

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.510/Del/2020  
Assessment Year: 2011-12

Suchita Gupta, 103, Nikita Tower 1, Azadpur Commercial Complex, Behind Akash Cinema, Delhi- 1100 33	<b>Vs.</b>	Income-Tax Officer, Ward-38(1), New Delhi
<b>PAN :AHLPG5974F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Sachin Jain, CA
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	21.07.2022
Date of pronouncement	19.10.2022

**ORDER**

This is an appeal by the assessee against order dated 05.11.2019 of learned Commissioner of Income-Tax (Appeals)-13, Delhi. The effective grounds raised by the assessee are as under:

1. That both the lower authorities were not justified in making and confirming the re-assessment order u/s. 147 since the same was not in accordance with the Provisions of the Income-Tax Act, 1961 and is illegal on account of various reasons.
2. That under the facts and circumstances of the case, the reassessment order passed without following the Law of land

declared by Hon'ble Supreme Court of India in case of GKN Driveshaft is invalid and deserves to be quashed.

3. That the Ld. CIT(Appeals) had not considered the adjudicated the legal grounds raised by the appellant and no findings were given on legal grounds raised.
4. That under the facts and circumstances of the case, the Ld. CIT(A) was not justified in sustaining the addition amounting to Rs.20,94,294/- u/s 69A by treating the cash deposited as unexplained. Further, the Ld. CIT(A) was justified in deleting the addition of Rs.10,60,434 out of total addition.
5. That under the facts and circumstances of the case the Ld.CIT(A) was not justified in not giving any finding on Ground no.6.

2. Briefly, the facts are, the assessee is a resident individual. As claimed by the assessee, since, in the year under consideration, her income remained within the non-taxable limit, she did not file any return of income. However, from the system data base of the department, the Assessing Officer found that in the year under consideration, the assessee had deposited cash in her savings bank account maintained with Axis Bank. As alleged by the Assessing Officer, a query letter issued to the assessee seeking information on the issue did not evoke any response. Thus, having reason to believe that income chargeable to tax in the year under consideration amounting to Rs.66,60,456 has escaped assessment, the Assessing

Officer reopened the assessment under Section 147 of the Act. Challenging the reopening of the assessment, the assessee raised objection before the Assessing Officer. However, by a separate order, stated to have been passed on 31.10.2018, the Assessing Officer rejected the objection.

3. In course of assessment proceedings, the Assessing Officer while verifying the bank account, noticed that the assessee has invested an amount of Rs.31,05,000 in commodities derivatives through Religare commodities Ltd. out of cash deposits made in the bank account. Therefore, he called upon the assessee to explain the source of cash deposits in the bank account as well as investment made in Religare Commodities. In response, assessee submitted that the bank accounts are jointly held with her husband Shri Sanjay Gupta and most of the deposits and investments in Religare Commodities are by her husband. Further, she submitted that in the bank account, wherein, she is the first holder, cash deposits were made out of earlier withdrawals. The Assessing Officer, however, did not find merit in the submissions of the assessee. Accordingly, he added back an amount of R.31,05,000, being investment made in Religare Commodities Ltd.

stated to be made out of deposits in bank account. Further, he added back an amount of Rs.8006, being commission received from M/s. Carol Securities Pvt. Ltd.

4. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals), inter alia, challenging the validity of reopening of assessment under Section 147 of the Act. While deciding the appeal, learned Commissioner (Appeals) did not adjudicate the grounds raised by the assessee challenging the validity of reopening of assessment under Section 147 of the Act. As regards the merits of the additions made, learned Commissioner (Appeals) granted partial relief to the assessee in respect of addition made of R.31,05,000 by restricting the addition to Rs.20,94,294. As regards the addition of Rs.8,006 representing commission income, learned Commissioner (Appeals) did not adjudicate the ground raised by the assessee.

5. Before me, learned counsel appearing for the assessee submitted that reopening of assessment under Section 147 of the Act is invalid as the Assessing Officer while reopening the assessment has applied his mind properly to the facts and material on record.

6. Drawing my attention to the reasons recorded, he submitted that by considering wrong facts and figures relating to some other assessee, the Assessing Officer has reopened the assessment. He submitted, the copy of the reasons recorded communicated to the assessee clearly reveals the mechanical approach of the Assessing Officer. He submitted, while granting approval for reopening of assessment, the authorities concerned has failed to apply his mind as well. Thus, he submitted, the assessment order passed should be declared as invalid.

