

## No reassessment just because ITR wasn't reflecting in IT system of dept. if it was filed manually by assessee

**Summary – The Jaipur ITAT in a recent case of Narain Dutt Sharma, (the Assessee) held that where AO reopened assessment on ground that he had deposited certain amount in bank account which was not reflected in return as per IT System of department, in view of fact that assessee had filed return manually which had been duly acknowledged and in said return assessee had furnished proper details in respect of contractual receipts deposited in bank account, impugned reassessment proceedings deserved to be quashed**

### Facts

- For relevant year assessee filed its return declaring certain taxable income. After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that assessee had deposited certain amount in bank account the source of which was not explained.
- The Assessing Officer at the time of recording reasons for reopening the assessment mentioned that amount deposited in bank could not be verified because assessee had failed to file return of income for relevant year as same was not reflected in the IT system of Department.
- The Assessing Officer thereupon passed reassessment order making addition of amount deposited in bank accounts to assessee's taxable income.
- The assessee filed instant appeal raising a plea that it had filed return for relevant year manually. As regards merit of the case, the assessee submitted that amount deposited in bank account represented its contractual receipts duly disclosed in return of income filed under section 44AD.

### Held

- In the instant case, the notice under section 148 in exercise of powers under section 147 has been issued after the expiry of period of four years from the end of the impugned assessment year *i.e.*, Assessment year 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year.
- The contention of the revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impugned assessment year and the same was not reflected in the IT system. *Per contra*, the assessee submitted that return of income for the assessment year 2007-08 was filed manually. It is relevant to note that the return of income so filed manually is with ITO who is the same officer who has subsequently issued the notice under section 148 and therefore, revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of

reassessment proceedings and where there is no fault on the part of the assessee in filing his return of income.

- Interestingly, during the course of reassessment proceedings, the ITO in his reassessment order stated clearly in the return of income filed under the head business, assessee has declared income under section 44AD. It is relevant to note the said return of income was not filed in pursuance to issuance of notice under section 148 but the same was the return of income which was originally filed by the assessee under section 139 of the Act. It is therefore clear that the whole foundation of the revenue's reasoning is contradictory and self-defeating where at the time of issuance of notice under section 148, it says that the assessee has failed to file his return of income and subsequently, during the proceedings under section 147, it admits that the assessee has filed his return of income originally under section 139. On this ground itself, the assumption of jurisdiction under section 147 cannot be sustained and the subject proceedings are liable to be quashed.
- The reasons recorded by the ITO refers to information gathered from AIR database of the revenue department whereby certain data/information regarding purchase of units and its linkage with the assessee's saving bank account during the financial year 2006-07 has been reported by the concerned Bank. As per ITO, said information is not verifiable for the reason that assessee has failed to file its return of income for the subject assessment year as per the revenue's department IT system. The basis of formation of belief by the ITO that the assessee's income for the impugned assessment year has escaped assessment is therefore the receipt of certain AIR information from an external source *i.e.*, banking institution with which the assessee maintains his saving bank account and the fact that assessee has failed to file his return of income for the impugned assessment year.
- In the instant case, pursuant to receipt of AIR information from an external agency that cash has been found deposited in assessee's savings bank account, there has been no further examination by the Assessing Officer as to whether the cash so found deposited in the assessee's bank account has been reflected or has any connection with the reported turnover in the return of income so filed by the assessee. The reason for the said action on part of the Assessing Officer is not hard to found out as the Assessing Officer has concluded that the assessee has not filed any return of income after looking at the Department's IT system and without verifying the physical records maintained by the department which shows that the assessee has filed the return of income. When such a conclusion has already been reached, where is the question of examination of such information and its linkage with the return of income.
- There is a clear contradiction on part of the Assessing Officer to hold that assessee has not filed his return when the records so filed shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the Assessing Officer has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a *prima facie* opinion that income of the assessee had escaped assessment for the impugned assessment year. In absence of necessary nexus between the tangible material and formation of belief, the reassessment proceedings cannot be sustained.

- In light of above discussions, the jurisdiction required as provided in section 147 read with the proviso has not been fulfilled in the instant case. In the result, the reassessment proceedings are hereby quashed and set-aside.
- In the result, the appeal of the assessee is allowed.