

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 2694/DEL/2016
[Assessment Year: 2012-13]**

Ms. Amita Yadav
B-321, Ashok Nagar
Shahdara Delhi
III-N-51, Nehru Nagar
Ghaziabad

Vs.

The I.T.O
Ward -62(1)
New Delhi

PAN : AAPPY 4375 H

[Appellant]

[Respondent]

**Date of Hearing : 22.06.2021
Date of Pronouncement : 25.06.2021**

Assessee by : Shri Anil Jain, CA

Revenue by : Shri Prakash Dubey, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A)- 20, New Delhi dated 30.03.2016 pertaining to A.Y 2012-13.

2. The substantive grievances of the assessee read as under:

1. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has failed to appreciate that the notice issued u/s 148, the initiation of proceeding u/s 147 and the consequent assessment order passed is illegal and bad in law.

2. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has failed to appreciate that impugned assessment order passed by the learned assessing officer is against the principles of natural justice and has been passed without affording reasonable opportunity of being heard.

3. That on the facts and circumstances of the case and the provisions of law the Ld CIT Appeal has erred in sustaining an addition of Rs. 15,81,000/- on account of cash deposited in the bank as income of the appellant from undisclosed sources.

4. That the appellant craves the right to amend, append, delete any or all grounds of appeal."

3. The representatives of both the sides were heard at length, the case records carefully perused and the judicial decisions relied upon by both the representatives duly considered.

4. At the very outset, in our considered opinion, there cannot be any decision which would be factually identical to the facts of the case of the assessee, *mutatis mutandis*, in order to follow the findings given by the co-ordinate benches as well as the Hon'ble High Court. In fact, all the decisions of the co-ordinate benches and Hon'ble High Court relied upon by the ld. counsel for the assessee are based on specific facts on the basis of which the co-ordinate benches and the Hon'ble High Court have decided the appeal after analyzing the facts of the case in hand.

5. With these observations, we will now consider the facts of the case in hand.

6. The assessee filed her return of income on 29.03.2013 declaring net taxable income of Rs. 2,76,780/-. The said return was processed u/s 143(1) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act']. The appellant has declared income under the head "Business and Profession".

7. On the basis of AIR Report for F.Y. 2011-12 relevant to Assessment Year 2012-13, the Assessing Officer came to know that the assessee has entered into the following transactions:

"1. Deposited cash of Rs. 19,83,900/- in Saving Bank Account maintained with Punjab National Bank, Nehru Nagar, Ghaziabad (UP)

2. Purchase property for Rs. 35,10,000/- on 16.05.2011 registered with Sub-Registrar-IV, Ghaziabad, UP."

8. In view of the above information, the Assessing Officer initiated proceedings u/s 147 of the Act and notice u/s 148 of the Act dated 06.02.2014 was issued to the assessee. Several notices were issued to the assessee but nobody attended and no details were filed. Finally, a show cause notice dated 13.02.2015 was issued asking the assessee to file source of cash deposit of Rs. 19.83 lakhs and the source of property purchased of Rs. 35.10 lakhs.

9. It was made clear to the assessee that if no reply is filed, then these amounts will be treated as "Income from undisclosed sources". Once again, nobody responded to the notice and the Assessing Officer had no choice but to complete the assessment u/s 144 of the Act on

the basis of information available on record.

10. Assessment was completed as under:

Return income	Rs. 2,76,780/-
Additions:	
(i) u/s 80C, as discussed above	Rs. 1,00,000/-
(ii) Cash depose as income from undisclosed sources, as discussed above	Rs.19,83,900/-
(iii) Unexplained investment in property, as discussed above	<u>Rs.35,10,000/-</u>
	Rs.58,70,680

11. The assessee assailed the assessment before the ld. CIT(A) challenging the validity of notice u/s 148 of the Act. Additions were also challenged on merits by filing additional evidences with application to admit the same u/r 46A of the I.T. Rules.

12. The first appellate authority upheld the reopening of the assessment by holding as under:

"I have considered the submission of the appellant and the Assessment order, in this regard it quite obvious that the A.O was

in possession of credible material by way of AIR information about cash deposits in the bank accounts. The notice was issued at the address on the assessment records. However, the no reply was filed by the assessee. therefore, I am not inclined to interfere with action of the A.O in issuing notice under section 147 of Act. In this regard I have taken into account Apex Court Judgment in the case of As is propounded by the Apex court in the case of Assistant CIT Vs. Rajesh Jhaveri Stock Broker Pvt. Ltd and Jurisdictional Delhi HIGH Court judgment in the case of COMMISSIONER OF INCOME TAX VERSUS NOVA PROMOTERS & FINLEASE (P) LTD as cited above, the legal position is that at the stage of issuing the notice under Section 148 the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax at escaped assessment. In the present case, the prima- facie information/evidences in possession of the A.O is credible enough to form the reason to believe. Therefore, the A.O has rightly issued the notice u/s 148 of the Act. Accordingly, appellant's ground of appeal is dismissed."

13. On merits of the additions, the ld. CIT(A) admitted the additional evidences, considered the explanation of the assessee and accepted the explanation of the assessee in respect of the source of cash deposited to the extent of Rs. 3.25 lakhs and confirmed the addition of Rs. 15.81 lakhs.

14. In so far as the investment in purchase of property is concerned, the Id. CIT(A) was convinced with the explanation of the assessee and deleted the addition of Rs. 35.10 lakhs.

15. Before us, relying upon various judicial decisions, the Id. counsel for the assessee vehemently stated that without any application of mind, the Assessing Officer has issued notice u/s 148 of the Act which is bad in law and deserves to be quashed. It is the say of the Id. counsel for the assessee that no tangible material evidence has been brought on record and the Assessing Officer had only reason to suspect and not a reason to believe that income has escaped assessment. Therefore, referring to the various judicial decisions of the co-ordinate bench, the Id. counsel for the assessee stated that reopening deserves to be quashed.

16. In our considered opinion, in a case where initial return is processed u/s 143(1) of the Act and an intimation is sent to the assessee, the reopening of such assessment, no doubt, requires the Assessing Officer to form reasons to believe that income has escaped assessment, but such reasons do not require any fresh tangible material.

17. In other words, where reopening is sought of an assessment in a situation where initial return is processed u/s 143(1) of the Act, the Assessing Officer can form reasons to believe that income has escaped assessment by examining the very return and/or document accompanying the return.

18. The returned income of the assessee was Rs. 2.76 lakhs. The admitted business receipt of the assessee is around Rs. 3 lakhs. The Assessing Officer had information that the assessee has deposited Rs. 19.83 lakhs in her bank and has purchased property of Rs. 35.10 lakhs. Details given in the return of income are not commensurate with the cash deposited and property purchased. Therefore, it can be safely concluded that the Assessing Officer had reasons to believe and form an opinion that income has escaped assessment, which prompted him to issue notice u/s 148 of the Act.

19. The ld. counsel for the assessee had vehemently stated that the Assessing Officer should have made enquiries before issuing notice u/s 148 of the Act. We fail to understand what enquiries the ld. counsel for the assessee was expecting from the Assessing Officer. The ld. counsel for the assessee cannot expect the Assessing Officer to ask the Bank Manager to explain the source of cash deposited by an account

holder. Nor the Assessing Officer can ask the Sub-Registrar to explain the source of purchase of property by the assessee.

20. In our considered opinion, the only person from whom the Assessing Officer could have made enquiry was the assessee herself and the Assessing Officer can make enquiry from the assessee by issuing notice and asking her to explain the source and this is what the Assessing Officer has done. The Assessing Officer has not made additions solely by issuing notice u/s 148 of the Act, but after giving several opportunities to the assessee to explain the source of her investment.

21. Considering the peculiar facts of the case in hand, we are of the considered view that there is no error or infirmity in issuing notice u/s 148 of the Act and initiating reassessment proceedings. We, accordingly, confirm the findings of the Id. CIT(A). To this extent, reopening of the assessment is upheld.

22. Coming to the merits of the addition, though the first appellate authority has accepted the additional evidences u/r 46A of the Rules, but has not examined the explanation of the assessee that the source of cash deposits are duly reflected in her books of account regularly

maintained by her. We are of the considered opinion that since the assessee has sought to explain the source of cash deposit from her books of account, the entries need to be examined.

23. Therefore, in the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The assessee is directed to explain the source by relevant entries in her books of account and the Assessing Officer is directed to verify the same and decide the issue afresh after giving reasonable and sufficient opportunity of being heard to the assessee.

24. In the result the appeal of the assessee in ITA No. 2694/DEL/2016 is allowed in part for statistical purposes.

The order is pronounced in the open court on 25.06.2021.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated : 25th June, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	