

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI O. P. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 5747/DEL/2018 (A.Y 2008-09)**

Pankaj Sapra, H-1481, 1 <sup>st</sup> Floor, C. R. Park, New Delhi – 110 019. (PAN : BBOPS 2128 D)  <b>(APPELLANT)</b>	Vs	Income Tax Officer, Ward – 23(2), New Delhi.  <b>(RESPONDENT)</b>
---	----	---

<b>Appellant by</b>	<b>Sh. R. S. Singhvi, C.A.</b>
<b>Respondent by</b>	<b>Shri S. N. Meena, Sr. D.R.</b>

<b>Date of Hearing</b>	<b>21.11.2019</b>
<b>Date of Pronouncement</b>	<b>22.11.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Assessee against the order of the Commissioner of Income Tax [Appeals]-31, New Delhi dated 31.07.2018 for Assessment Year 2008-09.

2. The Grounds of appeal are as under :-

- 1(i) *“That on the facts and circumstances of the case and under the law, the Assessing Officer has wrongly assumed jurisdiction u/s. 148 without proper appreciation of facts, recording of satisfaction and requisite approval in terms of provisions of sec. 151 of the Act.*
- (ii) *That there is no case of any income escaping assessment and whole basis of reassessment is illegal and without jurisdiction.*

- 2(i) *That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs.27,27,350/- as unexplained investment in terms of provisions of sec. 69 of I.T. Act, 1961.*
- (ii) *That there is no case of any unexplained investment and finding and conclusion of the CIT(A) is without proper appreciation of facts, application of mind and opportunity to the appellant.*
- (iii) *That addition of Rs. 27,27,350/- is highly arbitrary and unjustified.*
- 3(i) *That CIT(A) is also not justified in confirming addition of Rs. 23,48,615/- as unexplained cash deposit in terms of provisions of sec. 68 of the I.T. Act, 1961.*
- (ii) *That there is no factual or legal basis for alleged cash deposit of Rs. 23,48,615/- and Assessing Officer has considered the same in arbitrary manner without any reference to bank account or any other material.*
- (iii) *That impugned addition is highly arbitrary, unjustified and merely based on presumption and surmises.*
4. *That the assessee crave leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.*
5. *That orders of the lower authorities are not justified on facts and same are bad in law.”*

3. The assessee carried on business as a property consultant. The return of income was filed on 25.02.2010 declaring income of Rs.1,25,400/- and the same was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently, the case was re-opened and a notice dated 26/03/2013 u/s 148 of the Income Tax Act, 1961 was issued on the basis of the information received from Addl. Director Income Tax (Inv.) that the assessee has deposited cash of Rs.23,48,615/- and made unexplained investment of Rs. 27,27,350/-. The reasons recorded by the Assessing Officer are extracted as under:

*Reasons recorded for initiating proceedings u/s. 148 of the IT Act, 1961 in the case of Sh. Pankaj Sapra (BBOPS2128D) for the A.Y. 2008-09*

*The Addl. Director Income Tax (inv.), Unit-V, New Delhi vide his letter F.No. Addl. DIT (Inv.)/U-V/2011-12/251, dated 16.03.2012 had sent a report in the case of Sh. Pankaj Sapra.*

*As per the investigations made, the assessee had deposited unaccounted cash in his Bank account and also made large investment in assets. The details are as follows:-*

1. *Unexplained cash deposit:-*  

A.Y. 2008-09	Rs. 23,48,615/-
--------------	-----------------
2. *Unexplained investments:*                      Rs. 27,27,350/-

*In view of the above mentioned facts, the unexplained cash deposits and unexplained investments are liable to tax u/s. 68 & 69 of the Income Tax Act, 1961. The income has escaped assessment in the case of Sh. Pankaj Sapra for A.Y. 2008-09 to the extent of Rs. 50,75,965/-, as per the provisions of the Income Tax Act, 1961.*

*In view of the above mentioned facts, I have reason to believe that income to the tune of Rs. 50,75,965/- has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Accordingly, necessary permission/approval under section 15(2) of the Income Tax Act, 1961 may kindly be accorded for issuance of notice u/s 148 of the Income Tax Act, 1961 for A.Y. 2008-09.”*

Subsequently, the reassessment proceedings u/s 147 were completed vide order dated 19/03/2014 at an income of Rs. 52,01,510/- after making addition of Rs. 50,76,110/- being Rs. 23,48,615/- on account of unexplained cash deposits u/s 68 of the Act and Rs. 27,27,350/- as unexplained investments u/s 69 of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards Ground No.1 relating to validity of notice u/s 148 and assumption of jurisdiction u/s 147 of the Act, the Ld. AR submitted that the Assessing Officer initiated the reassessment proceedings merely on the basis of information received from Additional Director of Income Tax (Investigation), New Delhi. The Ld. AR further submitted that the Assessing Officer without conducting any enquiry / investigation in respect of cash deposits and agreement to sale entered into by the assessee has presumed that the income has escaped assessment. However, as per the facts of the case and based on relevant bank account, there is no case of cash deposits as referred to in the

reasons recorded by the Assessing Officer. The Ld. AR pointed out the relevant bank account and its details which were produced before the Assessing Officer as well as CIT(A). The Ld. AR further submitted that in fact on the identical grounds, proceedings u/s 148 relating to A.Y. 2007-08 was set aside by the Tribunal vide order dated 28.03.2019 being ITA No.4253/Del/2018. The Ld. AR further submitted that there are various decisions of Jurisdictional High Court in respect of reasons recorded on the basis of wrong facts and the Hon'ble High Court held that there is no justification for assuming Jurisdiction u/s 148 of the Act. In this connection, the Ld. AR relied upon the following decisions:

- i. Sh. Inderjeet Vs. ITO (ITA No.2740/D/18) (Delhi ITAT) (03.12.2018)
- ii. CIT v. Suren International P. Ltd. [2013] 357 ITR 24 (Del)
- iii. Pr. CIT v. SNG Developers Ltd. (Delhi HC) (ITA 92/2017) (12.07.2017)
- iv. High-tech Construction P. Ltd v. ITO (ITA No.1605/D/19) (ITAT Delhi) (22.03.2019)
- v. Sh. Jagat Singh v. ITO (ITA No.2749/D/18) (Dated 04.09.2018) (ITAT, Delhi)
- vi. Maveric Electronics (P) Ltd. v. ITO (Delhi ITAT) (ITA No.1835/D/14) (21/03/2017)

6. As regards Ground No.2 relating to an addition u/s 69 of the Act on account of unexplained investment of Rs.27,27,350/-, the Ld. AR submitted that Shri S. N. Arora (Father of the assessee) entered into a collaboration agreement in respect of property no. H-1481, C.R. Park, New Delhi with Sh. Nilamber vide the agreement dated 13.09.2005 for a consideration of Rs. 56,50,000/- and as such an advance of Rs. 46,50,000/- was paid by Sh. S. N. Sapra / Arora. The Ld. AR submitted the collaboration agreement during the course of hearing which was also before the CIT(A). In fact Assessing Officer in case of Sh. S N Sapra has made addition of Rs.46,00,000/- as unexplained investment in A.Y. 2006-07. The Ld. AR further submitted that due to non-compliance of the terms & conditions of the collaboration agreement, the aforesaid collaboration agreement was cancelled by Sh. S N Sapra & Sh. Nilamber and the arrangement was made between the parties to adjust the

advance of Rs. 46,50,000/-. Subsequently, on 13/02/2008, Sh. Pankaj Sapra i.e. assessee along with Smt. Daya Sapra i.e. Mother of the assessee purchased rights of second floor with terrace that of property mentioned hereinabove vide sale deed for a consideration of Rs. 27,27,350/-. Similarly, on 14/02/2008, Smt. Daya Sapra along with Smt. Kamlesh Gupta having 50% share each purchased first floor from sale property from Sh. Nilamber vide agreement to sell for a consideration of Rs. 27,27,350/- in joint ownership. The Ld. AR further submitted that the balance amount of Rs. 5,58,975/- [46,50,000 - 27,27,350 - 13,63,675] was received by Sh. S. N. Sapra from Sh. Nilamber in full and final settlement of the transaction. The assessee has submitted memorandum of understanding before the Revenue authorities. The Ld. AR further submitted that the assessee has not made any investment and as such the complete transaction is related to the collaboration agreement entered into by Sh. S N Sapra and Sh. Nilamber as per mutual settlement. Moreover, the Assessing Officer has already made an addition of Rs. 46,00,000/- in the case of Sh. S N Sapra for A.Y. 2006-07 by passing re-assessment order u/s 147 of the Act and accordingly, the impugned addition is in the nature of double addition.

7. As regards Ground No.3 relating to addition u/s 68 of Rs. 23,48,615/- on account of unexplained cash deposits in the bank accounts, the Ld. AR submitted that cash deposits in the bank accounts is only to the extent of Rs. 60,835/- and as such whole basis of addition is highly arbitrary and without any basis. The Ld. AR further submitted that the assessee has taken a loan of Rs.13,00,000/- from Sh. Arun Gupta and received two cheques of Rs. 3,00,000/- and Rs.10,00,000/- respectively and the same were duly deposited in the bank account of the assessee. However, the cheque of Rs.10,00,000/- was not cleared due to insufficient balance in the account of Sh. Arun Gupta and infact, a new cheque of Rs. 10,00,000/- was given by Sh. Arun Gupta to the assessee. Thus the total deposits in the form of cheques was only to the extent of Rs. 13,00,000/-. The Ld. AR further submitted that the Assessing

Officer in the remand report dated 01.05.2008 made an observation that the returned cheque of Rs.10,00,000/- has to be considered. The CIT(A) ignored the said observations and upheld the additions made in the assessment order.

8. The Ld. DR, as regards Ground No.1 submitted that the reasons are properly drafted and there is a proper satisfaction given by the Assessing Officer for reopening the matter. As regards Ground No.2, the Ld. DR submitted that the addition u/s 69 on account of unexplained investment has duly been added, as the fact remains that before the Assessing Officer, the assessee could not established any direct nexus about the investigation. As regards Ground No.3 the Ld. DR submitted that the addition u/s 68 on account of unexplained cash deposits in the bank account was not properly demonstrated before the Assessing Officer, therefore, the addition was properly made.

9. We have heard both the parties and perused all the materials available on record. The issue relating to proceedings initiated u/s 148 whether the same is valid or not, has already been decided in assessee's own case for A.Y. 2007-08 by the Tribunal. The Tribunal held as under:

*"8. I have considered the rival submissions made by both the sides and perused the orders of the authority below. I find the AO on the basis of the information received from the investigation wing of the Department that the assessee has made cash deposit of Rs. 4,97,452/- reopened the assessment by issuing notice under section 148 and thereafter made addition of Rs. 4,97,452/- to the total income of the assessee by invoking the provisions of Section 68 of the I.T. Act, 1961. I find the learned CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned counsel for the assessee that there is complete non application of mind of the AO while recording the reasons and he has not verified the facts properly and the reopening was made on the basis of report of the investigation wing. Further the deposits in the bank accounts are fully explained and therefore no addition is called for.*

*9. I find force in the above arguments advanced by the learned counsel for the assessee. A perusal of the notice issued under section 148 shows*

*that the notice has been issued in a very casual manner, Clause 3 of the notice reads as under:-*

*“Notice under section 148 of the Income Tax Act, 1961.*

*3. This notice is being issued after obtaining the necessary satisfaction of the commissioner of Income Tax ...../the Central Board of Direct Taxes.”*

*10. Similarly, a perusal of the bank account maintained with Vijaya Bank account no. 004427, copy of which has been placed at page no. 25 and 26 of the paper book, shows that an amount of Rs. 2,50,000/- was by way of clearing of Cheque No. 719443 and not cash deposit. If the same is excluded from the total deposits made during the year from the two bank accounts then there is no such cash deposit of Rs. 4,97,452/- in the two bank accounts maintained by the assessee. Therefore, I find force in the argument of learned counsel for the assessee that the reasons recorded are either vague reasons or not based on ITA No. 4253/Del/2018 & ITA No. 4254/Del/2018 6 any application of mind. In any case, the assessee has explained the source of each deposit made both in cash as well as in cheque and therefore, even on merit also no addition is called for. I, therefore, set aside the order of the learned CIT(A) and direct the AO to delete the addition. The ground raised by the assessee is allowed.”*

Thus the reasons given by the Assessing Officer in notice u/s 148 of the Act are merely mechanical and have not given any concrete reasons as to why the re-opening is justified. As regards Ground No. 2 relating to addition u/s 69, the assessee has given a detail of investments and the fact that the addition of the said amount is already made in the hands of the father of the assessee does not sustain in the hands of the assessee. As regards Ground No.3 relating to addition u/s 68 in respect of cash deposits, the Assessing Officer himself admitted that the cheque of Rs.10,00,000/- has been returned back which was not at all considered by the CIT(A). The reasons are mechanical as all the investment as well as the loans were demonstrated by the assessee as per the audited balance sheet itself. Therefore, the Assessing Officer was not right in reopening the assessment which is bad in law and without any justified reasons for the additions. Thus, the appeal of the assessee is allowed.

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

**Order pronounced in the Open Court on 22<sup>nd</sup> day of November, 2019.**

Sd/-

**(O. P. MEENA)**  
**ACCOUNTANT MEMBER**

Dated: 22/11/2019  
*Priti Yadav, Sr. PS \**

Copy forwarded to:

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

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR

ITAT NEW DELHI