

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

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER  
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 65 & 140/Asr/2019  
Assessment Year: 2009-10**

Smt. Pramjit Kaur W/o Pavittar Singh VPV Haripur, Tehsil Phillaur. [PAN: DEBPD7101F] <b>(Appellant)</b>	<b>Vs</b> .	ITO-Ward(2) Phagwara.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Y K. Sud, CA</b>
<b>Respondent by</b>	<b>Sh. S.M. Surendranath, D. R.</b>

<b>Date of Hearing</b>	<b>23.09.2021</b>
<b>Date of Pronouncement</b>	<b>14.10.2021</b>

**ORDER**

**Per Dr. M.L. Meena, A.M.:**

These appeals filed by the assessee directed against the order of Ld. Commissioner of Income Tax (Appeals), in respect of Assessment Year 2009-10 confirming the addition and consequential penalty u/s 271(1)(c) of the Act.

2. The assessee has raised the following grounds of appeal in I.T.A. No. 65 /Asr/2019:

:

*“A. That the CIT(A) was not justified in sustaining of the action of the AO in initiating the reassessment proceedings u/s 147/148 of Income Tax Act.*

*B. That the CIT(A) overlooked the fact that ITO Ward-2 had no jurisdiction to frame the assessment. Hence the assessment had been framed without any jurisdiction of the AO and deserves to be quashed.*

*C. That CIT(A) further failed to appreciate that no notice u/s 148 was ever served upon the assessee. Hence the total proceedings were void ab initio.*

*D. That the CIT(A) further failed to appreciate that no notice u/s 143(2) & 142(1) were served upon the assessee. Hence the assessment framed u/s 144/147 deserves to be quashed.*

*E. That CIT(A) has wrongly sustained the addition of Rs. 7960000/- made by the ITO u/s 69/69A and while sustaining he failed to appreciate the submissions filed by the assessee.*

*F. The order of CIT(A) & ITO are against the law and facts of the case.”*

In ITA No. 140/Asr/2019, the assessee has taken the following grounds of appeal:

A. That the CIT(A) was not justified in sustaining the penalty of Rs. 2597970/- levied by the ITO u/s 271(1)(c).

B. That the CIT(A) has not granted proper opportunity while passing the order which is against the natural justice and therefore the order of CIT(A) cannot be sustained.

C. That CIT(A) failed to appreciate that the penalty was levied by AO without giving proper opportunity and notice to the assessee and penalty deserved to be quashed.

D. That both AO & CIT(A) failed to appreciate the explanation of the assessee filed in the quantum proceedings and no falsity could be pointed out by both the authorities in the explanation of the assessee filed before the CIT(A).

E. That the order of CIT(A) & AO are against the law and facts of the case.

3. Briefly, facts of the case are that during the year, on the basis of AIR information notices u/s 133(6) were alleged to be issued to the assessee but the same were never served upon her as she was being a British Citizen living in England. On the basis of AIR information ITO Ward-4 Phagwara issued a notice u/s 148 by recording reasons as per page 2 of the Asst. Order. Subsequent to issue of the notice u/s 148 of the act, the ITO Ward-4 Phagwara transferred the file to ITO Ward-2 Phagwara, who had the territorial jurisdiction of Phillaur Tehsil, an admitted fact by the ITO, Page.2 of her Asst. Order. The notice was never served upon on the assessee nor any verification letters were received since the assessee was

NRI and living in UK. Thereafter notices u/s 142(1) & 143(2) were issued by the ITO Phagwara, Ward-2. The ITO framed the assessment by making an addition of Rs. 7960000/- as unexplained investment in property u/s 69. The order of the ITO was being challenged before in appeal before the Ld. CIT (A) who has confirmed the addition by observing vide para 5.2 of the impugned order as under:

“5.2 I have gone through the assessment order passed by the AO and submissions made by the appellant and find that an addition of Rs. 79,60,000 on account of unexplained investment in immovable property u/s 69/69A of the IT Act has been made by the AO. The assessment proceedings were initiated by the AO u/s 147 of the IT Act based on the information available on record with regard to investment of Rs. 79,60,000 made by the appellant for purchase of agricultural land measuring 48 kanals in Vill. GannaPind, Tehsil Phillaur from Sh. Pavittar Singh S/o Sh. Sarwan Singh, attorney holder of Sh. Bhajan Singh. During the course of assessment proceedings, no compliance was made by the appellant and in the absence of any evidence with regard to the sources of investment, the total amount of investment was treated as income from unexplained sources for the year under consideration.

5.3 The appellant has in the course of present proceedings submitted an affidavit from Sh. Pavittar Singh husband of the appellant to the effect that he was attorney holder of Sh. Bhajan Singh (his brother) and no sale consideration was received for transfer of land. The appellant has also filed an affidavit from brother of the appellant Sh. Bhajan Singh to the effect that this property was transferred on settlement of family property.

5.4 I have carefully considered the contentions of the appellant and also gone through the sale deed which has been registered with the Sub Registrar on 1 1.02.2009 and find that it is specifically stated on page 2 of the sale deed that property has been sold for Rs. 75 lakh and total amount

has already been received in cash. Therefore, the contention of the appellant that no consideration was actually received as the transaction was between husband and wife is found to be without any merit. The land was owned by the brother-in-law of the appellant and has been transferred to the name of the appellant. The affidavit filed by the appellant is of self serving nature and thus cannot be relied upon. The fact of having received sale consideration in cash is specifically mentioned in the sale deed and there is no reason to disregard the same.

5.5 The contention of the appellant does not hold good as the land if it was received without any consideration, the same fact should have been mentioned in the sale deed itself and stamp duty is payable even in such cases as per the circle rate of the property to be transferred. There is no bar under any legal provision for registration of transfer of property stating that the same has been received as a gift without any consideration. Thus, there is no reason to disbelieve what has already been stated in the legal document. Therefore, I hold that appellant has not been able to substantiate the sources of investment made for purchase of property. Accordingly, addition of Rs. 79,60,000 made by the AO on account of unexplained investment is confirmed.

4. The Ld. Counsel Sh. Y. K. Sood for the assessee submitted that the CIT(A) completely ignored the settled legal position while sustaining the action of the ITO. He contended that this is an admitted fact that the notice u/s 148 of the act, was issued by the ITO Ward-4 Phagwara and subsequently transferred the file to ITO Ward-2 Phagwara, who had the territorial jurisdiction of Phillaur Tehsil, as evident from letter of the AO wherein she has agreed in her comments to the Written submissions of the assessee in para 3 of her remand report letter to the CIT(A) which has

been reproduced by the CIT(A) on page 8 of impugned order. The Ld. AR contended that the action of the ITO for initiating the proceedings u/s 148 was challenged before the CIT(A) on Jurisdictional grounds and on the ground of non-service of notice issued u/s 148 of the Income Tax Act. He contended that the AO who records the reasons and issues a notice u/s 148 should be a Jurisdictional AO and also the competent authority to framed the assessment u/s 143/147. In support, he placed reliance on the following decisions:

1. Raghbir Singh Vs ITO Ward-3 Phagwara ITA No.599/Asr/2017 Page 1 to 7 of compilation of Judgments.
2. Gaurav Joshi Vs ITO 197 TTJ Asr 946 Page 16 to 20 of compilation of judgments
3. Jawahar Lal Aggarwal Vs ITO 119TTJ(Agra)870 Page No 10-15 of compilation of judgments
4. Dr. Mrs. K.B. Kumar Vs ITO 131 TTJ 511 Page No.8-9 of compilation of judgments
5. Manjit Singh Vs DCIT(Intl Taxation)207TTJ(Chd)1041 Page 21-28 of compilation of judgments.

**5.** Per contra, the Ld. DR stands by the impugned order, though he has admitted the fact on verification of assessment records that undisputedly the ITO Ward-4 Phagwara who had no Jurisdiction over the case recorded

the reasons and issued the notice u/s 148 and thereafter transferred the file to the Jurisdictional ITO i.e. Ward-2 Phagwara who framed the assessment.

6. Having heard rival contentions, perusing the relevant documents, assessment record and case law cited, it is admitted fact that ITO Ward-4 Phagwara, had no Jurisdiction over the case who has recorded the reasons and issued the notice u/s 148 and thereafter transferred the file to the Jurisdictional ITO i.e. Ward-2 Phagwara who in turn framed the assessment. The issue of jurisdiction in this regard is now settled law by orders of the Amritsar Bench, Agra Bench, Chandigarh Bench and Delhi Bench of ITAT where it has been held that firstly the AO who records the reasons and issues a notice u/s 148 should be a Jurisdictional AO and secondly the assessment also has to be framed by the same AO who initiated the proceedings u/s 147, 148. In our view, the assessment order passed by the ITO, Ward-2, Phagwara is without jurisdiction and the same is not in accordance with law, hence required to be quashed. The finding of the Ld. CIT(A) on the issue of jurisdiction and thereby confirming the assessment order are unwarranted and perverse and such a finding against the settled position of law can not be approved.

7. In the above view, we accept the grievance of the assessee genuine. We hereby quash the assessment order and the impugned order of the CIT(A) for the aforesaid reasons.
8. The consequential penalty order u/s 271(1)(c) would become infructuous in view of dismissal of quantum appeal.
9. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 14.10.2021**

Sd/-  
(LalietKumar)  
Judicial Member  
*doc\**

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