

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

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 48/Lkw/2021
Assessment Year 2012-13

Ritika Gupta, 117/H-2/165 Pandu Nagar, Kanpur - 208005 PAN – AZBPG9986B (Appellant)	Vs.	Income Tax Officer 1(2)(3), Kanpur (Respondent)
--	-----	---

Appellant by	Shri P.K. Kapoor, CA
Respondent by	Shri Harish Gidwani, DR
Date of hearing	26/07/2022
Date of pronouncement	17/08/2022

ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A), dated 31.03.2021.

2. The Id. AR, at the outset submitted that assessee had filed additional grounds of appeal vide petition 13.04.2022. My attention was invited to Ground Nos. 10 to 12 of additional grounds which is in continuation of the original grounds of appeal. The Id. AR submitted that these grounds are legal in nature and are coming out of material already on record and therefore it was prayed that in view of the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT 229 ITR 383 they may be adjudicated first.

3. The Id. DR fairly agreed that these additional grounds are coming out of material already on record and therefore these were admitted and Id. AR was asked to proceed with his arguments on these grounds. The Id. AR

arguing Ground Nos.10 and 11 submitted that the case of the assessee was reopened for verifying the investment in property and my attention was invited to copy of reasons placed in PB pg.5. It was submitted that Assessing Officer has initiated the reopening by holding that the assessee has made investment in immovable property to the tune of Rs.51,95,000/- whereas the Assessing Officer has made an addition of Rs.10,70,000/- by holding that the assessee could not explain the source of such deposits for making investment in the property and therefore it was submitted that Assessing Officer has not made additions on the basis of which case of the assessee was reopened and has made addition on another basis. It was submitted that the case law of CIT vs. Jet Airways Ltd. 331 ITR 236 is squarely applicable to the facts of the case where it has been held that if the Assessing Officer do not make any addition on an issue on which reopening was initiated and makes addition on some other issue, the assessment order is void ab initio.

4. Arguing on Ground No.12 the Id. AR submitted that assessee had filed return of income on 19.03.2013 and my attention was invited to PB pgs. 1 and 2 where a copy of acknowledgment of return alongwith computation of income was placed. The Id. AR submitted that reopening is bad also on this account as the Assessing Officer has noted that assessee had not filed return of income u/s. 139 of the Act and again my attention was invited to PB pg. 5, where a copy of reasons for reopening of the case was placed. The Id. AR submitted that reopening initiated on the basis of wrong facts is bad in law and reliance in this respect was placed on the following judgments:

1. Mumtaz Haji Mohammad Memon vs. ITO, Ward 6(1)(1), reported in 408 ITR 268 (Guj).
2. Sagar Enterprises vs. ACIT, reported in 257 ITR 335 (Guj.)

6. The Id. AR further placed his reliance on an order of Hon'ble Allahabad High Court in the case of Shri Sunil Kumar Rastogi HUF vs. ITO, Writ Tax No. 658 of 2017 where vide order dated 02.12.2019 the Hon'ble Court has held in favour of the assessee under similar facts and circumstances.

6. The Id. DR, on the other hand, submitted that on the basis of AIR information, the case of the assessee was reopened and in the bank account there was no mention of PAN of the assessee and during a search in the PAN database, the name of the assessee did not appear therefore the Assessing Officer was left with no option but to issue notice u/s. 148 of the Act and in view of the above, it was submitted that the ground taken by the assessee be dismissed. The Id. DR has also filed written submissions, which for the sake of completeness is made part of this order and is reproduced as under:

"In the above case the assessee has taken three additional grounds numbering 10 to 12 as under:

10. BECAUSE the addition of Rs. 10,70,000/- sustained by Ld. CIT(A) not being the addition on the basis of belief of escapement of income as had been formed by the Assessing Officer in the reason to believe, the said addition is not sustainable in view of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (1) Ltd., reported in (2011) 331 ITR (236) (Bom.).

11. BECAUSE the addition of Its 10,70,000/- made by the Assessing Officer as "un explained investment in purchase of the immovable property" has been confirmed by Ld. CIT (A) as "un-explained credit appearing in the books of account of the appellant." whereas the reason to believe were recorded to assess the escaped income on account of investment in immovable property on the basis of information to the effect that the assessee had purchased an immovable property of Rs. 30,00,000 or above, therefore, the re-assessment order and the addition made therein or not sustainable in view of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (1) Ltd., reported in (2011) 331 ITR (236) (Bom.).

12. BECAUSE the reasons recorded by the Assessing Officer were based on erroneous assumption of non-filing of return of income whereas per material and information available on record the assessee had filed return u/s 139 on 19.03.2013, the formation of belief of escapement of income got wholly vitiated and consequently the assessment order dated 19.12.2019 in pursuance of such reason to believe deserved to be held as bed in law."

The above grounds have been taken as is submitted by the AR that they are grounds on pure legal issue and go to the very root of the matter.

It is submitted that the case law cited by the assessee is not applicable to the fact to the present case due to the following reasons

The case was assessed u/s 147/143(3) of the IT Act on the basis of reasons recorded by the A.O. after obtaining prior approval of the prescribed authorities. As per the reasons to believe recorded by the A.O. an amount of Rs.51,95,000/- which was the amount reflecting in the information furnished by Sub-Registrar, Kanpur had escaped assessment for the year under consideration. A letter u/s 133(6) of the IT Act, 1961 was issued to the assessee requiring to furnish the information which was not responded to by the assessee within the stipulated time because of which proceedings were initiated.

During the course of assessment proceedings, the assessee was required to furnish various details and as per notice dated 29.10.2019 the assessee was specifically required to furnish the source of investment for purchase of property during Financial Year 2011-12. The assessee filed the reply vide which she submitted that she had taken un-secured loan from Mr. Mohit Gupta and Mrs Rama Gupta of Rs. 5,00,000/- each on 04.11.2011 and 12.11.2011 in her bank account. However, the assessee failed to explain that these loans were actually intended for purchase of property in question although the assessee maintains complete books of account. Further no documentary evidence/proof in the form of confirmation from the parties giving loan could be produced to substantiate the claim during the course of assessment proceedings. Accordingly the source of investment of Rs 10,70,000/- remained un-explained and un-verified and therefore the said investment of Rs. 10,70,000/- towards the purchase a property was held to be made out of the un-disclosed source and was treated as un-expected income/investment of the assessee for the year under consideration. The assessee preferred an appeal before the CIT (A).

During the course of appellate proceedings the assessee has kept silent on the loans taken because of which the addition on account of investment in the purchase of property was confirmed to be made from undisclosed sources by the Ld. CIT(A).

The Ld. CIT (A) held as under:

"I find that appellant is maintaining books of account & the assessing officer has categorically observed this fact. Also during the year loans have been taken by appellant for which no confirmation or any other evidence to establish identity genuineness of loan and capacity of person having given the loan has been given by appellant either during the assessment proceedings or in appellate proceedings. Addition to income is therefore justified Assessing Officer has made the addition on account of un-explained the investment. In my view it is more

appropriate to add to income the loan taken us 68 of the Act as unexplained credits appearing in the books of account of appellant. The addition made by Assessing Officer is thus confirmed"

The assessee has herself admitted to have taken loan from the purchase of property and has submitted that it is reflected in her books of account as unsecured loan. However, the assessee has failed to show the connection of the loans taken with the purchase and also failed to file documentary evidence regarding the loans taken.

The working portion of Section 68 is reproduced as under:

Where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum credited may be charged to income-tax as the income of the assessee of that previous year.

Thus on going through the above provisions of section it may be inferred that the CIT (A) has confirmed the addition of Rs. 10,70,000/- which was not explained by the assessee in either assessment proceedings or appellant proceedings.

The above legal issue therefore ceases to exist and the principle laid down in Jet Airways is therefore not applicable to the present ceases the addition confirmed by the CIT(A) is the same which was made by the A.O.

To sum up, the case was selected for reassessment to verify the source of investment in purchase of immovable property which the assessee submitted to have purchased through two loans of Rs 5 lacs which claim however, the assessee could not corroborate through any documentary evidence nor the assessee could establish any nexus between the loans taken & purchase of property in either assessment or appellate proceedings.

The addition of Rs 10,70,000/- made by the AO. & confirmed by the CIT (A) is the same i.e. investment in purchase of property & this was held to be from undisclosed sources which the assessee could not satisfactorily explain before both the authorities & which primarily was the income that had escaped assessment which the A.O. had mentioned in his reason to believe does not, therefore, come under the ambit of principles laid down in Jet Airways."

7. The Id. AR in his rejoinder submitted that the argument of the DR did not address ground no.12 taken by the assessee that the reasons were

recorded by recording wrong fact of non filing of the return by assessee whereas as per the material available on record the assessee had filed return of income u/s. 139 on 19.3.2013.

8. I have heard the rival parties and have gone through the material placed on record. I find that Ground No.12 is a jurisdictional issue regarding assumption of jurisdiction for issuing of notice u/s. 148 of the Act. Since the Id. AR has argued that Assessing Officer has assumed the jurisdiction on wrong facts, I proceed to decide this ground first. From the reasons recorded placed at PB pg.5, I find that as per AIR information available on record, the Assessing Officer observed that assessee has purchased an immovable property amounting to Rs.**51,95,000/-** which has escaped income. The Assessing Officer wrote a letter to assessee to explain the source of such investments. The assessee did not reply to the said notice. The Assessing Officer further notes that PAN database was searched in the system but could not find the particulars about assessee therefore he held that no question of assessment u/s. 143(3) arises as no return was visible on the system and therefore he held that there has been a failure on the part of assessee to make a return u/s. 139 of the Act and he initiated the reassessment proceedings. Paper book Pg.6 is a list of questions which needs to be filed by AO while initiating reopening of a case. Sl.No. 8 of the questions requires Assessing Officer to answer to a question as to whether provisions of Section 147(a) or 147(b) are applicable. Against reply to this question Section 147(a) has been mentioned and it has also been mentioned that no return has been furnished by the assessee. On the contrary, the fact remains that assessee did file return of income u/s. 139 of the Act on 19.03.2013, a copy of the acknowledgement along with computation of income is placed in paper book pgs. 1 and 2. The date of filing of the return is much before than the date of recording of reasons which is 27.03.2019. The Assessing Officer has noted that PAN was searched in the system and DCR of respective year has also been consulted and he had not found the copy of return filed by assessee. In view of the fact of having filed the return of

income by the assessee the finding of the Assessing Officer that no return has been furnished by the assessee is wrong and therefore I hold that Assessing Officer has reopened the case by recording a wrong fact. The copy of acknowledgment of return for the relevant year has been made part of this order. Had the Assessing Officer noted the correct facts of filing the return, he would have verified the fact of escapement of income from the return of income which he has not done therefore the notice issued u/s. 147 is not legally tenable.

9. The Hon'ble Allahabad High Court in the case of Shri Sunil Kumar Rastogi HUF (Supra) vide order dated 02.12.2019 has cancelled the notice issued u/s. 148 under similar facts and circumstances. The findings of Hon'ble Court are reproduced below:

“The writ petitioner has approached this Court challenging a notice dated 30th March, 2017, issued under section 148 of the Income Tax Act, 1961, read with the order dated 05th September, 2017, issued by the Income Tax authorities in respect of reassessment of income of the writ petitioner for the assessment year 2010-2011.

A plain reading of the notice dated 30th March, 2017, reveals that the same was issued after obtaining necessary satisfaction of the Principal Commissioner of Income Tax1, Kanpur, on the basis of approval dated 30th March, 2017. The reasons for issuance of notice has also been annexed to the writ petition wherefrom it appears that the case was reopened for assessment under section 147 of the Income Tax Act, 1961, in respect of assessment year 2010- 2011 since the assessee had not filed return of income for the assessment year 2010-2011. The records of the case, however, reveals that the assessee, in fact, had filed return of income for the assessment year 2010-2011. As such non - filing of return by the assessee could not possibly have been the reason for re - opening of assessment under section 147 of the Income Tax Act, 1961.