7. As regards the merits of the additions made, learned counsel submitted, there are three accounts in the name of the assessee in the Axis Bank. He submitted, out of the three accounts, only in respect of one account she is a single owner. Whereas, other two accounts were jointly held with her husband.

8. Drawing my attention to the copy of the bank statements placed in the paper book, learned counsel submitted, in the bank account in assessee's own name, there is no transaction at all. In joint account with husband where the assessee is second holder, an amount of Rs.50,000 was deposited by the assessee and Rs.2,50,000 was

deposited by her husband. In so far as the third bank account wherein the assessee is the first holder, an amount of Rs.28,54,728 was deposited by assessee's husband. He submitted, the transactions with Religare Commodities are in the name of assessee's husband and the assessee is no way connected to such transaction. Further, he submitted, though, for identical reasons, assessee's husband case was reopened under Section 147 of the Act in assessment year 2010-11, however, assessment was completed without making any addition.

9. As regards, addition of commission income of Rs.8006, learned counsel submitted, in the return of income filed for the impugned assessment year, the assessee herself has offered it as income. Therefore, the amount cannot be added again.

10. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

11. I have considered rival submissions and perused the material on record.

12. At the outset, I will address the issue relating to the validity of reopening of assessment under Section 147 of the Act. However, it is

relevant to observed, though, the assessee had raised specific grounds before learned First Appellate Authority challenging the validity of the reopening of assessment, however, the concerned authority did not adjudicate any of those grounds. Be that as it may, on perusal of reasons recorded, a copy of which, as communicated to the assessee, is placed at page 11 of the paper book, it is observed that there are various inconsistencies between facts as recorded in the reasons to believe and the facts available on record. Firstly, though, assessee's name and address have been correctly mentioned at the top, however, PAN is different. Further, in the heading relating to reasons for issue of notice under Section 148 of the Act, the Assessing Officer has referred to the case of Kapil Sharma. Even, the quantum of cash deposits made in the account held with Axis Bank is incorrect. Though, in the opening paragraph of the reasons recorded, the Assessing Officer has referred to bank account maintained with Axis Bank, however, in a later paragraph, the Assessing Officer has referred to cash deposited in various cooperative banks. Thus, the aforesaid factual inconsistencies appearing in the reasons recorded clearly establish that facts relating to some other assessee have been

interpolated to form belief regarding escapement of income. Thus, the reasons recorded reveal complete non application of mind by the Assessing Officer and the reasons recorded have no rational nexus with the actual facts. Unfortunately, the superior authority while granting approval under Section 151 of the Act has acted mechanically without application of mind. The facts discussed above clearly vitiate the initiation of proceedings under Section 147 of the Act. Thus, for this reason alone, the assessment order deserves to be quashed. Accordingly, I do so.

13. However, for the sake of completeness, I will deal with the merits of the additions as well. In so far as addition of Rs.31,05,000 is concerned, according to the Assessing Officer, the amount represents investment made in M/s. Religare Commodities Ltd. sourced from the cash deposited in the bank account. As discussed earlier, there are three accounts in assessee's name with Axis Bank. However, the single account standing in assessee's name has no transaction in the year under consideration. The other two accounts are held jointly with the husband. On perusal of bank statements of these two accounts along with statement of account of M/s. Religare Commodities Ltd.

reveals that assessee's husband Shri Sanjay Gupta was carrying on transaction in commodities derivatives. Even, the narration in bank statements gives credence to assessee's contention that the cash deposits were primarily made by her husband out of commodities transaction. As far as cash deposits made by the assessee, the source stands explained and learned Commissioner (Appeals) also accepted the source. When the cash deposits were found in joint accounts, either as first holder or second holder, the entire amount cannot be treated as deposits of the assessee by ignoring the evidence brought on record that the other joint holder of the accounts has deposited the cash.

14. In view of the aforesaid, I hold that the addition of Rs.20,94,294 sustained by learned Commissioner (Appeals) deserves to be deleted. Accordingly, I do so.

15. As regards the addition of Rs.8006, being the commission earned by the assessee, on perusal of record, it is evident, the assessee has offered it as income in the return of income filed in response to notice issued under Section 148 of the Act. That being the factual

position emerging on record, I delete the addition. Grounds are allowed.

16. In the result, the appeal is allowed.

***Order pronounced in the open court on 19<sup>th</sup> October, 2022.***

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 19<sup>th</sup> October, 2022.  
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi