

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1833/M/2021
Assessment Years: 2011-12**

M/s. Shantilal Surji Gala, 603/C, Maven Mahavir Universe, LBS Road, Bhandup West, Mumbai – 400 078 PAN: AJRPG9242Q	Vs.	Income Tax Officer – 29(3)(4), C-10, Pratyaksh Bhavan, Room No.308, BKC, Bandra East, Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Chintan Shah, A.R.
Revenue by : Shri Amit Kumar Soni, D.R.

Date of Hearing : 11 . 07 . 2022
Date of Pronouncement : 26 . 07 . 2022

ORDER

Per Amarjit Singh, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi.

2. The fact in brief is that the assessee had not filed return of income for the assessment year 2011-12. The AO stated that on perusal of individual transaction statement in the case of the assessee for F.Y. 2010-11 it was noticed that assessee had made investment of Rs.10 lakhs in State Bank of India, Rs.1,98,000/- in Punjab & Sindh Bank, Rs.1,00,000/- in Gravity India Ltd. and Rs.1,95,200/- in Tata Steel Ltd. It was also mentioned that assessee had also made commodity transaction to the amount of Rs.35,00,625/- and he had also received interest income of Rs.10,676/-. All the aforesaid information has been incorporated in the reasons recorded as basis for escaped assessment

under section 147 of the Act. In the reasons recorded it was also mentioned that the assessee had sold 11,600 shares for a consideration of Rs.41,18,000/- under open offer during the previous year, however, the assessee had not offered any capital gain/business profit on the same tax. In response to notice under section 148 of the Act the assessee has filed the return of income on 30.04.2018 declaring total income at Rs.2,18,780/-. The assessment under section 143(3) read with section 147 of the Act was finalized at Rs.12,38,490/- by making addition of Rs.10,19,710/- pertaining to cash deposits of Rs.3,67,540/- in the saving bank account of the assessee + Rs.6,52,170/- being 50% of cash deposit in joint account. The assessee filed appeal before the Ld. CIT(A), however the Ld. CIT(A) has dismissed the appeal of the assessee.

3. During the course of appellate proceedings before us, at the outset, the Ld. Counsel vehemently contended that AO has not made any addition pertaining to the issues on the basis of which assessment was reopened by issuing of notice under section 148 of the Act. Therefore, he has contended that other addition made in the assessment order passed under section 143(3) read with section 147 of the Act cannot survive, if no addition is made on the issue on the basis of which the case of the assessee was reopened. The Ld. Counsel has placed reliance on the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Jet Airways (I) Ltd. (2010) 195 taxman 117 (Bom.). The Ld. Counsel has also placed reliance on the decision of Hon'ble Delhi High Court in case of Ranbaxy Laboratory Ltd. vs. CIT (2011) 60 DTR 77 (Delhi-HC).

4. On the other hand, the Ld. D.R. supported the order of the lower authority.

5. Heard both the sides and perused the material on record.

6. Without reiterating the facts as elaborated above it is undisputed fact that the AO has not made any addition on the basis of which he formed reasons to believe that assessee had escaped assessment. In the case of the assessee assessment under section 143(3) read with section 147 of the Act was completed on 31.03.2011 by making addition of Rs.10,19,710/- pertaining to Rs.3,67,540/- for cash deposit in his saving bank account + Rs.6,52,170/- being 50% of cash deposit of the total cash deposit of Rs.13,04,340/- in joint account. However, the case of the assessee was reopened on the reason that assessee had escaped assessment for the year under consideration on account of investment of Rs.10 lakhs in State Bank of India, Rs.1,98,000/- in Punjab & Sindh Bank, Rs.1,00,000/- in Gravity India Ltd. and Rs.1,95,200/- in Tata Steel Ltd. Further, the assessee has made commodity transaction amounting to Rs.35,00,625/- and assessee has not offered any interest income of Rs.10,676/-. It was also mentioned in the reasons recorded that assessee had sold 11,600 shares for a consideration of Rs.41,18,000/- without offering any capital gain during the year under consideration. On perusal of the assessment order it is evident that AO has accepted the submission of the assessee on all the issues which were referred in the reasons recorded for reopening the assessment for escaped assessment. We have perused the decision of Hon'ble Jurisdictional High Court in case of Jet Airways (I) Ltd. (supra) wherein it has been held that if after issuing a notice under section 148, the AO accepts the contention of the assessee and holds that the income for which he had initially formed a reason to believe that it had escaped assessment, has as a matter of fact, not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. After taking into consideration the decision of Hon'ble Jurisdictional High Court (supra) and the decision of Hon'ble Delhi High Court (supra) we consider that in the case of the assessee AO has accepted the items for which

reasons were recorded had not escaped assessment which means the AO had no reason to believe that income has escaped assessment. Therefore the reopening of the assessment under section 147 of the Act in the case of the assessee is invalid. Accordingly, grounds No.1 & 2 of the assessee are allowed. Since we held the assessment made u/s 147 as bad in law, therefore other grounds of appeal i.e 3 and 4 are not required any adjudication. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 26.07.2022.

**Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER**

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.