

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 420/ASR/2019
(Assessment Year: 2006-07)**

Sh. Srijal Gupta, 5-A Patel Nagar Pathankot-145001 PAN:AOLPG6303F (Appellant)	Vs.	Income Tax Officer of Income Tax Ward 6(3), Pathankot (Respondent)
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Appellant by	None (written Submission)
Respondent by	Sh. S.M. Surendranath, Sr. DR

Date of Hearing	05.07.2022
Date of Pronouncement	14.07.2022

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal is directed against the order of Ld. Commissioner of Income Tax (Appeal)-2, Amritsar {in brevity CIT(A)} bearing appeal no. CIT(A)-2/10016/2014-15, date of order 23.03.2019, passed u/s. 250(6) of the Income Tax Act,

1961 (in brevity of the Act) for the Assessment year 2006-07.

The impugned order was originated from the order of Income Tax Officer, Ward-3, Pathankot (in brevity A.O) order passed u/s.143(3)/147 of the Act date of order 20.03.14 .

2. Assessee has raised the following grounds which are extracted as follows:

Grounds of Appeal

- 1. The lower Authority has grossly erred in initiating proceedings under section 147/148 against the appellant in his individual capacity, to assessee share in the partnership firm, which is prima facie contrary to facts of the case and assessment order is the void ab initio.*
- 2. That the assessee had led plethora of evidence before the Id. Assessing Officer to the effect that the partnership firm namely "Real Estate" was legally constituted on 24th December 2003, its bank account was opened, partners have contributed the capital, loans were raised from Banks and investment in the properties was made by the firm itself.*
- 3. That the proceedings under section 147/148 ought to have been initiated against the partnership firm. In case it was alleged that the firm was Bogus, the proceedings ought to have been initiated against the A.O.P. and not against the assessee.*
- 4. That the addition of Rs.7,70,385/- being 30% of the total deposit in the bank account of the firm alleged to be unexplained investment of the Assessee proportionate to his share and the profit and loss contrary to law and facts of the case.*

5. *That the lower authorities have grossly erred in not appreciating that if the properties are to be taken as their individual properties then the share of the assessee is very well defined in the Registration Deed itself and there was no need to apply the profit sharing Ratio.*
6. *That the Learning and Assessing Officer has erred in making the addition of Rs. 2,70,385/- by rejecting the explanation of the assessee and evidence filed by him.*
7. *That the assessment order passed/confirmed by the lower authorities are arbitrary, illegal, illogical, unreasonable, and unwarranted with considering the facts and circumstances of the case and law on the point.*
8. *That the Appellant craves to leave and or amend grounds of appeal till the appeal is heard and disposed off.*

3. The brief fact of the case is that the notice u/s. 148 was issued against the assessee on 15.03.2013. In respect to the said notice, the assessee filed his return of income on 03.06.2013 declaring the NIL income as there was no income and only assessee purchased a property. The reasons are recorded by the Id. AO which is extracted as follows as per page no.2 of the assessment order:

"On the basis of information available in this office, it has been mentioned that above mentioned person has purchased a property for a worth of Rs.9,53,750/- having 1/4th share of total value of property at Rs.38,15,000 including stamp duty as per sale deed executed on 13.12.2005 from Sh. Srinderjit Singh Jasapal, S/O. Sh. Achhar Singh of Gurdaspur. After going through the records of this

office, it has been found that the above-named person has not filed his return of income for the assessment year 2006-07.

In view of the above facts, I have, therefore, reason to believe that an account of assessee's failure to make the return of income under section 139 of the Income Tax Act, 1961, income of Rs.9,53,750/- chargeable to tax has escaped assessment i.e. unexplained investment made by the assessee on account of investment made for the purchase of property having one fourth share along with other copartners at Rs.9,53,750/- during the previous year relevant to the assessment year 2006-07 within the meaning of section 147 on the Income Tax Act, 1961. In order to assessee the escaped income and any other income chargeable to tax which will come to notice during the course of assessment to be initiated by way of issue of notice under section 148 of the Income Tax Act, 1961.

Issue notice under section 148 of the Income Tax Act, 1961 for the assessment year 2006-07"

3.1 The assessee explained the source of investment during the assessment proceedings. Explanation of source of Rs.5,00,000, the assessee explained that the money was received from his father Sh. Sahib Dayal from the sale of brickkiln as per agreement to sell. The copy of agreement to sell was filed before the Lower Authorities. The total consideration of the said brickkiln was stated at Rs.14,18,000/- out of which 5,00,000/- was claimed to be received as advance from Rajinder Singh, Surinder Singh and Ashok Kumar as 1/3rd share each. The rest of amount at Rs.1,53,750/- was paid from the savings of the family. Thus, the assessee has totally

explained the share of assessee in purchase of property and this was only share in M/s. Real Estate.

3.2 The Id. AO asked for detail of the existence of the firm M/s. Real Estate, as the assessee was co-owner of the firm. The firm had deposited cash amounting to Rs.25,67,950/-. Considering the cash as undisclosed source, the assessee's share in firm @30% i.e. amount to Rs.7,70,000/- related to deposit in cash in firm's account was added back with the total income of the assessee. But the Id. AO did not add any amount from observations from his recorded reasons.

4. The counsel of the assessee has filed written submission and prayed for hearing by considering his written submissions. The grievance of the assessee is that the Id. AO added back the deposit of cash of firm, M/s. Real Estate with the assessee's total income. The deposit of cash of the firm should not be added with the total income of the assessee, who is partner of the firm. The separate assessment should be done in the firm account and accordingly the addition should be called for.

5. The Id. SR DR argued and relied on the order of Revenue Authorities.

6. After a thoughtful observation of the fact of the case we decided that the reopening was made u/s. 148 related to purchase of property amount to Rs.9,53,750/-. But after completion of assessment, the Id. AO had accepted the assessee's investment and had not added any amount related to source of funds for purchase of property. Suddenly the Id. AO found that assessee is co-owner of M/s. Real Estate. As per the Id. AO, in the account opening form of the firm in the bank the PAN which was mentioned by firm, was not verified from AST Module (IT data base). The Id. AO came in conclusion that PAN of the firm was fake, so the entire deposit in the bank account of the firm is added back as per the profit-sharing ratio of the partners and added back in the partner's hand. The Id. AO made gross violation of natural justice in this case. Without the assessment of the firm how the amount deposited in account of the firm was added back in the partner's hand. Further, the Id. AO fully deviated from reason recorded & the addition made in assessment. The Id. CIT(A) had not

adjudicated the issue in his order. The respectful observation of the judgment of Hon'ble Bombay High Court in the case of Commissioner of Income-tax-5, Mumbai v. Jet Airways (I) Ltd held that:

"Whether, however, if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee Here to found no infirmity in the order of Revenue Authorities".

The AO recorded the reason which warranted him to hold the belief that the income chargeable to tax has escaped assessment thereafter the Id. AO usurped the jurisdiction to reopen the assessment. When the income is foundation on which he based his belief of escapement of income is absent, so AO's usurpation of jurisdiction to reopen of assessment is legally untenable & so, null in the eyes of law. So, we quash the reassessment made by the Id. AO without jurisdiction. The addition to amount of Rs. 7,70,385/- be deleted accordingly.

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

Order pronounced in the open court on 14.07.2022

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order