If the assessee had not disclosed income or concealed income, the reason for re - opening of assessment ought to have reflected otherwise, in the notice dated 30th March, 2017.

In that view of the matter – on a very short and narrow compass – we are of the view that the notice dated 30th March, 2017, issued under section 148 of the Income Tax Act read with order dated 05th September, 2017, issued by Income Tax Officer-3 (4), Kanpur, cannot be sustained in law and is liable to be set aside and is accordingly, set aside.

Setting aside of the notice dated 30th March, 2017, read with the consequential order dated 05th September, 2017, however, shall not, in any manner, stand in the way of the Income Tax authorities to proceed further in the matter in accordance with law.

The writ petition stands disposed of accordingly.”

10. In view of above and following the judicial precedents as relied on by the assessee I also quash the notice u/s. 147 and therefore hold the assessment order void ab initio and the consequent order of Id. CIT(A) is also held to be a void ab initio. In view of above, Ground No.12 of additional ground is allowed.

11. Since I have annulled the assessment order no other grounds are needed to be adjudicated.

12. In the result, the appeal filed by the assessee is partly allowed.

(Order pronounced in the open court on 17/08/2022)

**Sd/-
(T.S. Kapoor)
Accountant Member**

Aks –
Dtd. 17/08/2022

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

Assistant Registrar



AY 20

Received with thanks from **RITIKA GUPTA**
 ITR No. ▶ 1(SAHAJ) ▶ 2 ▶ 3 ▶ 4S(SUGAM) ▶ 4 ▶ 5 ▶ 6 for assessment year 2012-13

A1 FIRST NAME **A2** MIDDLE NAME
 R I T I K A

A3 LAST NAME **A4** PERMAN
 G U P T A A Z B P G 9 9 8 6 B

A5 SEX **A6** DATE OF BIRTH **A7** INCOME TAX WARD/CIRCLE
 Male • Female 2 6 0 3 1 9 8 8 INCOME TAX OFFICER 2(3),KANPUR

A8 FLAT/DOOR/BUILDING **A9** ROAD/STREET
 1 1 7 / H - 2 / 1 6 5

A10 AREA/LOCALITY **A11** TOWN/CITY/DISTRICT
 P A N D I U N A G A I R K A N P U R

A12 STATE **A13** PINCODE
 U T T A R P R A D E S H 2 0 8 0 0 5

A14 Fill only one: filed ▶ Before due date-139(1) ▶ After due date-139(4) ▶ Revised Return-139(5) OR in response to notice ▶ 142(1) ▶ 148 ▶ 153A/153C

COMPUTATION OF INCOME AND TAX RETURN Whole-Rupee(₹) only

B1 Gross Total Income	▶ B1 ()	2,61,582
B2 Deductions under Chapter VI-A	▶ B2	68,400
B3 Total Income	▶ B3 ()	1,93,180
B4 Current Loss if any	▶ B4 ()	0
B5 Net Tax Payable	▶ B5	327
B6 Interest Payable	▶ B6	0
B7 Total Tax and Interest Payab	▶ B7	327
B8 Total Advance Tax Paid	▶ B8	0
B9 Total Self Assessment Tax P	▶ B9	330
B10 Total TDS Deducted	▶ B10	0
B11 Total TCS Deducted	▶ B11	0
B12 Total Prepaid Taxes (B8+B9+B10+B11)	▶ B12	330
B13 Tax Payable (B7-B12, If B7 > B12)	▶ B13	0
B14 Refund (B12-B7, If B12 > B7)	▶ B14	0

ASK No: 070190313020843
 Date/A.Y: 19-03-2013/2012-13
 PAN: AZBPG9986B ITR4
 Name: RITIKA GUPTA
 RRR/BIN: W0520301001/N00015/12
 AO: ITO 2(3),KANPUR



FOR OFFICIAL USE ONLY