

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 1556/Del/2019
Assessment Year: 2010-11

Nishi Kapoor H.No. 835, Sector-17, Faridabad, Haryana. PAN No. AFLPK2022C	vs	ITO Ward 2(1) Faridabad.
APPELLANT		RESPONDENT

Assessee by	Shri K.C. Singhal, Advocate Shri Amit Gupta, Advocate
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	21.08.2019
Date of Pronouncement	02.09.2019

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-Faridabad dated 21.01.2019 for AY 2010-11.

2. Briefly the facts of the case are that the return of income was filed by assessee on 29.07.2010 declaring total income of Rs. 2,87,800/-. There was an AIR Information that assessee sold immovable property for Rs. 78,51,000/- during assessment year under appeal. ITO, Ward 2(3), Noida issued a letter requiring to verify the financial transaction. However, no plausible explanation was furnished by the assessee. As per information provided by Sub Registrar the assessee had sold Plot no. 230, Block-B, Sector-

71, Noida for Rs. 75,21,000/-, value for stamp purposes Rs. 78,51,000/- on 06.03.2010. The AO initiated reassessment proceedings u/s 147 of the Act to assess the income of the assessee in this regard which escaped assessment. The assessee filed a letter stating therein that return filed originally may be treated as return filed in response to notice u/s 148 of the Act. The AO noted that on change of incumbent the proceedings have been continued from the stage as per section 129 of the Act. The AO completed the assessment and computed the long term capital gains of Rs. 35,47,079/- and made the addition of this amount accordingly. The reassessment order u/s 143(3)/147 of the Act was passed on 22.12.2017 by ITO, Ward 2(1), Faridabad. The assessee challenged the reassessment proceedings and the above addition before Ld. CIT(A). The Ld. CIT(A), however, dismissed the appeal of assessee.

3. Ld. Counsel for assessee referred to PB 4, which are reasons for reopening of the assessment which reads as under:

“An AIR Information regarding sale of immovable property amounting to Rs. 78,51,000/- has been received from CIB for examining of non-pan financial transactions. Therefore, to ascertain the assessment particulars of the assessee and to verify the transaction, query letters were issued to the assessee to furnish the assessment particulars of the assessee and to furnish the copy of ITR for AY 2010-11 along with computation of capital gain on this transaction. Simultaneously the information was called for from Sub-Registrar. As per information given by Sub Registrar the assessee had sold Plot no. 230, Block-B, Sector-71, Noida for Rs. 75,21,000/- (Value for stamp purpose Rs. 78,51,000/-) on 06.03.2010. However, in

response to the query letters, no plausible explanation has been furnished by the assessee. Thus, the capital gain arises on this transaction entered into by assessee during the FY 2009-10 i.e. relevant to AY 2010-11 has escaped assessment.

In view of above facts, on the basis of information in my possession, I have reason to believe that the income under head capital gain arises on of Rs. 78,51,000/- chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.”

Dated: 10.03.2017

Sd/-

(R.K. SHARMA)

*Income Tax Officer,
ITO, Ward 2(3), Noida*

4. He has submitted that these reasons are recorded by ITO, Ward 2(3), Noida and thereafter, he has written a letter dated 07.09.2017 PB 10 to the Assessing Officer (ITO, Ward 2(1), Faridabad) stating therein that the notice u/s 148 of the Act was issued on 30.03.2017. As per acknowledgement of return for assessment year submitted by the assessee on 07.09.2017, assessee comes under the jurisdiction of ITO, Ward 2(1), Faridabad. The ITO, Ward 2(3), Noida therefore, transferred this case to ITO, Ward 2(1), Faridabad. Ld. Counsel for assessee submitted that the ITO, Ward 2(3), Noida who has recorded reasons for reopening of the assessment was not having jurisdiction over the case of assessee and that the ITO, Ward 2(1), Faridabad who has further issued notice u/s 148 and 142(1) of the Act and completed the reassessment order who was having jurisdiction over the case of the assessee did not record reasons for the reopening of the assessment. Therefore, initiations of

reassessment proceedings are illegal, bad in law and liable to be quashed. In support of which contention he has relied upon order of ITAT Agra Bench in the case of S.N. Bhargawa vs. ITO 147 ITD 306 in which it was held as under:

“IT: Where Assessing Officer, Agra initiated reassessment proceedings against assessee and subsequently he transferred case to Assessing Officer, Mathura, who was having jurisdiction over assessee, and thereupon Assessing Officer, Mathura without recording fresh reasons and on the basis of reasons recorded by Assessing Officer, Agra issued on assessee a fresh notice u/s 148. Assessing Officer, Mathura had not validity assumed jurisdiction to initiate reassessment proceedings against assessee.”

5. On the other hand, Ld. DR relied upon the orders of the authorities below. Vide order sheet dated 26.08.2019 Ld. DR was directly to intimate, if any, other reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR produced the assessment record and submitted that no separate reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR, however, submitted that AO was having jurisdiction to proceed with the matter on transfer of the case from ITO, Noida.
6. I have considered the rival submissions. It is not in dispute that reasons for reopening of the assessment have been recorded in this case by ITO, Ward 2(3), Noida, who was having no jurisdiction over the case of the assessee. When assessee filed letter before ITO, Ward 2(3), Noida on 07.09.2017 stating therein that return filed originally may be treated as return having filed in

response to notice u/s 148 of the Act and is also supported by copy of acknowledgment of return filed originally, the ITO, Ward 2(3), Noida transferred this case to ITO, Ward 2(1), Faridabad, vide letter dated 07.09.2017 (PB 10). The AO while completing the assessment in this case has taken the shelter of provisions of section 129 of the Act. However, the said provision is not applicable because it is a matter of assumption of valid jurisdiction in the matter or to validly initiate the reassessment proceedings against the assessee. It is not a case of succession to exercise jurisdiction by one ITO to another ITO. Since, reasons have been recorded for reopening of the assessment by ITO, Noida who was not authorized to do so, therefore, mere recording of reasons for reopening of the assessment by him is of no consequence and has no value under the law. The AO who has jurisdiction over the case of assessee i.e. ITO, Faridabad admittedly did not record any reasons for reopening of the assessment. Therefore, the issue is covered in favour of the assessee by order of ITAT Agra Bench in the case of S N Bhargawa (supra). It is, therefore, clear that assumption of jurisdiction by the AO is illegal and bad in law. The AO at Faridabad had not validly assumed jurisdiction to initiate reassessment proceedings against the assessee. This view is further supported by judgment of Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 in which it is observed that AO recorded reasons for reassessment and AO issued a notice u/s 148 must be the same person. Successor AO cannot issue

notice u/s 148 on the basis of reasons recorded by predecessor AO. The Hon'ble Gujarat High Court held as under:

“Held, (i) that so far as the assessment years 1990-91 and 1991-92 were concerned, the officer who had issued the notice under section 148 of the Act, was different from the officer who had recorded the reasons and hence, the notices for both these years were invalid and deserved to be quashed on this ground alone.”

7. In view of the above discussion, I am of the view that the assumption of jurisdiction u/s 147/148 of the Act is illegal and bad in law and, as such, liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment u/s 147/148 of the Act. Resultantly the entire addition stands deleted.

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

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 02/09/2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.08.2019
Date on which the typed draft is placed before the dictating Member	02.09.2019
Date on which the typed draft is placed before the Other Member	02.09.2019
Date on which the approved draft comes to the Sr. PS/PS	02.09.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	02.09.2019
Date on which the fair order comes back to the Sr. PS/PS	02.09.2019
Date on which the final order is uploaded on the website of ITAT	02.09.2019
Date on which the file goes to the Bench Clerk	02.09.2019
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	