

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.4915/Mum/2018  
(निर्धारण वर्ष / Assessment Years: 2010-11 )

Mrs. Krishna Ramesh Sharma Flat No. 1101, Sadguru Kalyan Building, Junction of 13 <sup>th</sup> & 17 Road, Khar, Mumbai400052.	<b>बनाम/</b> Vs.	DCIT-Central Circle 2(1) Mumba, Old CGO Building, Pratistha Bhawan, M. K. Road, Mumbai-400020.
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आयकर अपील सं/ I.T.A. No. 4916/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Ramesh H. Sharma Flat No. 1101, Sadguru Kalyan Building, Junction of 13 <sup>th</sup> & 17 Road, Khar, Mumbai400052.	<b>बनाम/</b> Vs.	DCIT-Central Circle 2(1) Mumba, Old CGO Building, Pratistha Bhawan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAOPS5770R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Anant Pai	
Revenue by:	Shri Manpreet Singh Duggal (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 04/11/2020  
घोषणा की तारीख /Date of Pronouncement: 17/12/2020

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2010-11.

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2. The assessee has filed the present appeal against the order dated 27.06.2018 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

3. The assessee has raised the following grounds: -

"1. *The Assessing Officer erred in view of the facts and in the circumstances of the case in reopening the assessment for the said year u/s 147. The said reopening is bad in law and the assessment made in pursuance to the same may be held to be void ab initio*

2. *The Assessing Officer erred in view of the facts and in the circumstances of the case in making an addition of a sum of Rs. 6,51,000/- as estimated deemed income on Security deposit for the period of 12 months. In law, no such addition is called for and the same is bad and against the established law. In any case, and without prejudice, the said Security Deposit has been retained only for 3 months and the estimation for the entire period of 12 months is against facts and the law.*

3. *The appellant craves leave to alter, add or amend the aforesaid grounds of appeal."*

4. The brief facts of the case are that the assessee filed her return of income on 12.10.2010 declaring total income to the tune of Rs.27,53,670/- for the A.Y.2010-11. The assessment was completed u/s 143(3) of the I. T. Act, 1961 on 18.03.2013 determining total income to the tune of Rs.1,85,35,760/-. The assessment was reopened u/s 147 of the Act by issuance of notice u/s 148 of the Act dated 30.03.2017 after the approval of the Pr. CIT(Central)-1, Mumbai. The reasons for reopening of assessment are reproduced as under.:-

*"On examination of records it was seen that the assessee has received rent income from property at Almeida Park, Bandra of*



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*Rs.95.0001' per month and deposit of Ps. 1,25,00,000/-. The property is jointly owned by the assessee and her husband Shri. Ramesh Sharma. The deposit amount received is found to be disproportionately high as compared to rent offered for taxation. The benefit derived by the assessee from this deposit has to be considered for determining fair rental value. This fact was not disclosed by the assessee during original assessment. The benefit derived from the deposit of Rs. 1,25,00,000/- works out considering 10% of interest received of Ps. 12,50,000/- out of which assessee's share is Rs.6,25,000/- being 5% share in the property. In view of the facts, the amount of Rs.6,25,000/- on account of benefit derived from the deposit remained to be considered for determination of fair rental value of the property on account of assessee's failure for not disclosing fully and truly material facts.*

*In view of the above facts, I have reason to believe that income chargeable to tax to the extent of Rs.6,25,000/- for determining fair rental value on the property has escaped assessment for AY 2010-11 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Since more than 4 years have elapsed from the end of the relevant assessment year, the case is covered u/s 149 r.w.s. 151 of the I.T. Act."*

5. Subsequently, the notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. It was asked as to why 10% of the Security Deposit i.e. amount of Rs.1,25,00,000/- should not be added to the rent for determining the Annual Letting Value of the said property. The property was under the ownership of her husband in equal share. On seeing the security received by the assessee and market rent of the property of the assessee, the income from the house property was re-worked at Rs.2,50,000/-. The difference of Rs.1,55,000/- per month of the rent was assessed and added to the income of the assessee and the remaining income was added towards the husband of the assessee. The total income of the assessee was assessed in sum of Rs.1,91,86,760/-.

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7. Under these issues the assessee has challenged the reopening of the assessment u/s 147/148 of the Act. The assessment of the assessee was completed u/s 143(3) of the I. T. Act, 1961 on 18.03.2013 determining total income to the tune of Rs.1,85,35,760/-. During the course of assessment, the AO issued the notice dated 30.12.2012 to the assessee and the contents of which are hereby reproduced as under.:-

*“1. From the copy of the letter dated 26.09.2008 from Satguru Kalyan Condominium it appears that possession of the property was handed over to you on 26.09.2008. The onus to prove that the possession of the flat was given to you on 26.09.2008 or any date thereafter is on you. Therefore, it is requested to provide all necessary evidence to prove that you take possession of property on or after 26.09.2008. The proof could be first electricity bill, telephone bills, society maintenance charge or any other reliable evidence that can establish your claim of taking Possession of property only on or after 26.09.2008 and not before.*

*2. Copy of agreement entered into by you on 02.11.2007.*

*3. Details of housing loan of Rs. 50 lacs on 27.08.2002 including details of payment of the loan with documentary evidence*

*4. Status of the following properties with reasons of non - disclosure of any income u/s 23.*

*i) Anukampa Builders*

*ii) Agrasen Nagar*

*iii) Office Gl. Khar*

*5. Details of expenses of Rs. 12,80,606/- with cash summary and break up of expenses with documentary evidence.*

*6. The sources of society charges of Rs. 8,33,377/- as the capital account does not show any such entry.*

*7. The details of deposit and refund of Rs. 1,25,00,000/- from Tata AIG General Insurance Co. Ltd. The monthly rentals so received may be explained with the market rate prevalent during the relevant period.*



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8. *Wealth return for the A.Y. 2009-10 & 2010-11 with valuation reports of all the properties and jewelries as or valuation date of 31.03.2009 and 31.03.2010*

*Please note that failure to comply with the requirement of this notice by the appointed date may lead to initiation of penalty proceedings u/s 271(1)(b) of the Act."*

8. On appraisal of the above mentioned notice, it is quite clear that the AO had already been asked the details of deposit and refund of Rs.1,25,00,000/- from Tata AIG General Insurance Co. Ltd. and about the monthly rent received with the market rate prevalent during the relevant period. Now it is to be seen what are the reasons for reopening of the assessment u/s 147/148 of the Act. The reasons is hereby mentioned as under.:-

*"On examination of records it was seen that the assessee has received rent income from property at Almeida Park, Bandra of Rs.95,000/- per month and deposit of Rs. 1,25,00,000/-. The property is jointly owned by the assessee and her husband Shri. Ramesh Sharma. The deposit amount received is found to be disproportionately high as compared to rent offered for taxation. The benefit derived by the assessee from this deposit has to be considered for determining fair rental value. This fact was not disclosed by the assessee during original assessment. The benefit derived from the deposit of Rs. 1,25,00,000/- works out considering 10% interest received of Rs. 12,50,000/- out of which assessee's share is Rs.6,25,000/- being 50% share in the property. In view of the facts, the amount of Rs.6,25,000/- on account of benefit derived from the deposit remained to be considered for determination of fair rental value of the property on account of assessee's failure for not disclosing fully and truly material facts.*

*In view of the above facts, I have reason to believe that income chargeable to tax to the extent of Rs.6,25,000/- for determining fair rental value on the property has escaped assessment for AY 2010-11 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Since more than 4 years have elapsed from the end of the relevant assessment year, the case is covered u/s 149 r.w.s. 151 of the I.T. Act."*



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9. It is quite clear that the issue which has been raised u/s 147 of the Act has already been examined by AO while completing the assessment u/s 143(3) of the Act. It is now not open to the revenue to reopen the case on the same issue which has been examined earlier while completing the assessment u/s 143(3) of the Act dated 18.03.2013. It is the change of the opinion of the AO which is not permissible in view of the law settled by the Hon'ble Apex Court in the case of **CIT Vs. Foramer France & Calcutta Discount Co. Ltd. Vs. ITO 41 ITR 191 (SC)**. Furthermore, we found that the assessment of the assessee was reopened after the expiry of 4 years. As per proviso u/s 147 of the Act, no action can be taken after the expiry of 4 years from the end of the relevant assessment years if income chargeable to tax had escaped assessment by reason of failure of the assessee to make fully to disclosure of all the material facts necessary for assessment. In the instant case all the material fact has already been disclosed by assessee. Moreover, after the issuance of notice dated 30.12.2012, the assessee has furnished the reply also and after the satisfaction the matter of controversy has been decided. Since the assessee was not failure to for the disclosure of all the material facts necessary for assessment, therefore, the reopening is also bad in view of the decision in the case of (i) **Phool Chand Bajrang Lal Vs. ITO 203 ITR 456, 477** (ii) **ALA Firm Vs. CIT 189 ITR 285, 298** (iii) **Indian and Eastern Newspaper Society Vs. CIT 119 ITR 996, 1004 & ITO Vs. Lakhmani Mewal Das 103 ITR 437, 445**. On appraisal of the above said finding, it is apparent that the assessment could only be reopened on account of disclosure of new matter of knowledge of fresh facts which were not present at the time of original assessment. It may constitute reason to believe that the income of escaped assessment within the meaning of Section 147 of the Act. Taking into account all the facts and



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circumstances mentioned above, we are of the view that the notice u/s 147/148 of the Act is wrong against law and facts, hence, is hereby ordered to be set aside. Accordingly, we decide these issues in favour of the assessee against the revenue. Since the reopening of the assessment has been held invalid, therefore, deciding the issues on merits would only be academic in nature.

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**10.** Since the appeal of the assessee bearing ITA. No.4915/M/2018 for the A.Y.2010-11 is having similar controversy, therefore, the finding above is quite applicable to the facts of the present cases also as mutatis mutandis, therefore, this appeal is also hereby allowed accordingly.

**11.** In the result, the appeals filed by the assessee are hereby allowed.

Order pronounced in the open court on 17/12/2020

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/12/2020

*Vijay Pal Singh (Sr. P.S.)*

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

(Assistant Registrar)  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**