

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “एस.एम.सी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH ‘S.M.C’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT**

आयकर अपील सं. / ITA No.2765/Del/2019  
निर्धारण वर्ष / Assessment Year 2010-11

Rupinder Singh Kohli (HUF),  
BF-32, Tagore Garden,  
New Delhi-110027.  
PAN-AALHR0841M

.....अपीलार्थी / Appellant

vs

The ITO,  
Ward-45(3), New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Rano Jain, Advocate &  
Ms. Mansi Jain, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. Pradeep Singh Gautam, Sr.DR

सुनवाई की तारीख / Date of Hearing : 14.01.2020	घोषणा की तारीख / Date of Pronouncement: 21 .02.2020
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**आदेश / ORDER**

The present appeal filed by assessee is against order of CIT(A)-15, Delhi dated 01.02.2019 relating to assessment year 2010-11 against the order passed under section 143(3)/147 of the Income-tax Act, 1961 (in short ‘the Act’).

2. The preliminary issue raised in the present appeal is against the initiation of proceedings under section 147/148 of the Act by the Assessing Officer.

3. Briefly in the facts of the case, the proceedings were initiated by recording reasons for re-opening the assessment by the Assessing Officer under section 147/148 of the Act. Thereafter, notice under section 148 of the Act was issued to the assessee. The assessee in reply, filed the return of income on 21.04.2017 declaring total income of Rs.3,00,466/-. Thereafter, the assessment was completed under section 143/147 of the Act by making an addition of Rs.1,51,500/-.

4. The CIT(A) confirmed the initiation of re-assessment proceedings under section 147/148 of the Act.

5. The first issue which is raised by the assessee is against the invoking of jurisdiction by the Assessing Officer under section 147/148 of the Act.

6. The Ld. AR for the assessee pointed out that after recording the reasons for reopening the assessment, the Assessing Officer had to seek approval from the Pr. Commissioner of Income Tax before the jurisdiction is invoked by the Assessing Officer. Our attention was drawn to page-25 of the paper book wherein, copy of reasons recorded for initiating the proceedings under section 147/148 of the Act is placed. He further pointed out that there was no application of mind by the PCIT and only word "approve" is written. In this regard, reliance was placed on the ratio laid down by the Hon'ble Delhi High Court in 391 ITR 11 (Delhi).

7. The Ld. DR for the Revenue pointed out that the assessee had shown profit on derivatives which were taken under section 115BB of the Act. He

further stated that such trading can either be assessed as income from business or income from capital gains; but the assessee had not shown the same. In such circumstances, the Assessing Officer recorded reasons for reopening the assessment, which were based on investigation carried out by the Department. He placed reliance on the ratio laid by the latest decision of Hon'ble Delhi High Court in Sonia Gandhi vs ACIT in W.P.(C) 8482/2018, C.M. Appl.32580-32582/2018 dated 10.09.2018.

8. The Ld. AR for the assessee in rejoinder submitted that this issue is not pressed by him, but if you look at the reasons recorded for re-opening the assessment then the basis was non declaration of capital gains of Rs.1,51,500/- booked by the assessee through the transactions entered with NMCE. However, the Assessing Officer made the addition under section 69 of the Act being alleged trading activity profit and same was taxed @ 30% by invoking the provisions of section 115BBE of the Act.

9. On the perusal of record and after hearing both the authorized representatives, the jurisdictional issue raised by the assessee is against the exercise of jurisdiction u/s 147/148 of the Act. The Ld.AR for the assessee initially raised objections against the violation of provision of section 151 of the Act. However, during the course of hearing itself, he raised an alternate plea that as against the reasons recorded for the re-opening of assessment i.e. non-declaration of capital gains in the return of income; finally addition has been made u/s 69A of the Act and also for violation of provision of section 115AA of the Act. In other words, the addition made in the hands of

the assessee is on a ground other than the ground on which reasons were recorded for re-opening the assessment u/s 147 of the Act.

10. The Hon'ble Bombay High Court in CIT vs Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom.) have laid down the principle that in case no addition is made on account of the reasons recorded for re-opening the assessment then the addition made on any other account is not sustainable.

11. In the facts of the present case admittedly the Assessing Officer had recorded reasons for re-opening the assessment, copy of which is placed at page 25 of the Paper Book and he noted as under:-

*“On perusal of ITD it has been found that assessee has filed ITR on 25.03.2011 for the A.Y. 2010-11 declaring income of Rs.3,00,466/-. The declared income for the year under consideration consists of only “Other sources” income to the tune of Rs.3,00,466/-. It has been further seen that the assessee has not declared the capital gains of Rs.1,51,500/- booked by the assessee through the transactions entered with NMCE.”*

12. The satisfaction thus was on account of escapement of income from assessment of capital gains of Rs.1,51,500/-. The addition under the said head of income has not been in the case of the assessee. The Assessing Officer in final analysis vide para 11 observed as under:-

*11. “In view of above narrated facts and the information available on records, the income of Rs.1,51,500/- (alleged profit earned from commodity trading) is added back to the income of assessee u/s 69A of the Income tax Act for the A.Y. 2010-11. The income amounting to Rs.1,51,500/- is taxed @ 30% by invoking provisions of 115BBE of the Act. Further, I am of the view that the assessee has furnished inaccurate particulars of his income for the A.Y. 2010-11, penalty proceedings u/s 271(1)(c) are being initiated separately.”*

13. In other words, the addition was made u/s 69A of the Act and the income was taxed at the rate of 30% by invoking section 115BBE of the Act. In the absence of any addition being made on account of the reasons recorded for re-opening the assessment, other addition made in the hands of the assessee cannot be sustained. Accordingly, the same is deleted.

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

Order pronounced in the open court on 21<sup>st</sup> February, 2020.

**Sd/-**  
**(SUSHMA CHOWLA)**  
**उपाध्यक्ष / VICE PRESIDENT**

दिल्ली / दिनांक Dated : 21<sup>st</sup> February, 2020

\* Amit Kumar \*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR,  
ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली  
Assistant Registrar, ITAT, Delhi