

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7350/Del/2019
(Assessment Year: 2011-12)

Ruchi Mahajan, 3/115, Vikash Nagar 2, Lucknow Pan: AVAPM2662F	Vs.	ITO, Ward-44(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri J. S. Bhasin, Adv
Revenue by:	Shri R. K. Gupta, Sr. DR
Date of Hearing	20/10/2020
Date of pronouncement	21/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by Smt Ruchi Mahajan, assessee/ appellant against the order of The Commissioner Of Income Tax (Appeals) – 15, New Delhi dated 2 July 2019 wherein the appeal filed by the assessee against the order of The Income Tax Officer, Ward 44 (1), New Delhi passed u/s 143 (3) read with Section 147 of The Income Tax Act dated 17/12/2018 was dismissed. Assessee aggrieved , therefore, this appeal.
2. The assessee has raised the following grounds of appeal:-
 - “1. That Ld. CIT (A)-15 Delhi grossly erred in law and on facts in upholding the validity of proceedings initiated under section 147/148 by the Id. ITO without there being any tangible material before him at the time of recording reasons.
 2. That Ld. CIT (A) -15 Delhi, was not justified in summarily upholding the addition of Rs.12,16,248/- , as made by the ld. ITO, without appreciating the facts and the material brought on record, in correct perspective.
 3. That Ld. CIT (A) -15 Delhi, while confirming the impugned addition, failed to appreciate and understand the true nature of the transactions to endorse the figure of total turnover at Rs. 12, 16, 84,200/-, as wrongly taken by the Id. ITO, and in further confirming 1% net profit of such turnover at Rs.12,16,248/-.
 4. That Ld. CIT (A) -15 Delhi, erred in arbitrarily brushing aside the transaction summary for each day of commodity trading, as received from stock exchange, which actually reflected a loss of Rs. 5,085/- sustained by assessee in impugned transactions.
 5. That the order under appeal is most arbitrary and against the principle of natural justice and hence liable to be held as illegal.”

3. The brief facts of the case shows that the notice u/s 148 of The Income Tax Act 1961 was issued on 28th of March 2018 after recording the reason that:-

“As per the information received on AIR/,ITD , Smt, Ruchi Mahajan had made transaction in commodity/shares amounting to ₹ 121,684,248/-. As per the ITD/AST/ITBA information, the assessee has not filed his return of income for the year under consideration i.e. assessment year 2011 – 12. The assessee having PAN AVAPM2662F and as per records available on ITD – AST system only the PAN and the PAN Address is available, the assessee has not filed his return of income. Hence, except the PAN no other information is available.

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It has been noted that no ITR has been filed by the assessee with regard to assessment year 2011 – 12. Since the assessee has not furnished return of income for assessment year 2011 – 12, income from share/ commodities transaction has escaped assessment. However in absence of any denial, the profit of the total transactions amounting to ₹ 121,684,248/- is assumed that the rate of 2% which comes to ₹ 2,433,685/-. Accordingly I am satisfied that the income of ₹ 2 433685/- has escaped assessment because of failure on part of the assessee to disclose fully and truly all material facts of his income.

It is pertinent to mention that in case of Raymond woollen Mills Ltd versus ITO (1999) 236 ITR 34 (SC), the honourable Supreme Court has held that we only to see whether there was a prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material need not be looked at initial stage.

In view of the above, I have reason to believe that an amount exceeding ₹ 1 lakh or more has escaped assessment within the meaning of the provisions of Section 147 of the income tax act, 1961, therefore, notice u/s 148 of the income tax act, 1961 is to be issued to the assessee to assess the income escaped as stated hereinabove.”

4. Pursuant to the above notice assessee, filed her return of income on 20/11/2018 declaring income of Rs 9993/- being Income from other sources. On questioned about the transactions made, assessee submitted that initial investment of ₹ 60,000 was made by her on commodities through Kassa holding and consultants private limited (the broker) the source of the same is explained by providing copy of bank statement from which transactions have been made. The assessee was asked to file the details of the profit and loss account in respect of the transactions of the commodities to arrive at the profits. Assessee expressed her inability to provide the requisite details as the company through which transactions were made i.e. broker, is stated to be closed. In view of this further show cause notice was issued by the AO and there was no response from the assessee thereafter. Therefore the learned assessing officer adopted the profit rate of 1% of the total transaction in commodity in shares

at ₹ 1,216,842/- and the income was assessed u/s 143 (3) read with Section 147 of the act by the order dated 17/12/2018 at ₹ 1,226,835/- against the returned income of Rs. 9993/-. The assessee aggrieved with that order preferred an appeal before the learned CIT – A. Before the learned CIT – A assessee submitted that the only the difference of the total transaction is to be taken as the turnover and not the full value of the contract. The learned CIT – A noted the contentions of the assessee and stated that it does not have any merit and therefore the addition was confirmed as assessee could not produce any conclusive documentary evidence in support of her claim. Therefore, aggrieved with the order of the learned CIT – A assessee has preferred this appeal before us.

5. We have heard the rival parties, perused the various judgements relied upon by the learned authorised representative, his return synopsis and the orders of the lower authorities.
6. Ground number (1) is:-

“That learned CIT (A) – 15 Delhi grossly and in law and on facts in upholding the validity of proceedings initiated u/s 147/148 by the learned ITO without there being any tangible material before him at the time of recording reasons.”
7. We have heard the rival contentions on this issue. In the present case the learned assessing officer was having an information as per the annual information return [AIR] that assessee has entered into the commodity/share transactions with one broker amounting to ₹ 121,684,248/-. It was also noted that the assessee has not filed the return of income and in ITD only information is about the PAN. As assessee has entered into a transaction of commodities /shares, the learned assessing officer noted that that the resultant profit and loss on such transaction has not been disclosed by the assessee. Therefore he assumed 2% of the transaction as the profit and reopens the case of the assessee. In the present case there was a tangible material available with the assessing officer in the form of annual information return. The concrete details were available about the broker through Womb the assessee has made the transaction. AO has further noted that Assessee has not filed any voluntary return of income u/s 139 (1) of the act. Therefore we find that the learned assessing officer was having a tangible material in the nature of Annual Information Return where the concrete information about the trading by the assessee on commodities/shares were available with a particular broker for which assessee has not disclosed any profit/loss. Further the information available with the assessing officer cannot be found to be vague as there was concrete information with every rupee was found to be correct about the turnover and the name of the broker. It is not the case of the assessee that she denies carrying on any transaction. The learned AO also applied his mind to verify the above information from the ITD however, except the permanent account number of the assessee, no other information was available.

Therefore, there was a proper application of mind by the AO. In view of this, we do not find any infirmity in the action of the learned assessing officer in reopening the assessment u/s 147 of the income tax act and confirmation of the action of the learned assessing officer by the learned CIT – A. Therefore ground number 1 of the appeal is dismissed.

8. Ground number 2 – 4 are with respect to the addition made by the learned assessing officer. The learned assessing officer presumed the profit at the rate of 1 percent on the total turnover made by the assessee of ₹ 121,684,200/-. Before us, assessee has submitted that she has submitted the demat account statement, trading transactions statement and based on that, she has incurred a loss of ₹ 5 055/-. It was further stated that assessee has submitted a reply which is uploaded on 7/12/2018 wherein all these information is provided but not considered by the assessing officer. He also referred the various statements of the transactions entered into by the assessee and submitted that that loss incurred by the assessee is of ₹ 5055 and there is no element of profit involved in the above transaction. As before us assessee has submitted a complete statement, where the time and date stamp of the exchange as well as the nature of transactions are shown, where from assessee has derived of loss of Rs. 5 055/- on the above transaction. However, even before us no bills of the brokers or the statement from the exchange was submitted. Even the 1% profit determined by the learned AO on trading of gold was also without any basis. The confirmation of the above addition by the learned CIT – A was also not based on any material. In view of this, in the interest of justice, we set-aside the whole issue of determination of profit on the transaction of ₹ 121,684,248 made by the assessee in trading of gold is required to be examined by the learned assessing officer afresh to arrive at the correct profit earned by the assessee. Assessee has submitted that in subsequent year also on identical transaction assessee has been assessed at a loss. Therefore, we direct the assessee to submit the copies of the bills, the statement of profit and loss on the trading of gold based on the above bills to the assessing officer, which may be examined by the AO in accordance with the law and resultant profit/loss may be taxed accordingly. In view of this ground number 2 – 4 are allowed with above direction.
9. In the result appeal of the assessee is partly allowed.
Order pronounced in the open court on 21/10/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 21/10/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi