

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.5098/Del/2019
Assessment Year: 2010-11

Sayed Sadiq Habib, A-202, Noon apartment, C 135/1, Thokar No.8, Shaheen Bagh, Okhla, New Delhi-1100 55	Vs.	ITO, Ward-4(4), Noida
PAN : ACIPH7677N		
(Appellant)		(Respondent)

Appellant by	Shri Praveen Kapoor, CA
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	01.06.2022
Date of pronouncement	26.08.2022

ORDER

This is an appeal by the assessee against order dated 15.03.2019 of learned Commissioner of Income-Tax (Appeals)-1, Gurgaon for the assessment year 2010-11.

2. The grounds raised by assessee are concerning the solitary issue of validity of notice issued under Section 148 of the Income-Tax Act, 1961 as well as reopening of assessment under Section 147 of the Act.

3. Briefly, the facts are, the assessee is a resident individual. For the year under dispute, assessee didn't file any return of income under Section 139(1) of the Act. Subsequently, from the Individual Transaction Statement (ITS) downloaded from the system of the department, the assessing officer found that during the year under consideration, assessee had entered into an agreement with Unitech Limited, Gurgaon for purchase of an immovable property for a consideration of Rs.54,30,561. Since, assessee had not filed any return of income for the year under consideration declaring the source of investment, the assessing officer formed a belief that income for an amount of Rs.54,30,561 chargeable to tax for the year under consideration has escaped assessment. Accordingly, he reopened the assessment under Section 147 of the Act. In course of assessment proceedings, the assessing officer called upon the assessee to explain the source of investment in immovable property purchased during the year. In response, assessee filed its reply stating that an amount of

Rs.20,48,714 was paid to M/s. Unitech Ltd. through RBS Bank, Gurgaon. On pursuing the bank statement, the assessing officer noticed that assessee had received an amount of Rs.21,34,000 in his RBS Bank account prior to making payment to M/s. Unitech Ltd. Therefore, he called upon the assessee to explain the source of amount received in his bank account. Though, assessee made an attempt to explain the source of the amount received in bank account, however, the assessing officer was of the view that assessee could explain the source of receipt of Rs.9,00,000 only. Accordingly, he treated the balance amount of Rs.11,48,714 as unexplained. As regards, the balance amount of consideration paid to M/s. Unitech Ltd., the assessing officer accepted the source of Rs.10,89,199, while treating an amount of Rs.22,92,647 as unexplained. Thus, ultimately, he added back an amount of Rs.34,41,361 to the income of the assessee. Accordingly, he completed the assessment.

4. The assessee challenged the assessment order in an appeal before learned Commissioner (Appeals), inter alia, on the ground that the reopening of assessment is invalid. While deciding the appeal, learned Commissioner (Appeals) did not find merit in the grounds

raised by assessee challenging the validity of reopening of assessment. However, on merits, learned Commissioner (Appeals) granted partial relief to assessee by reducing the addition to Rs.12,34,000. Further, learned Commissioner (Appeals) enhanced the income by an amount of Rs.10,35,000 towards cash withdrawals made for household expenses.

6. Before me, in addition to the submissions made orally, learned counsel appearing for the assessee has also filed a written submissions running into 15 pages. The sum and substance of assessee's submissions are as under:

- *The assessing officer didn't have any relevant information at the time of recording reasons to believe.*
- *The competent authority has granted approval for reopening of assessment mechanically without proper application of mind.*
- *Income escaped assessment at the time of issue of notice is less than Rs.1,00,000.*
- *No reopening of assessment under Section 147 of the Act merely on information received under AIR/CIB.*

7. In support of the aforesaid contentions, learned counsel also relied upon judicial precedents as referred to in the written submissions. Whereas, learned Departmental Representative strongly

relied upon the observations of the assessing officer and learned Commissioner (Appeals).

8. I have considered rival submissions and perused the material on record. I have also examined the decisions cited before me. Admittedly, for the impugned assessment year, the assessee did not file any return of income voluntarily under Section 139(1) of the Act. It is a fact on record that the assessing officer received definite information indicating that in the year under consideration the assessee had entered into an agreement with a party for purchase of an immovable property for a consideration of Rs.54,30,561. It is observed, after receiving such information, the assessing officer wanted to make further inquiry and accordingly issued a notice to the assessee on 21.02.2017, seeking necessary information. However, assessee did not comply.

9. Considering the fact that assessee did not file any return of income on his own nor furnished any information in compliance with the notice issued, the assessing officer was unable to ascertain the fact, whether, the consideration paid of Rs.54,30,561 was from explained sources or not. Therefore, the assessing officer had tangible

information in his possession to form a belief that income chargeable to tax has escaped assessment. In that view of the matter, the contention of assessee that reopening of assessment is invalid, in my view, is unacceptable. More so, when the assessing officer has followed the legally laid down procedure of disposing of the objection filed by assessee vide a separate order. As regards, contention of the assessee that the approval for reopening of assessment was granted mechanically, I am not convinced. When the assessee is alleging some action of the departmental authorities to be not in accordance with law, it is for the assessee to substantiate such fact with proper evidence. In the facts of the present appeal, assessee has not disputed that in the year under consideration, he has purchased an immoveable property for a consideration of Rs.54,30,561. Whereas, assessee on his own has not filed any return of income despite having taxable income. This is evident from the fact that assessee has not raised any ground on merits challenging the addition sustained by learned first appellate authority. Thus, it is a fact proven on record that despite having taxable income, assessee did not volunteer to offer such income. In such cases, the department has every right and authority to proceed

under Section 147 of the Act to bring to tax the income which has escaped assessment.

10. In view of the aforesaid, I do not find any deficiency in the action of the assessing officer in reopening the assessment under Section 147 of the Act. Accordingly, I decline to entertain the grounds raised by assessee. Grounds are dismissed.

11. In the result, the appeal is dismissed.

Order pronounced in the open court on 26th August, 2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 26th August, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	18.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	23.08.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	25.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	25.08.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	26.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	29.08.2022
8.	Date on which the file goes to the Bench Clerk	29.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	