

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.  
BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER  
AND  
DR. M. L. MEENA, ACCOUNTANT MEMBER

I.T.A. No. 185/Asr/2018  
(Assessment Year: 2009-10)



Shri Sukhdev Singh Kang, S/o. Jabar Singh, Village Mehrajwala, PO Kang Khurd, Tehsil, Hahkot (Distt-Jalandhar) PAN: EDKPK6356J (Appellant)	Vs.	Income-Tax Officer, Nakodar     (Respondent)
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Assessee by :	Shri Sandeep Vijh, CA
Revenue by:	Smt Ratinder Kaur, DR
Date of Hearing	13/12/2021
Date of pronouncement	21/12/2021

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against order passed by the CIT(Appeal)-2, Jalandhar, dated 09/01/2018, which in turn arises from the order passed by the Assessing Officer ("A.O", for short) u/s 143(3) of the Income Tax Act, 1961 ('Act', for short), dated 26.12.2016 for A.Y 2009-10. The assessee has assailed the impugned order on the following grounds of appeal (amended) before us:

1. The Learned Assessing Officer, has erred in assuming jurisdiction u/s 148. Not only are the reasons recorded wrong/incorrect, no effective verification of cash deposits was made from the assessee before issuing notice u/s 148. Even the reasons were not recorded by the jurisdictional Assessing Officer and the sanction obtained from the superior authority is not in order. The impugned order is bad in law..
2. The learned Commissioner of Income Tax Rs. 3,91,553 (Appeals), has erred in sustaining the addition of Rs. 11,50,000/- u/s 69/69A in respect of alleged unexplained deposits in bank account chargeable to tax u/s 115B BE The Learned Commissioner of Income Tax(Appeals) has erred in sustaining the addition of Rs. 12,00,000/- u/s 69/69A made towards unexplained income chargeable to tax u/s 115BBE which basically represented agricultural income."



2. At the very outset of the hearing of the appeal, it was submitted by the Id Authorised Representative ("A.R", for short) for the assessee, that the assessee had filed before us amended ground of appeal. Elaborating on the reasons leading to filing of the amended grounds of appeal, it was submitted by the Id. A.R that the ground of appeal No. 1 is in the nature of an additional ground which had been raised for the first time before the tribunal. It was further submitted by the Id A.R that though the ground of appeal No. 3 was raised before the CIT(A), however, the same had inadvertently remained omitted to be raised in the memorandum of appeal filed before the Tribunal. Adverting to his contention qua admission of the additional ground of appeal, it was submitted by the Id A.R that as he had therein assailed the validity of the jurisdiction assumed by the A.O u/s 147 of the Act, the adjudication of which was based on the facts available on record, therefore, the same may be admitted. In so far the ground No. 3 was concerned, it was submitted by the Id A.R that the assessee had inadvertently omitted to raise the same in his appeal filed before the Tribunal, although, the same was duly raised before the CIT(A).

3. Per contra, the Id Departmental Representative ("D.R", for short) objected to admission of the additional ground of appeal of the assessee appellant. It was averred by the Id D.R that as the assessee had not assailed the validity of the jurisdiction assumed by the A.O u/s 147 of the Act before the lower authorities, therefore, he could not be now allowed to raise it for the first time in the course of the proceeding before the tribunal. After deliberating at length qua the aforesaid issue in the backdrop of the contentions advanced by the authorized representatives, we are of the considered view, that as the assessee by raising the additional ground of appeal had sought our indulgence for adjudicating a legal issue i.e validity of the jurisdiction assumed by the A.O u/s 147 of the Act, the adjudication of which would not require looking any further beyond the facts available on record, therefore, the same merits admission. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in case of CIT Vs. National Thermal Power Ltd. (1998) 229 ITR 383 (SC). In so far, the ground of appeal No. 3 raised by the assessee before us is concerned, we find that though the same was raised by the assessee before the first appellate authority, however, he had inadvertently omitted to raise the same in the memorandum of appeal that was



earlier filed before us. Backed by the aforesaid fact, we herein find no reason as to why the same be not allowed to be raised before us. We, thus, in terms of our aforesaid observations allow the raising of the aforesaid respective grounds of appeal before us.

4. We shall now deal with the grievance of the assessee wherein he has assailed the orders of the lower authorities primarily on two fold grounds, viz. (i). the validity of the jurisdiction assumed by the A.O for reopening of the assessee's case u/s 147 of the Act; and (ii). the sustainability of the additions made by the A.O on merits. As the assessee has thrown a challenge to the jurisdiction assumed by the A.O for reopening of his case u/s 147 of the Act, therefore, we shall first deal with the same.

5. Shorn of unnecessary details, the A.O as per AIR information in the case of the assessee gathered that he had deposited cash of Rs. 87.55 lakhs in his two bank accounts, as under:-

Sr. No.	Particulars	Amount
1.	Saving Bank A/c No. 0015000000238 with Capital Local Area Bank Ltd.	Rs. 52,55,000/-
2.	Saving Bank A/c No. 752000100192740 with Punjab National Bank.	Rs. 35,00,000/-

After necessary verifications, it was observed by the A.O that the assessee had neither filed his return of income for the year under consideration i.e A.Y 2009-10, nor was he holding a Permanent Account Number ("PAN", for short). In order to gather the details as regards the source of the cash deposits in the aforementioned bank accounts, the A.O issued notice u/s 133(6) of the Act and called upon the assessee to furnish the requisite details. As the assessee failed to furnish the requisite information, therefore, the A.O viz. Income Tax Officer, Ward-4, Phagwara with the prior approval of the Principal CIT-2, Jalandhar reopened his case u/s 147 of the Act. On a perusal of the records, we find that the case of the assessee was reopened by the A.O, viz. Income-Tax Officer, Ward-4, Phagwara on the basis of the following "reasons to be believe" :-

"Reasons for proceedings u/s 147 of the Income Tax Act, 1961.



As per Information was received by the undersigned that during the Financial Year 2008-09, the assessee had made cash deposits of Rs 52,55,000/- in his joint bank account A/c No 00150000005238 with Capital Local Area Bank, Lohian Khas and Rs. 35,00,000/- in his bank account No. 35,00,000/- in his bank account No. 7520001100192740 with Punjab National Bank, Lohian Khas. Copies of assessee s above mentioned bank account was called for form the concerned bank by issue of notice u/s 133(6) of the Income Tax Act, 1961. Verification letters were issued to the Assessee to explain the source of said cash deposits. However, even though the letters were issued/ served on the assessee no reply/ explanation was received from the assessee.

On perusal of the impugned bank statement it is seen that the assessee had made cash deposits of Rs.87,55,000/- during the Financial Year 2008-09 relevant to the Assessment year 2009-10. As no explanation has been given by the assessee, inspite of several opportunities to do so the cash deposits is taxable u/s 69/69A of the Income Tax Act, 1961, as unexplained investment/ monies. It is also seen that the assessee had interest income of Rs.1,94,163/- & Rs.51,053/- from both the accounts during the said year. Further, on perusal of records of income tax department, it was seen that the assessee has neither filed any income tax returns nor he has been assessed to tax for the said year. I therefore, have reason to believe that income of Rs.87,55,000/- + Interest income of Rs. 2,45,216/- (Rs. 1,94,163/- + Rs. 51,053/-) has escaped assessment within the meaning of section 147 of the Act. As no return has been filed by the Assessee, income amounting to Rs. 90,00,216/- is also deemed to have escaped assessment within the meaning of clause(a) to explanation 2 to section 147 of the Income Tax Act 1961 for the AY 2009-10."

As is discernible from the assessment order, the A.O, viz. Income-tax Officer, Ward-4, Phagwara after reopening the case of the assessee u/s 147 of the Act had transferred the case to the Income-tax Officer, Nakodar. The assessee in compliance to the notice issued by the Income-tax Officer, Ward-4, Phagwara u/s 148 of the Act, dated 29.02.2016 (Page 68 of 'APB') had filed his return of income on 30.11.2016, declaring an income of Rs. 1,94,163/- a/w agriculture income of Rs. 32,11,000/-. During the course of the assessment proceedings, the assessee on being queried submitted before the A.O that the cash deposited in his aforesaid bank accounts was sourced out of, viz. (i). sale of agricultural land vide two different registered deeds dated 28.07.2008 & 08.12.2008 for a consideration of Rs. 39.85 lac; (ii). sale of eucalyptus and poplar trees standing on his agricultural land for a consideration of Rs. 11,50,000/-; and (iii). sale of agricultural produce and redeposit of the cash withdrawals earlier made from his bank accounts of Rs. 28 lac. In order to buttress his aforesaid claim the assessee had placed on record the copies of the registered sale deeds evidencing the sale of agricultural land; copies of fard/jamabandi proving his ownership of agricultural land a/w



certificate from sarpanch confirming the transactions of sale of trees; and copies of his bank statements a/w cash flow statement in order to substantiate the source of the cash credits in his bank accounts. However, the A.O, viz. Income-tax Officer, Nakodar not being fully satisfied with the aforesaid explanation of the assessee, therein, made an addition of Rs. 74,79,000/- (out of cash deposits of Rs. 87.55 lakhs) and assessed his income vide his order passed u/s 143(3)/148 at an income of Rs. 76,73,160/- a/w scaling down of the agricultural income of Rs. 32.11 lac that was declared by him in his return of income to an amount of Rs.

8.16 lac.\*

6. Aggrieved, the assessee carried the matter before the 1d CIT(A). Observing, that the assessee was an aged person who was an agriculturist by profession, the CIT(A) was of the view that as no obligation was cast upon the assessee to maintain regular books of account qua his agricultural income, therefore, there was no justification on the part of the A.O in treating the credit entries of Rs. 51.29 lac that were received by the assessee as transfer/cheques in his bank accounts as his undisclosed income. Backed by his aforesaid observation the CIT(A) vacated the addition to the tune of Rs. 51.29 lac. In so far the addition of Rs. 11.50 lac that was made by the A.O was concerned, the CIT(A) being of the view that the assessee had failed to substantiate his claim that the said amount represented the sale of eucalyptus and poplar trees by him, thus, upheld the said addition. As regards the addition of Rs. 12 lac that was made by the A.O qua the cash deposited by the assessee in his bank account which he had tried to explain as being his agricultural income for the year under consideration, the CIT(A) holding a conviction that as the assessee had failed to substantiate his aforesaid claim of agricultural income which was also not in parity with his land holding, thus, upheld the said addition so made by the A.O. Accordingly, the CIT(A) partly allowed the appeal.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter before us. The 1d A.R had assailed the validity of the jurisdiction that was assumed by the A.O for reopening the case of the assessee u/s 147 of the Act on multiple grounds, viz. (i). that as the A.O had wrongly mentioned the amount of the respective cash deposits in the bank accounts and also the bank account number, therefore, on the basis of such incorrect facts he could not have validly



assumed jurisdiction and reopened the case of the assessee; (ii). that a perusal of the "reasons to believe" revealed that there was no application of mind by the A.O to the information on the basis of which the case of the assessee was reopened by him; and (iii). that the A.O, viz. Income-tax Officer, Ward-4, Phagwara who had reopened the case of the assessee u/s 147 of the Act had no jurisdiction over the assessee, while for the A.O who had framed the assessment, viz. Income-tax Officer, Nakodar had failed to validly assume jurisdiction for framing the impugned assessment.

8. Per contra, the ld D.R relied upon the orders of the lower authorities. It was submitted by the ld D.R that as the assessee was not being assessed to tax and was not holding any PAN, therefore, it was for the said reason that on receipt of AIR information qua the cash deposited by the assessee in his bank accounts that his case was reopened by the Income-Tax Officer, Ward-4, Phagwara. In sum and substance, it was claim of the ld D.R that as the assessee in question was not being assessed to tax, therefore, the Income-Tax Officer, Ward-4, Phagwara acting upon the information as regards deposit of substantial amount of cash by the assessee in his bank accounts had validly reopened his case u/s 147 of the Act. In the backdrop of his aforesaid contention, it was submitted by the ld D.R that as the case of the assessee was rightly reopened by the A.O u/s 147 of the Act which thereafter had culminated into an assessment u/ss. 143(3)/148, dated 26.12.2016 by the A.O having jurisdiction over his case, viz. Income-Tax Officer, Nakodar, therefore, no infirmity did emerge qua the assumption of jurisdiction by him for framing the assessment in question.

9. As the very assumption of jurisdiction by the A.O has been assailed before us, therefore, we shall first deal with the same.

10. We have heard the ld. Authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Before us, it is the claim of the ld. A.R that the A.O, viz. Income-Tax Officer, Ward Nakodar had wrongly assumed jurisdiction and framed the assessment vide his order passed u/ss. 143(3)/148, dated 26.12.2016. We shall advert to the facts involved in the present case to the extent the same are relevant for adjudicating the issue as regards the validity of the jurisdiction assumed by the A.O, viz. Income-Tax Officer, Ward Nakodar. On a perusal of the records to which our



attention was drawn by the ld. A.R, we find, that the Income-Tax Officer, Nakodar who was vested with the territorial jurisdiction over the case of the assessee had in order verify the source of the cash deposits in the aforementioned bank accounts of the assessee, vide his notice issued u/s 133(6) of the Act, dated 14.02.2012 and verification letters dated 06.12.2013 and 11.08.2014 (Page 52 to 54 of APB) called upon him to furnish the requisite details. Thereafter, the Income-Tax Officer, Ward-4, Phagwara recorded the "reasons to believe" on 14.12.2015 which were approved by the Pr. CIT-2, Jalandhar on 25.02.2016. Notice u/s 148, dated 29.02.2016 (Page 68 of 'APB') was thereafter issued by the Income-tax Officer, Ward-4, Phagwara. However, as observed by us hereinabove, the A.O, viz. Income-tax Officer, Ward-4, Phagwara after reopening the case of the assessee u/s 147 of the Act is stated to have transferred the case records to the Income-Tax Officer, Nakodar i.e the A.O who was vested with the jurisdiction over the case of the assessee. It is the claim of the ld. A.R that no order for transferring the case of the assessee from the Income-tax Officer, Ward-4, Phagwara to the Income-Tax Officer, Nakodar was passed as required per the mandate of Sec. 127 of the Act. Be that as it may, we at this stage are not concerned with the existence of a transfer order u/s 127 of the Act. Coming back to the facts of the case, we find that the assessee in compliance to the notice issued u/s 148, dated 29.02.2016 by the Income-Tax Officer, Ward-4, Phagwara had filed his return of income on 30.11.2016, declaring an income of Rs. 1,94,163/- a/w agricultural income of Rs. 32,11,000/-. Thereafter, the Income-tax Officer, Ward Nakodar based on the reopening of the assessee's case u/s 147 of the Act by the Income-tax Officer, Ward-4, Phagwara had after receiving the case records framed the assessment vide his order passed u/s 143(3)/148, dated 26.12.2016.

11. Backed by the aforesaid facts, it is the claim of the ld A.R, that as the jurisdiction over the case of the assessee was undeniably vested with the Income Tax Officer, Nakodar, therefore, the Income Tax Officer, Ward-4, Phagwara who had no jurisdiction over his case had clearly traversed beyond his jurisdiction and wrongly reopened the case of the assessee u/s 147 of the Act. Supplementing his aforesaid contention, it was submitted by the ld. A.R, that as prior to reopening of the assessee's case vide notice issued u/s 148 of the Act by the Income-Tax Officer, Ward-4, Phagwara the Income-Tax Officer, Nakodar who was vested with



the jurisdiction over his case had over the period i.e 14.02.2012 to 11.08.2014 sought for information u/s 133(6) of the Act and otherwise qua the cash deposits figuring in the bank accounts of the assessee. It was submitted by the Id A.R that it was neither a fact nor the case of the department that subsequent to 11.08.2014 i.e. the date on which the last notice was issued by the Income-Tax Officer, Nakodar that the case of the assessee was transferred to the Income-Tax Officer, Ward-4, Phagwara, on the basis of which the department would had sought to justify the issuance of Notice u/s 148 by him. In the backdrop aforesaid facts, we fail to understand that as to on what basis the Income-Tax Officer, Ward-4, Phagwara had assumed jurisdiction over the case of the assessee and reopened the same u/s 147 of the Act, specifically when over the period i.e 14.02.2012 to 11.08.2014 the Income-Tax Officer, Nakodar who was vested with the territorial jurisdiction over the case of the assessee u/s 124(1) of the Act had by taking recourse to the powers that were vested with him u/s 133(6) of the Act, as well as necessary AIR verifications had been gathering the requisite information qua the cash deposits in the assessee's bank accounts. On a perusal of the records, we find that the assessment had been framed by the Income Tax Officer, Nakodar vide his order passed u/ss. 143(3)/148, dated 26.12.2016 on the basis of the Notice issued u/s 148, dated 29.02.2016 and the "reasons to believe", dated 14.12.2015 recorded by the ITO, Ward-4, Phagwara. Before adverting any further, we may herein observe, that as is discernible from the records, the Income-Tax Officer, Ward Nakodar prior to framing of the assessment vide order passed by him u/ss. 143(3)/148, dated 26.12.2016, had after receiving the case records merely proceeded with on the basis of the Notice u/s 148, dated 29.02.2016 that was issued by the Income-tax Officer, Ward-4, Phagwara. In our considered view, the invalid assumption of jurisdiction by the Id ITO, Ward-4, Phagwara u/s 147 of the Act could not have been validated by a simpliciter transfer of the assessee's case to the Income-Tax Officer, Nakodar i.e the A.O who was vested with the requisite jurisdiction over the case of the assessee. Even if it is to be assumed that there was a transfer of jurisdiction over the case of the assessee from the Income-tax Officer, Ward-4, Phagwara to the Income-Tax Officer, Nakodar, then, in the backdrop of the fact that the Income-Tax Officer, Ward-4, Phagwara had *de hors* valid assumption of jurisdiction over the case of the assessee reopened his case, it



was incumbent on the part of the Income-Tax Officer, Nakodar to have validly assumed jurisdiction u/s 147 of the Act by satisfying the requisite conditions which were *sine qua non* for framing of a valid assessment u/ss. 143(3)/148 by him. In sum and substance, it is a case before us where the Income-Tax Officer, Ward-4, Phagwara who had no jurisdiction over the case of the assessee had invalidly assumed jurisdiction and reopened his case, while for the Income-Tax Officer, Nakodar who was vested with the jurisdiction over the case of the assessee had after receiving the case records of the assessee framed the assessment vide his order passed u/ss. 143(3)/148, dated 26.12.2016 without validly assuming jurisdiction by satisfying the requisite conditions, viz. recording the "reasons to believe" and issuing notice u/s 148 of the Act which form the *sine qua non* for framing of a valid assessment within the meaning of Sec. 147 of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Lalit Kumar Bardia, ITA No. 127/2006, dated 11.07.2017 (Bom), wherein it was observed as under :

- “ 21. Transfer of proceedings u/s 127 of the Act cannot be retrospective so as to confer jurisdiction on a person who does not have it. Section 127 of the Act does not empower the authorities under the Act to confer jurisdiction on a person who does not have jurisdiction with retrospective effect. In fact, the explanation under Section 127 of the Act clearly provides that all the proceedings under the Act which are pending on the date of such order of transfer and all the proceedings which may be commenced after the date of such order of transfer would stand transferred to the Assessing Officer to whom the case is transferred by Section 127(1) of the Act. The provision makes it clear that though transfer would come into effect from the date the order of Commissioner passed under Section 127(1), the proceedings already commenced would not abate and would continue with new Assessing Officer, who assumes charge consequent to transfer subject of course to the pending notices being within jurisdiction of the Officer issuing the notices. It is not a provision which validates without jurisdiction notice issued by an Income Tax Officer. If the submission of the Revenue on the above account is to be accepted, then an order which is without jurisdiction could be bestowed with jurisdiction by passing an order of transfer with retrospective effect. Section 127 of the Act does not validate notices/orders issued without jurisdiction, even if they are transferred to a new Officer by an order under Section 127 of the Act.”

(bold/underlining - emphasis supplied by us)

In our considered view, as the Income-Tax Officer, Nakodar had framed the assessment vide his order passed u/s 143(3)/148, dated 26.12.2016 without



validly assuming jurisdiction u/s 147 of the Act, therefore, the same cannot be sustained and is liable to be quash subject of course to the pending notices being ed. We, thus, in terms of our aforesaid observations quash the assessment framed by the Income-Tax Officer, Ward Nakodar, vide his order passed u/ss.143(3)/148, dated 26.12.2016. The **Ground of appeal No. 1** is allowed in terms of our aforesaid observations.

12. As we have quashed the assessment order for want of jurisdiction on the part of the A.O framing the assessment, therefore, we refrain from adverting to the other contentions advanced by the ld. A.R qua the validity of the assessment in question, as well as those as regards the sustainability of the addition on merits, which are accordingly left open. The **Grounds of appeal Nos. 2 and 3** are disposed off in terms of our aforesaid observations.

13. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 21/12/2021.

Sd/-

(Dr. M. L. MEENA)  
Accountant Member

Sd/-

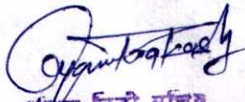
(RAVISH SOOD)  
Judicial Member

Dated: 21/12/2021  
A K Keot

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- 20/12/21 ✓ Applicant  
2. Respondent  
3. CIT  
4. CIT (A)  
5. DR:ITAT

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BY ORDER

  
द्वितीय निजी सचिव  
Sr. Private Secretary  
आयकर अपीलीय अधिकरण  
Income-Tax Appellate Tribunal  
अमृतसर  
Amritsar