

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.6093/Del/2019  
Assessment Year: 2009-10

Smt. Anupama Gupta, A-52, 2 <sup>nd</sup> Floor, Gurunanak Pura, Laxmi Nagar, New Delhi	<b>Vs.</b>	ITO, Ward-1(1), Ghaziabad
<b>PAN :AHFPG5333C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Vinesh Kumar Maheshwari, FCA
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	30.06.2021
Date of pronouncement	09.07.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal filed by the assessee is directed against order dated 06/05/2019 passed by the Learned Commissioner of Income Tax (Appeals)-Ghaziabad [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds:

S. No	Grounds of Appeal	Tax effect relating to each ground of appeal (in Rs.)
<b>1.</b>	<b>General &amp; Principle of Natural Justice</b>	
a.	<i>That the appellate order dated 06.05.2019 passed by Hon'ble Commissioner of Income-Tax Appeals ('CIT (A)') u/s 250 of the Act is bad in law and void ab-initio.</i>	
b.	<i>That on the fact and circumstances of the case and in law the Ld AO &amp; Hon'ble CIT(A) grossly erred in making, upholding the addition made under section 69 of the Act of Rs.1 1,10,000 and later on enhancing the same to Rs. 16,58,525 without giving opportunity of being heard and without considering the original return of income already filed on 18th March 2010.</i>	
c.	<i>That on the facts and circumstances of the case Ld.AO restrict the assessee from presenting her stand at assessment proceedings by sending all notices to incorrect addresses &amp; later on when Hon hie CIT(A) forwarded additional evidence for verification, Hon'ble CIT(A) directed Ld. AO to send remand report without discussing &amp; calling assessee to present her stand, thus no opportunity of being heard was ever given to the assessee which is against the principle of natural justice.</i>	
<b>2.</b>	<b>Assessment order passed without jurisdiction</b>	7,45,513
a.	<i>That Hon'ble CIT(A) has grossly erred in law and on facts and circumstances of the case by upholding the action of Ld AO of passing assessment order u/s 147 r.w.s. 144 in much hurry, without application of mind &amp; moreover without having jurisdiction of the assessee in his ward. Therefore, the assessment order passed u/s 147 r.w.s 144 is invalid, illegal, void-ab-initio, bad in law.</i>	
<b>3.</b>	<b>Non-fulfillment of jurisdictional conditions u/s 148 to 150</b>	
a.	<i>That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the reopening action of Ld AO u/s 148 made in violation of mandatory jurisdictional conditions stipulated under the Act.</i>	
b.	<i>That on the facts and in the circumstances of the case and in law, Ld CIT(A) failed to appreciate that both initiation of proceedings and framing of assessment framed u/s 147 r.w.s. 144 are without satisfying the preconditions for invoking the provisions of section 148 of the Act and thus entire reassessment proceedings are</i>	

		<i>invalid and untenable.</i>
	c.	<i>That Ld. AO and subsequently Hon'ble CIT (A) have erred in law and on facts and circumstances of the case in not appreciating the fact that neither reasons for issue of notice under section 148 had been provided nor notice u/s 148 had ever been served to the assessee. Therefore issue of notice under section 148 is bad in law and assessment order passed u/s 147 r.w.s 144 is liable to be quashed.</i>
4.		<b>No reasons to believe, assessment order framed merely on suspicion</b>
	a.	<i>That Ld. AO and subsequently Hon'ble CIT (A) have erred in law and on facts and circumstances of the case in not appreciating the fact that assessment or reassessment proceedings under section 147 could not be resorted to unless there was reason to believe, rather than suspect, that income had escaped assessment. Thus, reassessment order under section 147 ought to be set aside.</i>
5.		<b>The Ld AO alleged that investment in the immovable property constituted undisclosed income</b>
	a.	<i>That Hon'bleCIT(A) has grossly erred in law and on facts and circumstances of the case by upholding the action of Ld AO of invoking reassessment proceedings under section 147 of the Act merely on the basis of fallacious assumption that investment in the immovable property constituted undisclosed income and overlooked the fact that the source of purchase of the property need not be the income of the assessee. Therefore, reassessment order under section 147 ought to be set aside.</i>
6.		<b>No back material was ever confronted to assessee</b>
	a.	<i>That on the facts and in the circumstances of the case and in law, Hon'ble CIT-A erred in sustaining the order passed by Ld AO u/s 147 r.w.s. 144 without appreciating that no back material/valuable/precise information from reliable &amp; credible source were never confronted to assessee thus invalidating entire reopening.</i>
	b.	<i>That Ld. CIT (A) has erred in law and on facts and circumstances of the case in making several factually incorrect statements/ baseless assertions without</i>

		<i>affording any supporting evidence.</i>	
7.	<b><i>Assessee's submission and additional evidence under rule 46A were not appreciated/considered</i></b>		
	a.	<i>That on the facts and in the circumstances of the case and in law, Hon'ble CIT-A erred in sustaining the order passed by Ld AO u/s 147 r.w.s. 144 and enhancing the addition made by Ld AO as none of the assessee's submission and additional evidence submitted during appellate proceedings under rule 46A were appreciated while adjudicating the appeal.</i>	
9.	<i>The appellant craves leaves to amend, modify and/or alter grounds and/or to adduce and rely upon such further evidence and/or documents as may be required at any time before and during the time of hearing.</i>		
<b>Total Tax effect</b>			<b>7,45,513</b>

**2.** Briefly stated facts of the case are that on receipt of information in Annual Information Return (AIR) from respective authority of assessee having purchased immovable property for a consideration of ₹ 39 lakh, the assessment in the case of the assessee was reopened by way of issue of notice dated 10/03/2016 under section 148 of the Income-tax Act, 1961 (in short 'the Act'). Despite reminders and subsequent notices, no compliance was made by the assessee of the notices issued and therefore, the Assessing Officer completed the reassessment under section 147 of the Act read with Section 144 (i.e. best judgment assessment) on 15/11/2016 after making addition of ₹ 11,10,000/-. Aggrieved, the assessee filed appeal before the Learned CIT(A) and filed additional evidences in terms of Rule 46A of Income Tax Rules, 1962 (in short 'the Rules'). The Ld. CIT(A) forwarded the additional evidences to the Learned

Assessing Officer and after obtaining a remand report from him, she enhanced total income of the assessee to ₹ 16,58,525/-. Aggrieved, with the impugned order, the assessee is in appeal before the Income-Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

**3.** Before us, the parties appeared through video conferencing facility. The assessee also filed a paper-book in physical format containing pages 1 to 143.

**4.** Before us, the Learned Counsel of the assessee submitted that the Ld. CIT(A) has sustained the addition as well as enhanced the income on the basis of the comment of the Learned Assessing Officer in the remand report. In the report, the Learned Assessing Officer did not examine the bank statement of the assessee through which payment for the purchase of the property has been made. The Learned Counsel of the assessee submitted that the assessee is willing to submit bank statement and other evidence in support of source of investment in the property under reference. Accordingly, he submitted that matter may be restored back to the file of the Learned Assessing Officer for verification of evidence of source of investment.

**5.** The Learned DR, on the other hand, relied on the order of the lower authorities, however, did not object for restoring the matter to the Assessing Officer for verification of evidence in support of source of investment.

**6.** We have heard rival submission of the parties on the issue in dispute. The Assessing Officer has made addition for unexplained investment in a property by the assessee at ₹

11,10,000/- which has been further enhanced by the Learned CIT(A) to ₹ 16,58,525/-. The contention of the assessee that property was purchased jointly by the assessee along with her husband for Rs.30,43,000/-, out of housing loan of ₹ 25,48,300/- from Axis bank Ltd. The Learned CIT(A) has enhanced the addition on the basis of the remand report of the Assessing Officer on the additional evidences submitted. In para 4(d) of the remand report, the Learned Assessing Officer has reported that the assessee did not submit any bank statement and documents in support of her contention that investment was made during assessment year 2007-08. In para 4(f) of the said remand report, the Assessing Officer has also noticed that no evidence of investment of ₹ 2,73,000/- towards the stamp duty and ₹ 10,050/- towards other charges were filed before him. Now before us, the learned Counsel of the assessee has submitted that the assessee is willing to file all the documentary evidence before the Assessing Officer for his examination and verification. In view of the facts and circumstances of the case and in the interest of the substantial justice, we are of the opinion that assessee should be provided one more opportunity for filing the relevant documents before the Assessing Officer for adjudication of the issue in dispute. Accordingly, we set aside the order of the Ld. CIT(A) on the issue in dispute and restore the matter to the file of the Assessing Officer for deciding afresh with liberty to the assessee to file necessary documentary evidence in support of its claim of source of investment in the concerned property. The grounds No. 7 of the appeal of the assessee is accordingly allowed for

statistical purposes. Since the matter has already been restored, we are not adjudicating other grounds, which are rendered infructuous.

**7.** In the result, the appeal of the assessee is allowed for statistical purposes.

***Order pronounced in the open court on 9<sup>th</sup> July, 2021***

***Sd/-***  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 9<sup>th</sup> July, 2021.

RK/-(DTPDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi