

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 219/CHD/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Jaspal Singh, S/o Shri Jarnail Singh, Village-Gumthala Garhu, Tehsil-Pehowa, Distt.-Kurukshetra.		The ITO, Ward – 1, Kurukshetra.
स्थायी लेखा सं./PAN No: CLYPS1438M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 25.03.2021

उद्घोषणा की तारीख/Date of Pronouncement : 06.04.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 24.01.2019 of CIT(A), Karnal pertaining to 2010-11 assessment year is assailed on various grounds on merit including ground No. 1 wherein challenge is posed on the assumption of jurisdiction itself. The ground reads as under :

“That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer with regard to reopening of the case u/s 148 and also there were no reasons to believe that the income of the assessee had escaped assessment.

2. At the time of hearing, ld. AR invited attention to the aforesaid ground and submitted that in the facts of the present case, the jurisdiction assumed by the AO was not valid and hence unsustainable in law. In the facts of the present case, it was submitted that it was patently a case of non application of mind evident from the reasons recorded itself. This fact, it was submitted, would be evident from page 1 para 2 of the assessment order read alongwith page 2 para 2 of the Paper Book wherein reasons for re-opening the assessment are found recorded. The mistake and non-application of mind is evident on the record itself. Accordingly, it was his submission that in terms of the judicial precedent as settled and accepted by the Chandigarh Bench of the ITAT in the case of Monika Rani Vs ITO ITO No. 582/CHD/2019 placed at Paper Book page 1 to 11, the appeal of the assessee deserves to be allowed on this ground itself. Referring to the principle followed by the Co-ordinate Bench in the aforesaid decision, it was submitted that decisions of Gujrat High Court and various other orders of the Chandigarh, Mumbai and Jaipur Benches etc. of the Tribunal had been relied upon and were referred to. Specific attention was invited to paras 10.1 to 10.6 of the aforesaid order.

3. The ld. Sr.DR on the other hand referring to para 3.2 submitted that the ld. Commissioner has addressed this ground of

the assessee and taken note of the fact that no objection was raised during the assessment proceedings by the assessee.

4. The relevant facts of the case as found recorded are that the assessee was required to explain certain amounts found deposited in his bank account. The assessee explained that the amounts were on account of the transfer of money from his brother-in-law in lieu of transfer of land by the assessee. A family document described as 'dasbardarnama' and unregistered Release Deed was relied upon in support of the explanation. Both the assessee and his brother-in-law Shri Surinder appeared before the AO and confirmed the transaction and the source. However, in view of unregistered documentary evidences, the AO proceeded to make the addition. Apart from that, certain additions were also made on account of dairy and the activity of running a combined harvester etc. to the returned income of Rs. 2,95,000/- (+) Rs. 3,00,000/- agriculture income. As a result of the additions, total taxable income of Rs. 46,70,654/- was assessed.

5. The assessee carried the issue in appeal before the CIT(A) both on merits as well as challenging the action on assumption of jurisdiction also. The jurisdictional issue was decided against the assessee on which ld. DR has placed reliance. The relevant finding is extracted hereunder for the sake of convenience :

“3.2 I have examined the facts of the case and the materials on record. As far as the issue of non-service of notice u/s 148 of the IT Act, 1961 is concerned, the

notice has been issued as per the procedure laid down and there is nothing on record to show that it remained unserved. No objection was raised during assessment proceedings by the appellant. Hence, the proceedings are perfectly legal and the appeal on this issue is rejected.”

6. In the said background, addressing the argument advanced by the parties, it is seen that while recording the reasons, the AO has given the following specific reason:

*“However, as per the record of this office, **the assessee has not filed his return of income.**”*

(emphasis supplied)

7. Considering the fact that the re-opening was done in the facts of the present case recording that no return was filed, it is seen that the reason recorded run foul of para 2 of the assessment order dated 27.12.2017 itself. Para 2 of the relevant extract from the assessment order is reproduced hereunder for greater clarity :

*“2. Thereafter assessee was again issued notice u/s 142(1) alongwith final show notice. In response to this notice assessee attended the assessment proceedings and stated **that he has already filed his return of income for A.y 2010-11 on 18-05-2010 and submitted that same may be treated as return filed in response to notice u/s 148 issued on 25.03.2017.** Notice u/s 143(2) issued.”*

(bold text for emphasis)

8. The said reason is patently contradictory to the facts recorded in the assessment order itself. The language recorded in the reasons recorded gives credence and strength to the allegation raised on behalf of the assessee that it is a mechanical exercise of power wherein non-application of mind is clearly evident as no effort was made to see whether any return had been filed or not by the assessee. Had such an exercise been attempted, the return

filed would have been noticed and application of mind would have been based on cogent facts. In the facts as they stand, the formation of belief that income has escaped assessment is plainly a mechanical exercise looking of non-application of mind. Once the return filed in due course itself remains ignored, the mechanical exercise of power becomes the inescapable conclusion. Thus, the position of law as considered by the Co-ordinate Bench in the case of Monika Rani V ITO (supra) comes into play. In similar facts and circumstances, the Co-ordinate Bench was pleased to hold as under:

“10.1 From the aforesaid reasons it is clear that the A.O. issued the notice under section 148 of the Act, for the reasons that the assessee had not filed her return of income and that the assessee had purchased a property amounting to Rs. 1,49,02,500/- during the F.Y. 2009-10. However, the said reasons given by the A.O. for reopening the assessment are not correct since the assessee had filed the return of income on 30/03/2011, copy of which is placed at page no. 1 of the assessee's compilation. The assessee had also shown the investment in agricultural land amounting to Rs. 52,20,000/- in her Balance Sheet as on 31/03/2010, copy of which is placed at page no. 2 of the assessee's compilation therefore both the reasons given by the A.O. i.e; the assessee had not filed the return of income and invested in the property amounting to Rs. 1,49,02,500/-were wrong.”

8.1 While coming to the aforesaid conclusions, the following decisions of the ITAT and the Gujrat High Court were relied upon:

10.2 On a similar issue the Hon'ble Gujarat High Court in the case of Sagar Enterprises Vs. ACIT (supra) held as under:

" that it was apparent that the fact of non-filing of the return for the assessment year 1991-92 had weighted with the respondent for arriving at the satisfaction about the failure on the part of the assessee and escapement of assessment of income. However, the material on record showed that the return had been filed. In such circumstances, it could not be said with certainty as to which fact would have weighed with the officer concerned and once it was shown that an irrelevant fact had been taken into consideration, to what extent the decision was vitiated would be difficult to say. Moreover the Income-tax Officer had stated that the payment which was stated to be undisclosed income relevant for the assessment year 1991-92 could have been made during the financial year 1990-91 relevant to the assessment year 1991-92 and hence, "to cover up that

probability, protective addition was made in the assessment year 1992-93." The first appellate authority decided the appeal for the assessment year 1992-93 on January, 1996, and the reason had been recorded thereafter on August 18, 1997. The notice of reassessment was not valid and was liable to be quashed."

10.3 A similar view has been taken by the ITAT, Chandigarh 'SMC Bench in the case of *Baba Kartar Singh Dukki Educational Trust Vs. ITO (supra)* wherein it has been held as under:

HEAD NOTE:

" Where Assessing Officer processed under section 143(1 j) returns of income filed by assessee for assessment years 2001-02 to 2003-04 and subsequently he reopened said assessments on sole basis that assessee had not filed returns for years preceding to assessment year 2004-05 and, therefore, its income having escaped assessment, reopening of assessment was on basis of suspicion and non-existent and incorrect facts and it was invalid"

10.4 Similarly the ITAT "L" Bench, Mumbai quashed the reopening of the assessment which was based on incorrect facts vide order dt. 28/02/2018 in the case of *Van Oord Dredging and Marine Contractors BV vs. ADIT (supra)* by observing as under:

" In AY 2005-06, the A.O. has reopened the assessment on incorrect facts and further the assessing officer has failed to demonstrate that there was failure on the part of the assessee to disclose fully and truly all material facts during the course of original assessment proceedings. Hence the reopening of assessment of AY 2005-06 is liable to be quashed on these two grounds a/so. Accordingly we set aside the order passed by Ld. CIT(A) on this issue and hold that the reopening of assessments of both the years are not in accordance with the law and accordingly quash the assessment orders passed for both the years under consideration."

10.5 Similar view has been taken by the ITAT Jaipur Bench in case of *Shri Ram Mohan Rawat Vs. ITO(supra)* vide order dt. 10/10/2019 the relevant findings given therein read as under:

"Thus the reasons recorded by the AO for formation of belief that income assessable to tax has escaped assessment are based on two counts. One, the assessee has made bogus purchases and the second, that the purchases are not verifiable as the assessee has not filed the return of income. Thus the formation of belief is based on these two factual aspects that the assessee has made bogus purchases which are not verifiable as assessee has not filed the return of income. The reasons for nonverifiable of the purchases made by the assessee due to non filing of the return of income as stated by the AO is absolutely incorrect and wrong and contrary to the record when the assessee has filed the return of income electronically on 29.10.2007. This fact was also subsequently accepted by the AO that the assessee filed the return of income under section 139(1). The second aspect of the reasons that the assessee has made bogus purchases is also not based on any enquiry or verification of record by the AO but this is simply reproduction of information received from the Investigation Wing. The said information is also incomplete as regards the details of the purchases and the parties from whom such purchases were made by the assessee. Thus the reasons recorded by the AO manifest that there is no application of mind and the averments as recorded in the reasons are very vague and general and rather inconsistent with the facts available on record so far as the filing of return of income by the assessee. The formation of belief on such incorrect and vague reasons would lead the reopening of the assessment as invalid."

8.2 Considering the legal position and similar set of facts, the position of law as summed up has been relied upon :

“10.6 In the present case also the A.O. reopened the assessment on the basis of wrong facts, so respectfully following the ratio laid down in the aforesaid referred to cases, I am of the view that the reopening of the assessment in the present case was not valid, accordingly, the same is quashed. Since the appeal of the assessee is decided on the legal issue, therefore no findings are being given on the merit of the case relating to the quantum of addition.”

9. Since there is no change in the facts and circumstances, the appeal filed by the assessee succeeds on the jurisdiction ground itself. The impugned order is set aside and the assessment order accordingly is quashed. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 6th April, 2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनाम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar