

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 4678/DEL/2014	
	A.Y. : 2007-08	
KAMAL DHAWAN, C/O KAPIL GOEL, ADV., A-1/25, SECTOR-15, ROHINI, DELHI – 110 085 (PAN: AAKPD2880K)	VS.	INCOME TAX OFFICER, WARD 27(2), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Shri Kapil Goel, Advocate
Department by : Sh. Sudhiranjan Senapati, Sr. DR

Date of Hearing : 06-08-2015
Date of Order : 28-09-2015

ORDER

PER H.S. SIDHU : JM

This is an appeal filed by the Assessee is directed against the Order of the Ld. CIT(A)-XXIV, New Delhi dated 28.9.2012 for the asstt. year 2007-08.

2. The following grounds have been raised in the Appeal.

Validity of Reopening u/s. 148

"1. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not quashing the reopening action of the AO being made in contravention of jurisdictional conditions stipulated u/s. 147 to section 151 of the Act.

2. That on the facts and in the circumstances of the case and in law, from RTI reply dated 17.6.2014, it is admitted by AO that reasons were not communicated to appellant before conclusion of assessment proceedings which goes to the root of the matter and vitiates the entire proceedings.
3. That on the facts and in the circumstances of the case and in law, from reasons stated in RTI reply dated 17.6.2014, it is manifest that same do not amount to reasonable belief and there is total lack of application of mind and tangible material.
4. That on the facts and in the circumstances of the case and in law, appellant has not been provided the opportunity to rebut and confute the reopening and reasons recorded as per dictum of Apex Court in GKN Drive Shaft 259 ITR Page 19 thus nullifying entire proceedings.

Merits of the case

5. That on the facts and in the circumstances of the case and in law, Id. CIT(A) erred in not deleting the addition of Rs. 749,000/- made on basis of conjectures and surmises and suspicion and hearsay, whereas evidence on records adequately proves appellant's case.

Violation of Principles of Natural Justice

6. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not deleting the addition of Rs. 749,000/- made in violation of principles of natural justice as no adequate opportunity is provided to assessee to explain his case.

That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.”

3. The brief facts of the case are that in this case, a TEP was received from DG (Vigilance), New Delhi through CIT, Delhi-IX, New Delhi vide letter No. CIT-IX/Hqrs/TEP/2007-08/1604 dated 12.09.2007 that a bank locker no. 33 of Shri Kamal Dhawan and Smt. Anju Dhawan maintained with SBI, Subhash Nagar Branch, New Delhi was operated on 08.06.2006 and a cash of Rs. 7.49 lakhs, 800 grams jewellery and 3 property papers were found in it. In fact, an investigation was carried by the CBI, who carried out a search at the Bank Locker of Sh. Kamal Dhawan, the assessee. The locker contained cash amounting to Rs.7,49,000/-, approx. 800 grams of gold jewellery and documents pertaining to three properties i.e. shop no. 5 in Maya Enclave, Plot No. B-45, Sitapuri, Dabri and House No. 7/143, Subhash Nagar. The assessee stated that these three properties were purchased by him in the years 2000, 1999 and 1998 respectively. As regards the gold jewellery, he stated that most of it was received by his wife Smt. Anju Dhawan at the time of their marriage. The assessee gave a statement dated 14.06.2006, recorded u/s. 161 of Cr.PC. by Sh. Rajiv Wahi, Inspector, CBI, SCR-II, New Delhi. In the above statement, the assessee stated that he had

kept cash of Rs.7,49,000/- in his bank locker no. 33 of SBI Branch Subhash Nagar, which was collected by himself from the market and his friend Sh. Sanjay Sharan, resident of Janakpuri, for purchasing plywood core from Kashmir. He stated that the money was collected and kept in the locker one week before the search at his residence on 07.07.2005. The assessee further stated that his source of income was from running a Dhaba in Maya Enclave. He further stated that he earned approximately Rs. 3 to 4 lacs from the passport work which he did for nine years. He stated that he was filing his return of income showing business in the name of M/s. Dhawan Enterprises, which did not exist. The locker was opened on 8.6.2006 in the presence of the assessee, his wife Smt. Anju Dhawan, Sh. Rajiv Wahi, Inspector, CBI and Dy. Manager, Accounts in SBI Subhash Nagar, New Delhi Sh. Ravi Chopra. This information was passed on to the AO, who issued notice u/s. 148 for AY 2007-08 on 2.6.2009, since the assessment proceedings for that year had already been completed by that time. Thereafter, notice u/s. 143(2) dated 08.07.2009 was served on the assessee. In response, the assessee filed a copy of return which had already been filed for A.Y. 2007-08 declaring a total income of Rs.1,24,916/-. With regards to cash of Rs.7,49,000/-, the AO issued a query letter to the assessee, who replied that out of this amount Rs.2,50,000/- belonged to Sh. Sanjay Sharma, Rs.3,70,000/- belonged to Sh. Jatinder Pal Singh and Rs. 1,29,000/- belonged to him and his wife. The assessee also claimed that approx. 800 grams of jewellery found belonged to him and his wife. The AO issued letters u/s. 133(6) to Sh. Sanjay Sharma and Sh. Jatinder Pal Singh, whose statements were recorded by the AO on 13.12.2010. Both Sh. Sanjay Sharma and Sh. Jatinder Pal Singh admitted that they had given cash of Rs.2,50,000/- and Rs.3,70,000/- to the assessee for business purposes, but both of them were not aware that this cash was kept in locker no. 33 with

SBI, Subhash Nagar, New Delhi. The AO did not accept the explanations given by the assessee with regards to the cash found and added the amount of Rs.7,49,000/- to the income of the assessee as undisclosed cash receipts and assessed the income at Rs. 8,73,920/- vide order dated 24.12.2010 passed u/s. 147/143(3) of the Income Tax Act, 1961.

4. Aggrieved with the aforesaid assessment order dated 24.12.2010, Assessee was in appeal before the Ld. CIT(A), who vide impugned order dated 28.9.2012 has dismissed the appeal of the assessee.

5. Against the aforesaid order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

6. Ld. Counsel of the assessee reiterated the contention raised in the grounds of appeal wherein he stated that the reopening action of the AO and confirmed by the Ld. CIT(A) being made in contravention of jurisdictional conditions stipulated u/s. 147 to Section 151 of the Act. He further submitted that the from the Reply dated 17.6.2014, it was admitted by the AO that reasons were not communicated to assessee before conclusion of assessment proceedings which goes to the root of the matter and vitiates the entire proceedings and the reasons are not reasonable to believe and there is a total lack of application of mind and tangible material. In order to support this contention, the submitted that the assessee has not been provided the opportunity to rebut and confute the reopening and reasons recorded as per dictum of Apex Court in GKN Drive Shaft 259 ITR Page 19 thus nullifying entire proceedings. He further referred the various case laws of the Delhi High Court by which the present case of the assessee is covered including the case of Signature Hotel Pvt. Ltd. (2011) 338 ITR 51.

7. On the other hand, Ld. DR relied upon the order passed by the Ld. CIT(A) on the issue in dispute.

8. I have heard both the parties and perused the records. I find that the AO has recorded the reasons for belief that income has escaped assessment as under. The same is attached with the Paper Book filed by the assessee.

“Reasons for the belief that income has escaped assessment:”

- 1. An information has been received from CBI, New Delhi vide letter No. 3/6(a)2004 SCU/V/SCR.II/3015 dated 20.7.2007 that Shri Kamal Dhawan has kept the cash of Rs. 749,000/- and jewellery of 800 grams in locker No. 33, SBI, Subhash Nagar, New Delhi.*
- 2. On the basis of above information and perusal of asstt. records, it is found that assessee has not shown any cash in hand nor in the books of accounts even he has not shown any jewellery in the books of accounts.*
- 3. On the basis of information as per para 1 above, I have reason to believe that assessee has not disclosed true and correct particulars of his income and income has escaped assessment is likely to exceed more than Rs. 100,000. Notice u/s. 148 is required to be issued to assessee for asstt. year 2007-08.*

Sd/-

(S.P. Sachdeva)

ITO, Ward 27(2), New Delhi

9. I find that Assessee Sh. Kamal Dhawan has asked some information from the Income Tax Department under the Right to Information Act, 2005 and the Income Tax Department has replied the said information by passing an Order dated 17.6.2014 issued vide F.No. ITO/Ward27(2)/RTI/2014-15/32. For the sake of clarity, the contents of the order is reproduced as under:-

“The application from Sh. Kamal Dhawan (the applicant) has been received in this office on

23.5.2014 with request to supply following information.

In this regard, question wise reply in respect of this office is as under:-

<i>S.No.</i>	<i>Information/ Details required</i>	<i>Reply / Status</i>
<i>1.</i>	<i>Whether before issuing notice u/s. 148 for Asstt. year 2007-08, any reasons were recorded by Assessing Officer kindly reply in Yes or No.</i>	<i>Yes</i>
<i>2.</i>	<i>If answer is Yes, whether same were informed to the Assessee and whether a copy of said reasons were served on Assessee.</i>	<i>You have not made and any request to provide the same during assessment proceedings.</i>
<i>3.</i>	<i>Also provide copy of the said reasons recorded alongwith accompanying material.</i>	<i>Copy attached.</i>

In case you wish to file an appeal against this order, you may file the same within thirty days from the receipt of this letter before the appellate Authority i.e. the Jt. CIT, Range-27, New Delhi at Room No. 1806, 18th floor, Pratyaksh Kar Bhawan, E-2 Block, Dr. SPM Civic Centre, Minto Road, New Delhi – 110 002.

*Sd/-
(Suresh Kumar)
Central Public Information
Officer & Income Tax Officer,
Ward 27(2), New Delhi*

9.1 From the above, I find considerable cogency in the assessee's counsel submission that was not given opportunity to rebut and confute the reopening and reasons recorded as per dictum of Apex Court in GKN Driveshafts (India) Ltd. vs. ITO [2003] 259 ITR 19 which nullifying entire proceedings. In this case, the Hon'ble Apex Court has held as under:-

"That after the receipt of the notice under section 148 of the I.T. Act, the assessee must file the return, but he is entitled to ask for the reasons for issuance of a notice. The Supreme Court has further held that when the reasons are asked for, the AO is bound to furnish the reasons within a reasonable time. Thus the sine qua non for issuance of a notice under section 148 of the I.T. Act is recording of the reasons by the AO. In our view recording of the reasons and furnishing copy thereof to the Assessee when asked is not an empty formality. If the reasons recorded and a copy thereof required to be furnished to the assessee on demand the assessee would be entitled to show that the reasons recorded were factually incorrect. Furthermore, the power of the AO to proceed with the Assessment proceedings would be limited by the reasons recorded by him. He would be assessing or reassessing the income of the assessee only

on the reasons recorded by him and cannot travel beyond the reasons and continue the proceedings of assessment on different reasons.”

9.2 In the background of the aforesaid discussions and precedent relied upon, I am of the considered view that only effective ground in this appeal is reassessment proceedings u/s. 148 of the I.T. Act, the Assessee has reiterated that reassessment proceedings are illegal and without jurisdiction in the absence of any tangible evidence or material in respect of any undisclosed income and recording of requisite satisfaction in respect of any such undisclosed income. After hearing both the parties on the issue in dispute as well as after going through the orders passed by the Revenue Authorities alongwith order dated 21.7.2011 passed by the Hon'ble Jurisdictional High Court in the case of Signature Hotels P. Ltd. vs. Income Tax Officer [2011] 338 ITR 0051 wherein the Hon'ble High Court has held matter as under:-

“Held, allowing the petition, that the reassessment proceeding were initiated on the basis of information received from the Director of Income Tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lacs during the financial year 2002-03 as stated in the

Annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of Section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed."

10. In view of above, I am of the considered view that the above issue is exactly the similar to the issue involved in the present appeal and is squarely covered by the aforesaid decisions of the

Apex Court in GKN Driveshafts (India) Ltd. vs. ITO [2003] 259 ITR 19 and Hon'ble High Court of Delhi decision delivered in Hotel Signatures Ltd. (Supra). Hence, respectfully following the above precedents, I decide the legal issue in dispute in favour of the Assessee and against the Revenue and accordingly quash the reassessment proceedings. The other issues are not dealt with as the same have become academic in nature.

11. In the result, the Assessee's Appeal stands allowed.

Order pronounced in the Open Court on 28/9/2015.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date 28/9/2015

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches