

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.6133/Del/2019
Assessment Year: 2010-11

Sangeeta Garg, Flat No.6, Shree Radha Apartments, Plot No.3, Sector-9, Dwarka, New Delhi.	Vs.	ACIT, Ward-62(5), New Delhi.
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PAN: AFMPG1036R

(Appellant)

(Respondent)

Assessee by	:	Shri Nikhil Goyal, Advocate & Shri Bankim Garg, Advocate
Revenue by	:	Shri Saras Kumar, Sr.DR
Date of Hearing	:	12.12.2019
Date of Pronouncement	:	30.12.2019

ORDER

This appeal by the assessee is directed against the order dated 24th June, 2019 of the CIT(A)-38, New Delhi, relating to Assessment Year 2010-11.

2. The grounds raised by the assessee are as under:-

01. Whether in light of the facts and in law, the Ld. AO had relevant reasons for reopening assessment under section 147 of the Act?

2. Whether in light of the facts and in law, the Ld. AO has exceeded jurisdiction under Explanation 3 to section 147 of the Act in passing the reassessment order without making addition on the reasons for reopening the assessment proceedings?

3. That the Ld. CIT (A) has erred in ignoring the fact that there being no escapement of income, the opening of the case u/s 147 r.w.s 148 is against the law and needs to be dropped.

4. That the Ld. CIT (A) has erred in upholding the addition of Rs.8,99,934/- on account of capital gain.

5. That the Ld. CIT (A) has not considered the fact that the said agreement to sell is at present in challenge before the District Court for non-performance by the transferee.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.ö

3. Facts of the case, in brief, are that the assessee is an individual. On the basis of Tax Evasion Petition that the assessee had paid cash amounting to Rs.60,50,000/- for purchasing property at A-45, Naraina Industrial Area, Phase-II, New Delhi, reassessment proceedings u/s 147(3) were initiated and notice u/s 148 was issued to the assessee on 17.11.2016. In response to the same, vide letter dated 4th December, 2017, the assessee submitted that the return already filed on 28th March, 2012 declaring total income of Rs.2,44,537/- may be treated as return filed in response to notice u/s 148 of the Act. The AO, in the order passed u/s 143(3) r.w.s. 147/148 on 30th December, 2017 determined the total income at Rs.11,44,471/- wherein he made addition of Rs.8,99,934/- on account of long-term capital gain arising on sale of property at A-45, Naraina Industrial Area, Phase-II, New Delhi. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of reassessment proceedings. However, the Id.CIT(A) dismissed the appeal filed by the assessee both on merit as well as on legal aspect, i.e., the validity of the reassessment proceedings.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee, at the outset, drew the attention of the Bench to the reasons recorded for reopening of the assessment, copy of which is placed at page 12 of the paper book and submitted that the reasons for reopening was payment of cash of Rs.60,50,000/- for purchase of the property at A-45, Naraina Industrial Area, Phase-II, New Delhi. He submitted that the AO, in the order passed u/s 143(3)/147 has not made any addition on account of this and, on the contrary, has made addition of Rs.8,99,934/- on account of capital gain on sale of the property. Referring to the decision of the Honøble Delhi High Court in the case of *Ranbaxy Laboratories Ltd. vs. CIT reported in 336 ITR 136*, he submitted that the Honøble Delhi Court in the said decision has held that the AO has the jurisdiction to reassess on issues other than the issues in respect of which proceedings are initiated, but, he is not so justified when the reasons for the initiation of those proceedings cease to survive. Therefore, when the assessment was reopened for a particular issue and no addition has been made on that particular issue, the AO cannot make any other addition in the order passed u/s 143(3)/147 of the Act. Referring to the decision of the Honøble Bombay High Court in the case of *CIT vs. Jet Airways (2010) 195 Taxman 117 (Bombay)*, he submitted that the Honøble High Court in the said decision has held that if, after issuing a notice u/s 148 of the Act, the AO accepts the contention of the assessee and holds that income, for which he had initially formed a reason to believeø

that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income. If he intends to do so, a fresh notice u/s 148 would be necessary, the legality of which would be decided in the event of challenge by the assessee. He accordingly submitted that when no addition has been made on account of an issue on which assessment was reopened, the AO has no jurisdiction to assess such other income which has escaped assessment and which has come to his notice subsequently without issuing a fresh notice u/s 148 of the Act.

6. Referring to the decision of the Honøble Delhi High Court in the case of *Oriental Bank of Commerce vs. ACIT (2014) 49 taxmann.com 485*, he submitted that the Honøble High Court, in the said decision, has held that where no addition is made in respect of reasons given for reopening of assessment, it was not open to the AO to independently assess some other income.

7. Referring to the decision of the Honøble Delhi High Court in the case of *CIT(E) vs. Monarch Educational Society (2017) 387 ITR 416 (Del)*, he submitted that the Honøble High Court, in the said decision, has held that if no addition is made in respect of the issues recorded by the AO for reopening of assessment, the AO cannot make addition on any other issues in reassessment proceedings. He also relied on the following decisions for the above proposition:-

- (i) Rita Singh vs. ITO (ITA No.5966/Del/2018) (Del-Trib.);
- (ii) ACIT vs. Ankola Paper Mills Pvt. Ltd. (ITA No.516/M/2017) (Del-Trib.);

- (iii) Indu Arts vs. ACIT (2017) 88 taxmann.com 182 (Del-Trib.); and
- (iv) ACIT vs. Bharti Infotel (2017) 81 taxmann.com 433 (Del-Trib.)

8. He accordingly submitted that the reassessment proceedings initiated by the AO should be quashed.

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

10. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions relied on by the ld. Counsel for the assessee. I find the case of the assessee was reopened by recording the following reasons:-

ö In this case a TEP was received on transfer from ITO ward 50(5), New Delhi on 21/5/2015. The main allegation of TEP is Smt Sangeeta Garg W/o Late Sh. Anil Garg, R/o 2025, Gali No. 7, Chuna Mandi, Paharganj, New Delhi-110055 has paid cash amounting to Rs, 60,50,000/- for the purchase of back side of the property.A-45, Naraina Industrial Area, Phase-II, New Delhi-110028. The TEP received also have an attachment of copy of sale deed of the property mentioned above.

From the investigation and enquiries in this case, the source of the cash paid of Rs.60,50,000/- for the purchase of property remained unexplained. The cash paid also not commensurate with the business activity of the assessee.

I therefore, have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment year above mentioned year, the income chargeable to tax to the extent of cash of Rs. 60,50,000/- paid for the purchase of property has escaped assessment within the meaning of section 147 of the I.T. Act.ö

11. However, a perusal of the assessment order shows that no such addition has been made by the AO in the order passed u/s 143(3)/147 on account of such cash payment of Rs.60,50,000/-. On the contrary, the addition has been made by the AO on account of the assessee's share in capital gain amounting to Rs.8,99,934/-. The Honøble Delhi High Court in the case of *Oriental Bank of Commerce (supra)* has held that where no additions were made in respect of reasons given for reopening of assessment, it was not open to the AO to independently assess some other income. The Honøble Delhi High Court in the case of *Monarch Educational Society (supra)* has held that if no addition is made on the basis of 'reasons to believe' recorded by the AO for reopening of the assessment u/s 148 of the Act, resort cannot be had to Explanation 3 to section 147 of the Act to make an addition on any other issue not included in the 'reasons to believe' for reopening of the assessment. The Honøble Bombay High Court in the case of *Jet Airways (supra)* has held that the income, for which the AO had initially formed a 'reason to believe' that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income. If he intends to do so, a fresh notice u/s 148 would be necessary. The Honøble Delhi High Court in the case of *Ranbaxy Laboratories Ltd. (supra)* has also had similar view and held that the AO has the jurisdiction to reassess on issues other than the issues in respect of which proceedings were initiated, but, he is not justified when the reasons for the initiation of those proceedings cease to survive. The various other decisions relied on by the Id. Counsel for the assessee also support his case that the AO has no jurisdiction to make some other addition in the

reassessment proceedings without issuing a fresh notice u/s 148 when no addition has been made on the basis of the reasons recorded for initiation of reassessment proceedings for escapement of income. Since, in the instant case, no addition has been made on the basis of the reasons recorded for reopening the assessment and addition has been made on some other issue without issuing fresh notice u/s 148, therefore, the reassessment proceedings initiated by the AO are contrary to law. Accordingly, the same is quashed. The grounds raised by the assessee on the issue of validity of the reassessment proceedings are accordingly allowed. Since the assessee succeeds on this legal ground, the grounds raised by the assessee on merit is not being adjudicated being academic in nature.

12. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 30.12.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 30th December, 2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi