

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. R. K. Panda, Accountant Member

ITA No. 17/Del/2020 : Asstt. Year : 2011-12

Ranjana Aggarwal, 86, Akashneem Marg, DLF Phase-2, Gurgaon, Haryana-122002	Vs	Income Tax Officer, Ward-47(5), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAJPA6891Q		

Assessee by : Sh. Pulkit Saini, Adv.

Revenue by : Sh. Om Prakash, Sr. DR

Date of Hearing: 29.03.2022

Date of Pronouncement: 06.04.2022

ORDER

This appeal filed by the assessee is directed against the order dated 05.12.2019 of Id. CIT(A)-16, New Delhi relating to A.Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 24.09.2011 declaring total income of Rs.1,28,000/-. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 27.03.2014 determining the total income of the assessee at Rs.3,51,620/-. Subsequently, the AO reopened the assessment by recording the following reasons:

"The undersigned has clear evidences that the assessee has made transactions during the relevant assessment year. In view of the above facts, I have reason to believe that an income of Rs.39,76,192/- during the year which was chargeable to tax has escaped assessment. Accordingly, in this case, no scrutiny assessment

was made and the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above.

It appears that capital gain on the sale of property is likely to be more than Rs. 1 lac and hence I have reasons to believe that there is escapement of income of more than Rs. 1 lac."

3. In response to the same, the assessee intimated the AO that the original return already filed may be treated as return filed in response to notice u/s 148. The assessee requested for supply of the reasons recorded for reopening which were provided by the AO. The assessee filed objections to such reopening which was disposed off by the AO by passing a speaking order. Thereafter, the AO passed the order u/s 147/143(3) by making addition of Rs.39,76,192/- as undisclosed income of the assessee.

3.1 Before the Id. CIT(A), the assessee apart from challenging the addition on merit challenged the validity of the reassessment proceedings. The Id. CIT(A) called for a remand report from the AO. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id. CIT(A) upheld the validity of the reassessment proceedings and also upheld the addition in merit.

4. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

"1. The CIT(A) was not justified impliedly rejecting the ground of appeal argued that the notice issued u/s 148 was invalid for lack of inherent jurisdiction.

2. the CIT(A) was not justified impliedly rejecting the ground of appeal argued that the initiation of proceedings u/s 147 were barred by limitation.

3. The CIT(A) was not justified in holding that reassessment proceeding were not initiated on change of opinion.

4. The CIT(A) erred in holding that the value of the land declared for stamp duty purposes was more than the sale consideration mentioned in sale deeds.

5. The CIT(A) erred in facts and law in confirming the addition of Rs.39,76,192/-."

5. The Id. Counsel for the assessee at the outset drew the attention of the Bench to the reasons recorded, copy of which is placed at page no. 36 of the paper book. He submitted that the assessment year involved in this case is assessment year 2011-12 and the notice u/s 148 was issued on 29.03.2018 which is beyond a period of 4 years from the end of the relevant assessment year. The original assessment was completed u/s 143(3) and in the reasons recorded there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment. Relying on various decisions, he submitted that when the original assessment is completed u/s 143(3) and the reassessment proceedings have been initiated after a period of 4 years from the end of the relevant assessment year and there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, such reassessment proceedings initiated are *void ab initio* in view of the first proviso to Section 147. He accordingly submitted that on this ground itself, the reassessment proceedings being bad in law has to be quashed.

6. The Id. DR, on the other hand, heavily relied on the order of the Id. CIT(A).

7. I have heard the rival arguments made by both the sides, perused the orders of the AO and the Id. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the original assessment in this case was completed u/s 143(3) on 27.03.2014, copy of which is placed at page nos. 1 to 13 of the paper book and the assessment year involved in A.Y. 2011-12. I find the AO in the instant case initiated reassessment proceedings by recording reasons on 29.03.2018 and the copy of the reasons so recorded are placed at page 36 of the paper book. A perusal of the reasons clearly shows that there is absolutely no allegation whatsoever by the AO of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment.

8. I find the Hon'ble Delhi High Court in the case of JSRS Udyog Ltd. Vs. ITO reported in 313 ITR 321 and relied on by Id. Counsel while quashing the re-assessment proceedings has observed as under:

"The Assessing Officer issued the notice under section 148 of the said Act on March 28, 2008, beyond the period of four years. As such, the proviso to section 147 would become applicable. Under the proviso itself, it is necessary that before any action is initiated, it must be pointed out that the assessee had failed to make a true and full disclosure of all the material facts. In the reasons recorded in writing for reopening the case under section 148 of the said Act, there is no allegation that the petitioner did not

make a full and true disclosure of all the material facts. In fact, in our view, the reasons recorded are quite general and vague as would be apparent from a plain reading of the same."

9. I find the Hon'ble Delhi High Court in the case of CIT Vs. Viniyas Finance & Investment (P) Ltd. reported in 357 ITR 646 and relied on by Id. Counsel for the assessee has observed as under:

"7. On going through the purported reasons we find that there is no mention of the respondent-assessee not having made a full and true disclosure of the material facts necessary for assessment. On the contrary the purported reasons indicate that the amounts mentioned therein had been shown in the books of accounts as receipts from the companies mentioned therein. We also note that at serial No.5 of the list of companies from which amounts have been allegedly received, the name of the assessee has been shown. This means that the assessee received the received money from itself, which can hardly be an allegation in this case.

8. For the foregoing reasons we feel that the Tribunal has approached the matter in the correct perspective and has held the issuance of the notice under Section 148 dated 30.7.2007 to be bad in law and so, too, all the proceedings pursuant thereto. There is no reason for us to interfere with the impugned order inasmuch as no substantial question of law arises for our consideration."

10. Respectfully following the decisions of the Hon'ble Jurisdictional High Court cited (supra), I hold that the reassessment proceedings initiated by the AO and upheld by the Id. CIT(A) are not in accordance with law. I, therefore, quash the same and the grounds raised by the assessee on the issue of validity of reassessment proceedings are allowed. Since, the

assessee succeeds on legal ground, the various other grounds challenging the addition on merit are not being adjudicated being academic in nature.

11. In the result, the appeal filed by the assessee is allowed.
Order Pronounced in the Open Court on 06/04/2022.

Sd/-

(R. K. Panda)
Accountant Member

Dated: 06/04/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR