

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

**(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No.8671/DEL/2019  
[Assessment Year: 2011-12]**

Davinder Kaur Marwah, 18, Vaishali, Pitampur, Delhi-110034	ITO, Ward-40(2) Room No.1710, 17 <sup>th</sup> Floor, Pratyaksh Kar Bhawan, E-2, Block, Civic Centre, New Delhi-110002
<b>PAN-AFFPM4465B</b>	
Assessee	Revenue

Assessee by	Ms.Rano Jain, Adv. Sh. Venketesh Chaurasia, Adv.
Revenue by	Sh. Om Prakash, Sr. DR

<b>Date of Hearing</b>	<b>03.02.2022</b>
<b>Date of Pronouncement</b>	<b>23.02.2022</b>

**ORDER**

This appeal filed by the assessee is directed against the order dated 18.10.2019 of the learned CIT(A)-14, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 25.07.2011 declaring total income of Rs.3,03,640/-. Subsequently, the AO on the basis of information received that the assessee has

deposited Rs.21,10,000/- in her saving bank account maintained in Punjab & Sind Bank during the FY 2010-11 relevant to AY 2011-12 and has not filed her return of income, issued verification letter to the assessee to ascertain the source of deposit. In absence of any reply from the assessee, the AO after recording the following reasons reopened the assessment:-

**Reasons for reopening of the assessment in the case of Ms. Daviinder Knur Marwah, for Asstt. Yr. 2011-12 u/s 147 of the Income Tax Act, 1961**

*On going through the ITD System and AIR Information available in this office it is seen that the assessee Ms. Davinder Kaur Marwah, has deposited cash of Rs,21.10,000/- in Bank Account maintained with Punjab & Sind Bank during the F.Y. 2010-11 relevant to A.Y. 2011-12.*

*On verification of data base of the department and information available with the undersigned it has been noticed that the assessee had not filed his Income tax Return for the Asstt Yr. 2011-12. Since the assessee had not filed his ITR for the Asstt. Yr. 2011-12, the source of cash deposits made by him cannot be examined verified.*

*As the assessee has not furnished his ITR for the assessment year under consideration, the verification of the information that the assessee has deposited cash of Rs.21,10,000/- in bank account maintained with Punjab & Sind Bank. is not feasible.*

*System Generated letter issued on 21/02/2018, to the assessee for furnishing her response and a request vide letter dated 12/03/2018 was also made to the assessee to furnish copy of the Income tax Return for the Asstt, Yr. 2011-12 (if any filed) and to furnish*

*nature and source of fund of the above said financial transactions made during the FY 2010-11 but no response has been received so far in this office. Hence, the above said transaction remained as unexplained and unverified. After careful analysis of the above said information and after application of mind of the information available on the ITS. I have reached on the conclusion that the assessee has escaped assessment to the extent of Rs.21,10,000/- and this is a fit case for reopening for the Asstt. Yr. 2011-12.*

*In view of the findings stated above, the undersigned has reason to believe that the assessee's income of Rs.21,10,000/- for F.Y. 2010-11 relevant to Asstt. Yr. 2011-12 has escaped assessment within the meaning of Section 147 of the I.T. Act 1961. The escaped assessment in this case is exceeds above Rupees One Lakh and the cash is falls under the meaning of section 149 of the Income Tax Act. 1961.*

*It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to Section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*Keeping in view of the above facts, necessary approval u/s 151(1) of the Income Tax Act, 1961 is being obtained separately from the Pr. Commissioner of Income Tax, Delhi-14, New Delhi."*

**Sd/-**  
SANDEEP JAIN,  
INCOME TAX OFFICER,  
WARD-40(1), New Delhi

2.1. Accordingly, notice u/s 148 of the Act was issued on 28.03.2018 which was duly served upon the assessee. In response to the same, the assessee filed her reply along with copy of return of income filed manually by the assessee on 25.07.2011, declaring total income of Rs.3,03,640/- for AY 2011-12. Thereafter, the AO issued statutory notice u/s 142(1) of the Act. The assessee filed her objection on 01.10.2018 in respect of issue of notice u/s 147/148 which was disposed off on 15.10.2018. Subsequently, another objection filed on 19.11.2018 against notice u/s 148 of the Act was also disposed of on 26.11.2018. Thereafter, the AO issued notice u/s 143(2)/142(1) of the Act to the assessee on 26.11.2018. However, since there was no compliance from the side of the assessee, the AO after considering the material available on record and observing that the assessee has made cash deposit of Rs.21,10,000/- in her saving bank account maintained with Punjab & Sind Bank, 18, Vaishali, IInd Floor, Pitampura Delhi-110088, made addition of the same to the total income of the assessee. The AO accordingly determined the total income of the assessee at Rs.24,13,640/-.

3. Before the ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of reassessment proceedings. However, the ld. CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the validity of reassessment proceedings as well as the addition on merit.

4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

- 1. The Ld. AO erred in law and on facts in initiating the proceedings and framing the assessment u/s 147 of the Act and the Ld. CIT (Appeals) erred in law and on facts in confirming the action of the Ld. AO in the facts and circumstances of the case.*
- 2. The Ld. AO erred in initiating and the Ld. CIT (Appeals) erred in confirming in law and on facts the proceedings u/s 147 of the Act since the reasons were recorded on wrong facts, without application of mind and without complying with the necessary conditions for taking action u/s 147 and framing assessment u/s 147 of the Act.*
- 3. That the Ld. AO erred in law and on facts in making and the Ld. CIT (Appeals) in confirming the addition of Rs. 21.10.000/- being the amount of cash deposited in bank account as unexplained money in facts and circumstances of the case, without giving proper opportunity of being heard and without properly appreciating the facts of the case and evidence placed on record.*

5. The Id. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) in upholding the validity of reassessment proceedings. Referring to the reasons recorded, copy of which is placed at page 7 to 10 of the paper book, she submitted that the AO has reopened the case on the ground that the assessee has not filed her return of income. She submitted that again the AO in the reasons recorded has mentioned that since the assessee has not furnished any income tax return for the year under consideration, the verification of the information regarding the deposit of cash of Rs.21,10,000/- in the bank account maintained with Punjab & Sind Bank is not feasible. She submitted that a perusal of the above would clearly show that the whole premises of the reasons for reopening of the assessment is that the assessee has not filed her income tax return. Referring to page 1 of the paper book, she submitted that the assessee has duly filed her return of income u/s 139(1) of the Act on 25.07.2011. Even in the form of recording of reasons placed at page 7 of the paper book, it has been mentioned in clause 8 that no valid return has been filed. Referring to the reasons recorded in the penultimate paragraph, the AO has again mentioned that the

assessee has not filed the return of income for the year under consideration. She submitted that when the whole basis of reopening is non-filing of return of income by the assessee and when the assessee has in fact filed her return of income; therefore, such reassessment is based on incorrect facts. She submitted that the AO has not applied his mind while reopening the case. It is evident from the record that although the assessee has filed her return of income, however, the AO has mentioned that the assessee has not filed her return of income. Even after, copy of the return was filed before the AO during the assessment proceedings, again the AO has mentioned in the order while disposing of the objections, the copy of which is placed at pages 28 to 33 of the paper book that the objection of the assessee is devoid of any merit. Relying on the following decisions, she submitted that the reopening of assessment on the basis of wrong and incorrect facts is not valid.

- i. ACIT vs Asis Plywood P. Ltd. (ITA No.2144/Del/2015), dt.28.01.2019
- ii. Krissh Impex Pvt. Ltd. Vs Ito ITA No.7610/Del/2019, dt.29.10.2020
- iii. Deepak Gupta & Sons vs ITO W.P.3344/Del/2018, dt.10.01.2019

iv. Pr. CIT vs RMG Plyvinyl (I) Ltd., ITA 19/2017 Dt. 07.07.2017 (Del HC)

6. In her next plank of arguments, the ld. Counsel for the assessee submitted that the approval for reopening of the assessment u/s 148 as prescribed u/s 151 was received by the AO from PCIT. Referring page -7 of the paper book, she submitted that the PCIT has also just given the approval in mechanical manner and without application of mind. Even she did not bother to check the original return filed by the assessee. Referring to the following decisions, she submitted that when the PCIT has given approval in a mechanical manner, such reopening is not in accordance with law.

1. CIT, Jabalpur (M.P.) vs M/s S. Goyanka Lime and Chemicals Ltd. SC, SLP 11916/2015 dt.08.07.2015.
2. Pr. Commissioner of Income Tax-6 vs M/s N.C. Cables Ltd., ITA 335/2015, Delhi High Court, dt.11.01.2017.
3. Synfonia Tradelinks Pvt. Ltd. Vs ITO, (Del HC), W.P.(C) 12544/2018, dt.26.03.2021
4. Smt. Kalpana Shanti Lal Haria vs ACIT Writ Petition (L) No.3063 of 2017, dt.22.12.2017 (Bom HC)
5. Omkam Developers Ltd. Vs ITO, ITA No.6862/Del/2018 and ITA No.507/Del/2018, Dt.11.05.2021
6. M/s Sungrow Impex Pvt. Ltd. Vs ITO, ITA No.4183/Del/2019, dt. 19.03.2021
7. VRC Township Pvt. Ltd. Vs ITO, ITA No.1503/Del/2017, dt. 14.10.2020

8. M/s Madhu Apartment Pvt. Ltd. Vs ITO ITA Nos.3869 and 3870/Del/2018, dt.01.02.2021.

7. The Ld. Counsel for the assessee in her next plank of argument, referring to the following decisions submitted that only the bank deposits cannot be the reasons for reopening. She submitted that bank deposits per se cannot be a reason to form belief that income has escaped assessment that too without perusal of return filed by the assessee.

i. Inder Jit vs ITO ITA No.2740/2018, dt. 03.12.2018

ii. Tejender Kumar Ghai vs ITO ITA970/2017, dt.07.06.2017

iii. Sh. Saurabh Saini vs ITO, ITA 6003/Del/2018, dt. 05.09.2019

iv. Sh. Abrar Ahmed Quasimi vs ITO, ITA 3177/Del/2017, dt.01.06.2018

8. She accordingly submitted that the reopening of the assessment made by the AO and upheld by the Ld. CIT(A) should be quashed.

8.1. So far as the merit of the case is concerned, she submitted that the assessee derives income from house

property and business and profession and has applied the provisions of section 44AF of the Act. Further, she has also derived income from sale of old household scrap. Thus, the source is fully explained and therefore, even on merit also, no addition is called for.

9. The Ld. DR on the other hand heavily relied on the order of the AO and the ld. CIT(A).

10. I have heard the rival arguments made by both the sides, perused the orders of the AO and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the AO in the instant case has reopened the assessment on the ground that the assessee made cash deposit of Rs.21,10,000/- in her saving bank account maintained with Punjab & Sind Bank and has not filed her return of income. The reasons recorded for such reopening of the case of the assessee has already been reproduced in the preceding paragraph. However, a perusal of the paper book filed on behalf of the assessee shows that the assessee has in fact filed her return of income for the impugned assessment year on 25.07.2011 vide Acknowledgment No.001015 dated 25.07.2011. Even the AO

also acknowledged in the first page of the assessment order at para-2 that the assessee has filed reply along with manual return filed by the assessee on 25.07.2011 declaring total income of Rs.3,03,640/- for AY 2011-12, which is placed on record. The relevant observation of the AO reads as under:-

*“2. Accordingly, the case was reopened for assessment after taking necessary approval from Pr. CIT-14, New Delhi. Notice u/s 148 of the IT Act 1961 was issued to the assessee on 28.03.2018 and duly served upon the assessee. The assessee filed reply along with manual return filed by assessee on 25.07.2011 declaring income of Rs.3,03,640/- for AY 2011-12 which is placed on record.”*

11. I find the AO has never disputed that the assessee has not filed the return of income or that the copy of the acknowledgment of the return of income dated 25.07.2011 is false or untrue. Therefore, I am of the considered opinion that the AO has recorded wrong facts while recording reasons that the assessee has not filed the return of income. Further, a perusal of the approval given by the Pr. CIT shows that she has also given her approval as under:-

*“I have gone through the reasons recorded by the A.O. and I am satisfied that this is a fit case for reopening of case.”*

12. A perusal of the above shows that even the superior authority has also given her approval in a mechanical manner

and without independent application of mind especially when the assessee has filed her return of income and reopening was made on the ground that no return has been filed.

12.1. It has been held in various decisions that reopening of the assessment on incorrect or wrong facts is a nullity. The Co-ordinate Bench of the Tribunal in the case of ACIT vs Asis Plywood P. Ltd. vide ITA No.2144/Del/2015, dt.28.01.2019 has observed as under:-

*“5.1 A perusal of the reasons shows that the Assessing Officer has clearly borrowed the information received from the Investigation Wing but he has not carried out any verification to test the veracity of the information which has been passed by the Investigation Wing. Thus, he has proceeded to form an opinion on the basis of borrowed reasons and there is no independent application of mind. It is also seen in the assessment order that the Assessing Officer had duly noted that the original return of income was filed on 22.02.2007 but has noted in the reasons that the assessee had not filed any return of income. Thus, the Assessing Officer has contradicted himself by admitting that the return was filed and then saying that it was not filed. Thus, this establishes that notice u/s 148 vis-a-vis the reasons recorded is devoid of any application of mind.”*

13. Similarly, the Co-ordinate Bench of the Tribunal in the case of Krissh Impex Pvt. Ltd. vs ITO, vide ITA No.7610/Del/2019, dt.29.10.2020 has observed as under:-

*“7. After considering the rival submissions and on perusal of the material on record specifically with regard to validity of proceedings u/s. 147 as argued before us, it is seen that the Assessing Officer in the reasons has categorically mentioned that no return of income was filed for Assessment Year 2010- 11. It is from the perusal of return of income for Assessment Year 2009-10 and 2011-12, he has drawn a presumption that since authorized share capital has been increased from Rs.1 lac in Assessment Year 2009-10 to Rs.30 lac in Assessment Year 2011-12. He has no information or record regarding Assessment Year 2010-11, whether assessee had received any share capital or not or any return of income was filed or not.*

*Even at the time of seeking approval u/s. 151, it has been categorically mention that in item no. 8 that ITR has not been filed. Based on this recommendation and Assessing Officer’s satisfaction, approval has been granted that it is a fit case for issuing notice u/s. 148, whereas the fact of the matter is that income tax return for Assessment Year 2010-11 was duly filed in time on 12.08.2010 u/s. 139 (1) and same was available on ITD system which is also evident from the comments of the Assessing Officer filed before the Ld. CIT (A) as incorporated above. Thus, the very premise for reopening was that the assessee has not filed the return of income which has been found to be factually incorrect. Even though there was a tangible material or information coming from the investigation wing, but Assessing Officer on the said material/ information received has to apply his mind after verifying the assessment records and after due application of mind, he has to satisfy himself and reached to reason to believe that income chargeable to tax has escaped assessment. Such omission of vital fact of filing of return of income has been frowned upon by the Jurisdictional High Court in the case of PCIT Vs. RMG*

*Polyvinyal (I) Ltd. 396 ITR 5 (Del.).”*

14. I find the Co-ordinate Bench of the Tribunal in the case of Deepak Gupta & Sons vs ITO, vide ITA No.8748/Del/2019, dt. 09.11.2020 has observed as under:-

*“4.1 We are of the considered view that the reasons recorded by the Assessing Officer is based on presumption and without application of mind by stating therein that assessee has not filed its return of income whereas the evidences produced by the assessee in the shape of paper book before the Ld. CIT(A) as well as before the Tribunal, establish that the assessee has filed the return of income for the assessment year in dispute, hence, the aforesaid decision of the Hon’ble Delhi High Court in the **case** of Pr. CIT vs. RMG Polyvinyl reported in (2017) 83 taxmann.com 348 (Delhi)/ 396 ITR 5 is squarely applicable here and therefore, applying the said ratio, the reassessment in the present **case** is bad in law and accordingly quashed and appeal of the assessee is allowed. ”*

15. I find the Hon’ble Bombay High Court in the case of Ankita A. Choksey vs ITO, vide W.P. No.3344/Del/2018, dt.10.01.2019 (Bom HC) has observed as under:-

*“6. It is a settled position in law that the Assessing Officer acquires jurisdiction to issue a reopening notice only when he has reason to believe that income chargeable to tax has escaped Assessment. This basic condition precedent is applicable whether the return of income was processed under Section 143(1) of the Act by intimation or assessed by scrutiny under Section 143(3) of the Act. [See Asst. Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers (P) Ltd., (SC) 291 ITR 500*

*and PCIT v/s. M/s. Shodimen Investments (Bombay) 2018 (93) Taxman.Com 153]. Further, the reasons to believe that income chargeable to tax has escaped Assessment must be on correct facts. If the facts, as recorded in the reasons are not correct and the assessee points out the same in its objections, then the order on objection must deal with it and prima facie, establish that the facts stated by it in its reasons as recorded are correct. In the absence of the order of objections dealing with the assertion of the Assessee that the correct facts are not as recorded in the reason, it would be safe to draw an adverse inference against the Revenue.”*

16. I find the Hon'ble Delhi High Court in the case of Pr.CIT vs RMG Polyvinyl (I) Ltd. vide ITA No.19/2017, dt.07.07.2017 (Del HC) has observed as under:-

*“11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.*

*12. Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage **was** processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that **case** were more or less similar to the reasons in the present **case**, viz., information **was** received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on*

*facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report. "*

17. The various other decisions relied upon by the ld. Counsel for the assessee also supports to the proposition that the reopening of the assessment on wrong facts or incorrect facts and without independent application of mind by the AO and on borrowed satisfaction makes such reopening a nullity. Since, the AO in the instant case, has reopened the assessment on the basis that the assessee has made cash deposits of Rs.21,10,000/-and has not filed the return of income, whereas, the assessee in fact has filed her return of income on 25.07.2011 declaring total income of Rs.3,03,640/-, therefore, it is established that the reopening was based on incorrect/wrong facts and without application of mind and on borrowed satisfaction. Therefore, relying upon the decisions cited (supra), wherein, it has been held that the reopening of assessment on incorrect/wrong facts makes such reopening a nullity, I hold that initiation of reassessment proceedings in the instant case on wrong facts that the assessee has not filed

the return of income makes the reopening a nullity. I, therefore, quash the reopening of assessment in the instant case. The grounds challenging the validity of reassessment are allowed.

18. Since, the assessee succeeds on the legal ground, therefore, the other grounds challenging the addition on merit become academic in nature and therefore not being adjudicated.

19. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court on 23<sup>rd</sup> February, 2022.

**Sd/-**  
**[R.K.PANDA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 23/02/2022

*Shekhar,*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi