed as upheld by the Ld. CIT(A) is also wrong on facts and erroneous on the point of law, because she has failed to consider that the penalty has been initiated in a routine manner in the assessment order and in the notice also, without specification of any charge.

4. That the penalty order passed is further perverse to the law and to the facts of the case, because the appellant has already produced, filed and placed upon records all the documents in support of

the cash received and deposited during the year from sundry debtor with whom the payment was due to him, to the tune of Rs. 7,50,000/- as on 31.03.2009, which has already been accepted as correct by the Deptt., as the appellant is filing his ITR u/s 44AF of the Income Tax Act 1961.

5. That the penalty order passed is further not justified as correct, because in support of the receipt of cash from sundry debtor, the appellant has also produced, filed and placed upon records its proper confirmation which was not taken into consideration while finalizing the assessment proceedings, which the Ld. CIT(A) has also failed to appreciate.

6. That no proper and reasonable opportunity if any has ever been afforded prior to initiate and levy the penalty by the Assessing Officer and by the Ld. CIT(A) while adjudicating the said order.

7. That the appellant 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.

PRAYER;

1. That the illegal and impugned levy of penalty of Rs. 1,92,158/- may please be quashed / cancelled.

2. That any other relief with this Hon'ble Court may please be deemed fit and proper on the facts and in the circumstances of this case.

It is prayed accordingly.

5. The brief facts of the case are that the assessee filed his return of income declaring income of Rs. 1,98,452/- on 31.3.2011 and the same was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). The case of the assessee was selected for scrutiny on the

basis of AIR information available with the department that the assessee has made the cash deposit of Rs. 44,96,955/- in his savings bank account with Punjab National Bank during the financial year 2009-10 relating to assessment year 2010-11. Accordingly, notice u/s. 148 of the Act was issued on 27.3.2017 after recording the reasons. In response to the same, the AR of the assessee filed a letter dated 14.6.2017 stating that his return of income on 31.3.2011 may be treated his return of income in response to the notice u/s. 148 of the Act. In response to various statutory notices issued u/s. 142(1) of the Act, on different dates, the AR of the assessee appeared from time to time and filed necessary evidences supporting the claim of the assessee. During the course of assessment proceedings, the AO noticed that the assessee had made the total cash deposits of Rs. 46,60,538/- in savings bank account with Punjab National Bank during the financial year 2009-10 relevant to assessment year 2010-11 whereas the gross receipts as declared in Income Tax Return was Rs. 39,15,420/-. Assessee was required to explain the difference amount of Rs. 7,45,118/- between the bank statement and income tax return. The explanation given by the assesee was not accepted by the AO and lastly the AO was of the view that addition of Rs. 74,518/- under the head 'from other sources' as per provisions of section 68 of the Act

wherein any sum is found credited in the books of accounts of the assessee maintained for any previous years and the assessee has offered no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the AO satisfactory, the sums so credited may be charged to income tax as the income of the assessee of that previous year and therefore, the AO added Rs. 7,45,118/- u/s. 68 of the I.T. Act in the total income of the assessee and also added Rs. 38,298/- thus assessing the total income at Rs. 9,41,870/- vide order dated 10.11.2017 passed u/s. 143(3)/147 of the Act. Aggrieved with the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 28.6.2019 has partly allowed the appeal of the assessee. Against the impugned order dated 28.6.2019, assessee is in appeal before the Tribunal.

6. At the time of hearing, Ld. Counsel for the assessee draw my attention towards the aforesaid additional grounds in which assessee has submitted that the order passed u/s. 147/143(3) of the Act on 10.11.2017 for the assessment year in dispute is perverse to the law and the facts of the case because of getting and granting approval u/s. 151 of the I.T. Act, 1961 is in mechanical manner as putting "Yes

Only" by the Pr. Commissioner of Income Tax. He further submitted that the AO passed the order dated 10.11.2017 for the assessment year in dispute which is also illegal, bad in law, because no mandatory notice u/s. 143(2) of the Act was issued to the assessee prior to the completion of assessment order dated 10.11.2017. Ld. Counsel for the assessee hence, requested that in view of the Hon'ble Apex Court decision in the case of NTPC vs. CIT 229 ITR 389 (SC), the additional grounds may be admitted and adjudicated first. To support his arguments on these legal grounds, he relied upon the decision of the Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP) and the judgment of the Hon'ble Supreme Court of India in the case of ACIT vs. Hotel Blue Moon, 324 ITR 372 (2010) (SC). In view of above, he requested that both the legal grounds are covered in favour of the assessee by the aforesaid decisions, hence, the additional grounds may be decided in favour of the assessee. As regards penalty appeal is concerned, Ld. Counsel for the assessee submitted that the if the quantum appeal is decided in favour of the assessee, the penalty may also be deleted being infructuous.

7. On the contrary, Ld. DR relied upon the orders of the authorities below.

8. I have heard both the parties and perused the records especially the orders of the revenue authorities alongwith the contentions raised by the assessee in the additional grounds of appeal regarding non-issuance of notice u/s. 143(2) of the Act by the AO and mechanical approval granted u/s. 151 of the Act by the Pr. CIT, I am of the view that both the additional legal grounds needs to be admitted in view of Apex Court decision in the case of NTPC vs. CIT 229 ITR 389 (SC), hence, I admit the same.

8.1 I have also perused the assessment order and I am of the considered view that the AO has completed the assessment u/s. 143(3)/147 of the Act on 10.11.2017 without issuing mandatory notice us. 143(2) of the I.T. Act, 1961 which is against the law laid down by the Hon'ble Apex Court in the case of ACIT vs. Hotel Blue Moon, 324 ITR 372 (2010) (SC) wherein, it has been held that in the absence of the notice u/s. 143(2) of the Act the assessment framed by the Assessing Officer is liable to be quashed. Even otherwise, I find that Ld. Pr. CIT has granted the approval in a mechanical manner by putting only "Yes" which is not valid for initiating the reassessment

proceedings. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. Keeping in view of the facts and circumstances of the present case and the case laws 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, hence, the same is quashed and the addition in dispute is deleted. My aforesaid view is fortified by the following decisions including the ITAT, SMC, Bench, New Delhi decision dated 16.10.2019 in the case of Dharmender Kumar vs. ITO, Ward 65(5), New Delhi decided in ITA No. 2728/Del/2018 relevant to assessment year 2008-09 wherein the following case laws were followed on similar facts and circumstances of the case.

A) United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.) In this case, approval by the Addl. CIT u/s. 151 was given in the following terms:-

> *"Yes, I am satisfied that it is a fit case for issue of notice u/s. 148 of the Income Tax Act."*

Analyzing, the above satisfaction/approval, it has been held that the CIT is required to apply his mind to the proposal put up to him for approval in the light to eh material relied upon by the AO. The said power cannot be exercised

casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. CIT before granting the approval. (Para 19).

(B) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).

"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee)."

9. As regards the penalty appeal No. 6909/Del/2019 is concerned, since I have already quashed the reassessment and delete the

addition in dispute in the quantum appeal, as aforesaid, hence, the penalty, does not stand in the eyes of law, therefore, the same is deleted as such, by also allowing this appeal of the assessee.

10. In the result, both the Appeals filed by the Assessee stand allowed.

Order pronounced in the Open Court on 07-01-2021.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi