

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)**

**AND**

**SHRI SAKTIJIT DEY ( JUDICIAL MEMBER)**

I.T.A. No.1709/Mum/2019  
(Assessment Year : 2010-11)

Shalini Baheti 15B Clive Row, Kolkata-700 001 <b>PAN :</b>	vs	ACIT, Circle 1, Kalyan
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	None
Respondent by	Shri T.S. Khalsa - DR

Dt of hearing	19-01-2021
Dt of pronouncement	28-01-2021

**ORDER**

Per Saktijit Dey (JM),

This is an appeal by the assessee against the order dated 07-01-2019 of learned Commissioner of Income Tax (Appeals)-50, Mumbai for the assessment year 2010-11.

2. As could be culled out from ground 2 raised by the assessee, the basic grievance while challenging validity of reopening of assessment is, the Assessing Officer has not furnished copy of reasons recorded before completing the assessment under section 143(3) r.w.s. 147 of the Act.

3. Briefly the facts are, the assessee is an individual. For the assessment year under dispute, she filed her return of income on 16-09-2010 declaring total income of Rs.52,32,850. The return of income filed by the assessee was initially processed under section 143(1) of the

Act. Subsequently, the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment, reopened the assessment under section 147 of the Act by issuing notice dated 31-03-2017 under section 148 of the Act. In course of assessment proceedings, the Assessing Officer alleged that as per the information received from Investigation Wing, Ahmedabad, the assessee is a beneficiary of fictitious profit / loss on account of client code modification through a broker. Though the assessee denied the allegations brought against her; however, ultimately, the Assessing Officer proceeded to complete the assessment by making an addition of Rs.87,65,275, being, the escaped income on account of Client Code Modification and further added an amount of Rs.2,62,958 towards commission paid for availing benefit of Client Code Modification. Against the assessment order so passed, assessee preferred appeal before learned Commissioner (Appeals), inter-alia, on the ground that reopening of assessment is invalid due to non furnishing of reasons recorded. Learned Commissioner (Appeals) while disposing of the appeal rejected assessee's contention regarding the validity of assessment. As regards the merits of the additions made, he granted partial relief to the assessee.

4. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Accordingly, we proceeded to dispose of the appeal exporter qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

5. The learned Departmental Representative, while justifying the validity of the assessment order passed under section 143(3) r.w.s. 147 of the Act submitted that the Assessing Officer, in course of assessment proceedings has provided the basis for reopening of assessment which is evident from the show cause notice issued in course of assessment proceedings. Further, he submitted, in response to the show cause notice the assessee had furnished a reply on the allegation brought against her regarding benefit received towards Client Code Modification by certain broker. Thus, he submitted, the assessee was very much aware of the reason on the basis of which assessment was reopened under section 147 of the Act. Therefore, no prejudice is caused to the assessee, even if, the Assessing Officer has not

formally communicated the reasons for reopening of the assessment to the assessee. In this context, he relied upon the observations of learned Commissioner (Appeals). Further, the learned Departmental Representative submitted, the Assessing Officer has reproduced the reasons recorded for reopening of assessment in the assessment order itself.

6. We have carefully considered the submissions of learned Departmental Representative and perused the materials on record. No doubt, in the case on hand, the Assessing Officer has reopened the assessment on the basis of certain information received by him from the Investigation Wing of the department. As revealed from the factual matrix, after responding to the notice issued under section 148 of the Act, the assessee had requested the Assessing Officer to supply her reasons recorded for reopening the assessment. Though in the assessment order, the Assessing Officer has not dealt with assessee's request and there is no observation whether reasons recorded for reopening of assessment were furnished to the assessee before completion of the assessment, However, before the first appellate authority, the assessee by way of ground 2 has specifically raised the issue of non furnishing of reasons recorded before completing the assessment. As could be seen from the observations of learned Commissioner (Appeals) at paragraphs 8 to 8.27, he has not disputed assessee's claim that reasons were not furnished to him. However, he has tried to justify such non furnishing of reasons by stating that the Assessing Officer had issued a detailed show cause notice specifying the allegations against her and has also allowed opportunity to rebut the same. Further, he has stated that reason for reopening of assessment has been fully reproduced in the assessment order. In our view, the aforesaid reasoning of learned Commissioner (Appeals) are not valid for upholding the assessment order passed without furnishing reasons recorded and not in conformity with the settled principles of law. Now, it is fairly well settled that once the assessee complies with the notice issued under section 148 of the Act and seeks reasons for reopening of assessment, the Assessing Officer is duty bound to furnish the reasons of reopening before proceeding further with the assessment. This is for the simple reason of enabling the assessee to raise objections against the validity of reopening of assessment under section 147 of the Act. Unless, the aforesaid basic requirement is complied, the assessment has to be declared as invalid. In the facts of the present case, it is patent and obvious that the Assessing Officer has

not supplied the reasons for reopening the assessment of the assessee prior to completion of re-assessment. Therefore, in our view, the impugned assessment order having been passed in gross violation of rules of natural justice, has to be declared as invalid and deserves to be set aside. We do so accordingly.

7. Further, we direct the Assessing Officer to supply the reasons recorded to the assessee for enabling her to raise objection, if any, on the issue of reopening of assessment. Only after meeting the objections of the assessee, the Assessing Officer may proceed to complete the assessment after due opportunity of being heard to the assessee. With the aforesaid observations, the impugned orders of learned Commissioner (Appeals) and the Assessing Officer are set aside and matter is restored back to the Assessing Officer for de novo adjudication.

8. In view of our above decision, the ground raised on merits need not be adjudicated at this stage. Grounds are allowed for statistical purpose.

10. In the result, appeal is allowed for statistical purpose.

Order pronounced in the Open Court on this 28/01/2021.

Sd/-

sd/-

<b>(PRAMOD KUMAR)</b>	<b>(SAKTIJIT DEY)</b>
<b>VICE PRESIDENT</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated : 28/01/2021.

Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
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By order