

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'D' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No. 6611/Del/2013

(Assessment Year : 2001-02)

SHRI INDERJEET SINGH SACHDEVA vs. DCIT, Range-1,
C/o M/s Shubham Nursing Home, Moradabad
Civil Lines, Moradabad
(PAN: ALFPS8175E)
(APPELLANT) **(RESPONDENT)**

ASSESSEE BY : Sh. Piyush Kaushik, Adv.
DEPARTMENT BY: Sh. Amit Jain, Sr. DR

Date of hearing : 18-05-2016

Date of Order : 03-06-2016

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the impugned Order dated 26.9.2013 passed by the Ld. CIT(A)-II, New Delhi relevant to assessment year 2001-02.

2. The grounds raised by the Assessee reads as under:-

1. That on the facts and circumstance of the case and in the law, the CIT(A) has erred in confirming the assumption of jurisdiction u/s. 148 by the AO which was inherently bad in law.

1.1 That on the facts and circumstances of the case and in the law the assessment order u/s. 148/144 as framed by the AO is bad in law and deserves to be quashed.

2. That on the facts and circumstances of the case and in the law the CIT(A) has grossly erred in confirming the addition of Rs. 12,00,000/- as made by the AO.

That the above grounds are independent and without prejudice to one another.

That the appellant craves leave to add to and / or amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”

3. The brief facts of the case are that the assessee filed return of income on 31.7.2001 showing income from salary and other sources at Rs. 2,47,000/-. The same was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) on 11.7.2002 creating a demand of Rs. 20,380/-. The order u/s. 143(1) of the Act was subsequently revised u/s. 154 of the Act and the demand was reduced to NIL. Thereafter, notice dated 28.3.2008 u/s. 148 of the Act was issued to the assessee on the basis of information from the DIT(Inv.-I), New Delhi in respect of the fact that the gifts received by the assessee were not gifts but simply accommodation entries given by the persons who have allegedly given the gifts. The notice u/s. 148 of the Act was issued after due approval from the Addl. CIT,

Range-I, Moradabad. The assessee has shown gifts during the year amounting to Rs. 12,00,000/-. In response to the notices issued nobody turned up. Further notice u/s. 143(2) of the Act and later in view of the fact that it remained uncomplied with, notice under section 144 of the Act was issued which also remained un-responded. As per the notice, the assessee was required to produce appropriate evidences in respect of the gift worthiness of the donors and other evidences which the assessee wished to rely upon. AO observed that nothing in this regard has been produced by the assessee. Under the circumstances, the AO taken up the case on merit u/s. 144 of the Act and observed that since the assessee was required to prove the creditworthiness of the donors which remained unproved on account of the fact that no explanation was filed by the assessee nor any supporting evidence offered. The onus to prove the genuineness of the gifts lay with the assessee and he failed to discharge it. AO also observed that since the case is being decided ex-parte, and in consideration of the fact that the findings of the DIT(Inv.) in the report that the gifts were nothing but accommodation entries the total amount of the gift was treated to be income in the hands of the assessee. The genuineness of the gift remained unproved. Accordingly, the AO assessed the income of the assessee at Rs. 14,47,000/- by making addition of Rs. 12 lacs vide his order dated 30.12.2008 passed u/s. 148/144 of the Act.

4. Against the Order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 26.9.2013 has dismissed the appeal of the assessee.

5. Aggrieved with the aforesaid order of the Ld. CIT(A), Assessee is in Appeal before the Tribunal.

6. At the time of hearing, Ld. Counsel of the assessee has only argued the legal ground challenging the assumption of jurisdiction u/s. 148 of the Act. He stated that AO issued notice u/s. 148 of the Act on 28.3.2008 requiring the assessee to file Return of Income for AY 2001-02, which was served on the assessee on 31.3.2008. He further stated that the Assessee vide its letter dated 9.4.2008 before the AO has submitted that the original return of income may be treated as return of income for the purpose of section 148 of the Act. Assessee has also requested in the letter dated 9.4.2008 that reasons recorded for issuing of Notice u/s. 148 of the Income Tax Act, 1961 may also be supplied to him, which was not supplied to the assessee till the completion of assessment. Thereafter, on 30.12.2008 the AO framed the assessment u/s. 148/144 without giving the copy of the reasons recorded as requested by the assessee. This point was also specifically raised before the CIT(A) and the Ld. CIT(A) vide para no. 3.1 of his impugned order categorically admits that he has conducted an enquiry from the office of the AO as per which it is clear that the reasons for re-opening were not supplied to the assessee. Ld. Counsel for the

assessee stated that non-supply of copy of reasons recorded is contrary to the provisions of law as laid down by the Hon'ble Apex Court in the case of GNK Driveshafts (India) Ltd. vs. ITO reported in 259 ITR 19 (SC). Therefore, he requested that by following the decision of the Hon'ble Apex Court, as aforesaid, the assessment may be quashed being bad in law. In support of his contention he relied upon the various other case laws and filed a Paper Book containing pages 1 to 44 having the copy of the various following decisions, wherein on similar facts and circumstances the assessment declared null and void.

- Hon'ble Bombay High Court in the case of CIT vs. Trend Electronics 2015-TIOL-2393-HC-Mum.
- Hon'ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd. 340 ITR 66 (Bom.)
- Decision of the Third Member Bench of ITAT in the case of Telco Dadajee Dhackjee Ltd. VS. DCIT 2(3) 2012 TIOL-532-ITAT-MUM-TM.
- Decision of the Coordinate Bench of Bangalore ITAT in the case of M/s Synopsys International vs. DDIT (Int. Taxation) dated 10.12.2012 in ITA No. 549/Bang/11.
- Decision of Coordinate Bench of Chennai ITAT in the case of G. Munuswamy vs. ACIT in ITA No. 242/Mds/2013 dated 5.7.2013.

- Recent decision of Coordinate Bench of Ranchi ITAT in the case of Sh. Sunil Kumar vs. DCIT 2015-TIOL-1929-ITAT-Ranchi.
- Decision of Coordinate Bench of Hyderabad ITAT in the case of S. Prasad Raju Vs. DCIT 96 TTJ 832.

7. On the contrary, Ld. DR relied upon the order passed by the CIT(A) and stated that he has passed a well reasoned order, which needs to be upheld.

8. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case law cited by the assessee's counsel on the issue in dispute. In our view, it is very much necessary to reproduce the contents of the notice dated 28.3.2008 issued by the AO u/s. 148 of the Act to the assessee and the reply thereof submitted by the assessee vide his letter dated 9.4.2008 before the Assessing Officer. The contents of the notice dated 28.3.2008 are reproduced as under:-

“Notice under section 148 of the Income Tax Act, 1961

Office of the Asstt. Commissioner of Income Tax

Range-I, Moradabad

Dated : 28/3/2008

To

Dr. IS Sachdeva,

Civil Lines,

Moradabad

Whereas I have reason to believe that your income chargeable to tax for the assessment year 2001-02 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore, proposed to assessee the income for the said assessment year and I hereby request you to deliver to me within 15 days from the date of service of this notice a return in the prescribed form for the said assessment year 2001-02.

This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income tax.....the Central Board of Direct Taxes.

Sd/-

Signature of Officer

Name.....(not legible)

Designation (not legible)"

8.1 In response to the aforesaid notice dated 28.3.2008, assessee filed his reply dated 9.4.2008 as under:-

To

The Asstt. Commissioner of Income Tax,

Range-I, Moradabad

Sir,

Ref:- Your notice u/s. 148 in the case of Dr. IS Sachdeva AY 2001-02

With reference to the above, I wish to submit that I have already filed my income tax return for the AY 2001-02 vide receipt no. 471 dated 31.7.2001 with Circle Moradabad. Kindly treat the same as having been filed in response to your notice u/s. 148 as referred to above. Photocopy of the receipt of the income tax return alongwith computation of income is enclosed herewith for your ready reference.

Further, you are requested to kindly provide me the reasons recorded for issuing the notice u/s. 148.

Thanking you,

Yours faithfully,

Sd/-

(IS Sachdeva)

Date: 09.04.2008”

8.2 For the sake of clarity, we are further reproducing the relevant portion of para 3.1 of the impugned order passed by the Ld. CIT(A) wherein the Ld. CIT(A) has categorically mentioned that the reasons recorded for reopening of the case were not supplied to the Assessee.

“3.1 Here it may be mentioned that on formal enquiries from the present AO, it was learnt that indeed reasons recorded for reopening of the case had not been supplied to the Appellant inspite of there being a specific request for the same.....”

8.3 After going through the Notice dated 28.3.2008; Reply of the Notice dated 9.4.2008 of the assessee and the finding of the Ld. CIT(A) made in his impugned order dated 26.9.2013 vide para no. 3.1 and the law as laid down by the Hon’ble Apex Court in the case of GNK Driveshafts (India) ltd. vs. ITO reported in 259 ITR 19 (SC) and also the various case laws, as

cited by the Id. Counsel of the Assessee, we find that the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. vs. ITO 259 ITR 19 (2003) has held that *"it is clear that the completion of assessment/re-assessment without furnishing the reasons recorded by the AO for initiation of proceedings under section 147/148 of the Act is not sustainable in law as it is incumbent on the AO to supply them within reasonable time.* We note that on the anvil of this judgment, on the request of the Assessee, the AO is bound to furnish the reasons recorded for initiation of proceedings under section 147 of the Act within a reasonable period of time so that the assessee could file its objections thereto and the AO was to dispose of the same by passing a speaking order thereon, which the AO has not done. We also note that even as per the rules of natural justice, the assessee is entitled to know the reasons on the basis of which the AO has formed an opinion that income assessable to tax has escaped assessment. The furnishing of reasons to the assessee is to enable/facilitate it to present its defence and objections to the initiation of proceedings under section 147/148 of the Act. Therefore, we are of the considered opinion that there was no justifiable reasons for the AO to deprive the assessee of the recorded reasons by him for initiating proceedings under section 147/148 of the Act. Therefore, in our considered opinion, the reopening in question is not sustainable in the eyes of law. Accordingly, we allow the assessee's appeal on legality aspect

without proceeding to adjudicate on merits by quashing the assessment order.

9. In the result, Assessee's appeal is allowed.

Order pronounced in Open Court on this 03-06-2016.

Sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 03-06-2016

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.