

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC-2” BENCH: NEW DELHI
(THROUGH VIDEO CONFERENCING)**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.9687/Del/2019
Assessment Year : 2011-12**

Munish Chander Khurana, A-4/440, Paschim Vihar, New Delhi-110063 PAN-AJYPK5166E	Vs	ITO, Ward-41(3), New Delhi.
APPELLANT		RESPONDENT
Appellant by		Sh. Lalit Mohan, CA
Respondent by		Sh. R.K.Gupta, Sr.DR
Date of Hearing		25.05.2021
Date of Pronouncement		14.06.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-14, New Delhi dated 28.10.2019. The assessee has raised following grounds of appeal:-

1. *“That the learned Commissioner of Income Tax (Appeals)-14, New Delhi has erred both in law and, on facts in directing the learned Assessing Officer u/s 251 of the Act to issue notice u/s 148 of the Act in Assessment Year 2011-12 after following the procedure laid down u/s 147, 148 and 151 of the Act.*

1.1. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act was invalid no direction could be issued and as such the aforesaid impugned order is illegal, invalid and without jurisdiction for the instant assessment year.”*

2. The only effective ground raised in this appeal by the assessee is against the direction of Ld.CIT(A) issued notice to the Assessing Officer u/s 148 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2011-12 after following the procedure laid down u/s 147 & 148 of the Act.

3. Facts giving rise to the present appeal are that the case of the assessee was re-opened for assessment by issuing notice u/s 148 of the Act dated 26.08.2018. In response thereto, the assessee filed return of income declaring total income of Rs.5,62,070/-. The ground for re-opening of assessment was cash transaction exceeding Rs.10,00,000/-. Thereafter, the Assessing Officer proceeded to make assessment by observing that the assessee had deposited an amount of Rs.42,85,700/- in Saving Bank Account No.10005845133 with State bank of Patiala (now State Bank of India), Branch-B-2/2, Paschim Vihar, New Delhi. The Assessing Officer observed that the assessee failed to provide justification by supporting evidence and he made addition of Rs.42,85,700/- thereby, assessed income at Rs48,47,770/- against the returned income of Rs.5,62,070/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, allowed the appeal of the assessee for statistical purposes on the ground that the notice issued u/s 148 of the Act was bad in law as the requisite prior sanction of Ld. Pr.CIT was found to be invalid. However, Ld.CIT(A) directed the Assessing Officer to issue notice u/s 148 of the Act for Assessment Year under consideration after following the due procedure laid down u/s 147, 148 and 151 of the Act.

5. Aggrieved against this direction, the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the Ld.CIT(A) exceeded its jurisdiction by directing the Assessing Officer to issue notice u/s 148 of the Act for Assessment Year 2011-12 after failing procedure laid down u/s 147, 148 and 151 of the Act. He submitted that Ld.CIT(A) has failed to appreciate that once the initiation of proceedings u/s 147 of the Act and assessment u/s 147/143 of the Act was held to be invalid. No direction could be issued and to that extent, the impugned order is illegal, invalid and without jurisdiction.

7. Per contra, Sh. R.K.Gupta, Ld. Sr. DR opposed these submissions and supported the order of Ld.CIT(A). Ld. Sr. DR submitted that direction so issued was within the powers conferred by Ld.CIT(A) u/s 251 of the Act. Ld. Counsel for the assessee submitted that bare reading of the provision could make it clear that there is no such power conferred by the Act.

8. I have heard the rival contentions and perused the material available on record. The moot question for determination is whether Ld.CIT(A) was within power to direct the Assessing Officer for issuance of notice u/s 148 of the Act. For the sake of clarity, section 251 of the Act is reproduced as under:-

(1) "In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates

under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”

9. From the above, it is clear that Ld.CIT(A) is empowered to confirm, reduce, enhance or annul the assessment. In the present case, Ld.CIT(A) annulled the assessment and further directed to issue notice u/s 148 of the Act. No such power has been granted by the Act, therefore, the impugned direction of Ld.CIT(A) in excess of the jurisdiction conferred by section 251 of the Act, hence the same is set aside. Thus, grounds raised by the assessee in this appeal are allowed.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 14th June, 2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI