

आयकर अपीलिय अधिकरण, पीठ "C" , कोलकाता
**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "C" KOLKATA**

समक्ष : श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री श्री मनीष बोरोड, लेखा सदस्य

**Before: Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member**

आयकर अपील सं.य/
ITA No. 2435/Kol/2019
Assessment Year: 2008-09

Sri Satyen Saraswat L/H of Late Smt. Anjana Saraswat C/o Sri Jitendra Kaushik, Advocate, 19D Muktaram Babu Street, Kolkata-700 007.	<u>बनाम</u> V/s.	DCIT, Cir-33, Kolkata 10B, Middleton Row, Kolkata-700 071.
PAN: ABCPS 8060K		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		Shri Sunil Surana, CA, Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Smt. Ranu Biswas, Addl. Ld.CIT/DR
सुनवाई की तारीख/Date of Hearing		20-09-2022
घोषणा की तारीख/ Date of Pronouncement		31-10 -2022

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment year 2008-09 is directed against the order dt. 28-05-2019 passed by the Id.

Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A)-09, Kolkata.

2. The assessee has raised the following grounds of appeal for the AY 2008-09:-

1. *For that the order of the Ld. CIT (A) is arbitrary, illegal and bad in law*
2. *For that on the facts and circumstances of the case, the Ld. CIT(A) erred in upholding the action of the DCIT in not filing the proceedings initiated u/s 147 of the I T Act 1961, when the DCIT was satisfied that the income of the appellant has not escaped assessment on the grounds of reasons recorded for initiation of proceedings u/s 147 of the I T Act 1961*
3. *For that the Ld. DCIT having been satisfied that there was no escaped income on the basis of recorded reasons, the proceedings initiated u/s 147 should have been dropped*
4. *For that on the facts of the case the proceedings initiated and continued u/s 147 is bad in law and the assessment was liable to be quashed.*
5. *For that on the facts and circumstances of the case, the order of the CIT(A) be modified and the assessee be given the relief as prayed for*
6. *For that the appellant craves leave to add, alter or amend any ground before or at the time of hearing of appeal*

3. At the outset before us the Ld. Counsel for the assessee placing reliance on the judgments of the Hon'ble Supreme Court in the case of National Thermal Co.Ltd Vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 (SC) prayed for admitting the following additional ground:-

7. *For that the AO issuing the notice u/s. 148, had no jurisdiction over the appellant and therefore the entire reassessment is liable to be quashed.*

4. As agreed by both the parties we will first take up the additional ground challenging assumption of jurisdiction by the Id.AO for issuing notice u/s. 148 of the Act.

5. At the outset the Ld. Counsel for the assessee submitted that the reasons recorded for issuance of notice u/s. 148 of the Act the Id.AO mentioned the value of consideration received for sale of immovable property. But while framing the assessment no addition was made by the Id.AO in respect of sale consideration received by assessee and, therefore, the very foundation of the re-opening no more survives and as such, re-assessment proceedings carried out by the Id. AO by issuing of such notice u/s. 148 of the Act are liable to be quashed. Reliance placed on the decision of Hon'ble Bombay High Court in the case of *CIT Vs. Jet Airways India Ltd 321 ITR 236 (Bom.)*, judgments of the Hon'ble Supreme Court in the case of *CIT Vs. Sun Engineering Works P.Ltd 198 ITR 297* and *GKN Drive Shafts (i) Ltd Vs. ITO 259 ITR 29(Cal)*.

6. Per contra, the Ld. Departmental Representative opposed the submissions made by the Ld. Counsel for the assessee and supported the findings of both the lower authorities.

7. We have heard the rival contentions and perused the record placed before us. Assumption of jurisdiction for issuance of notice u/s. 148 of the Act has been challenged by the assessee through the said additional ground. We observe that the assessee disclosed his/her income at Rs. 79,08,050/- in the return filed on 21-07-2008 for the AY 2008-09. In the said return the assessee had disclosed various income including income earned from long term capital gain at Rs. 77,99,000/-, which was arrived at after reducing cost of acquisition of immoveable property at Rs. 57,51,000/- and deduction claimed for investment u/s. 54EC in capital gain bonds at Rs. 25 lakhs against sale consideration value as per stamp duty valuation at Rs. 1,60,50,000/-. Return of income

filed by the assessee was processed u/s. 143(13) of the Act. Thereafter, the case was re-opened u/s. 147 and notice u/s. 148 of the Act was issued on. 31-03-2015 and duly served on the assessee. Following reasons were recorded by the Id. AO for issuance of notice u/s. 148 of the Act :-

The assessee filed her return of income for the Assessment Year 2008-09 in ITR-2 declaring Total Income of Rs.79,08,050/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961. Details of return reveals that the assessee taken full value consideration of Rs.1,35,50,000/-.

An information was received in this office on 23.03.2015 from Income Tax Officer Ward 3(3), Mathura where from it reveals that the assessee had made a gift of Rs. 50,00,000/- to Prashant Saraswat vide gift dated 24.07.2007. It was ascertained that value of the property adopted by the Registrar was Rs. 1,50,00,000/- and the assessee had also received a cheque of same amount which was deposited in her bank Account No.005010100458863 on 23.07.2007. As the assessee had taken full value consideration of Rs. 1,35,50,000/-, I therefore, have reason to believe that the income to the tune of Rs. 14,50,000/- has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

Issue Notice u/s. 148 of the Income Tax Act 1961 to the assessee

*Sd/-
ITO Ward 33(1)/Kolkata*

8. From perusal of the above reasons recorded reproduced hereinabove, we notice that firstly that the Id.AO has mentioned about the gift of Rs. 50 lakhs given by the assessee to Mr. Prashant Saraswat vide gift deed dt. 24-07-2007. Thereafter, there is mention about value of the property adopted by the Registrar at Rs.1.50 crores, which the assessee has received through cheque, The Id. AO also mentioned that

the assessee has taken full value of consideration at Rs.1,35,50,000/- and reason to believe that there is understatement of income by the assessee at Rs. 14.50 lakhs.

9. In the re-assessment order (u/s. 143/147 of the Act) framed on 26-08-2015 as far as gift of Rs. 50 lakhs s concerned, we find that there is no addition. As regard to the second issue i.e sale consideration of immoveable property is concerned, we find that assessee is alleged to have shown lesser value of sale consideration by Rs. 14.50 lakhs. We find that while framing the re-assessment the sale value of the property as per stamp duty valuation is taken at Rs. 1,60,50,00/- which is the same amount, which the assessee has disclosed in her return of income.

10. After going through the computation of income, we find that the assessee has *suo motu* shown the value as per stamp duty valuation of the immoveable property at Rs. 1,60,50,00/- in place of actual sale consideration Rs.1.50 cr. received by it. The assessee has also reduced the cost of acquisition of Rs. 57,51,000/-, which is not disputed by the Id.AO in the re-assessment proceedings. Assessee further reduced the capital bond investment amount of Rs. 25 lakhs, which is also not in dispute. It is an admitted fact that no addition was made by the Id.AO in the re-assessment proceedings on account of under statement of sale consideration. The assessment has been re-opened for a particular reason, but no addition was made in the re-assessment proceeding in respect of that reason. Whether such re-assessment proceedings are valid, needs to be examined in the light of judicial precedence. We find that Hon'ble Bombay High Court in the case of *Jet*

Airways India Ltd supra held that if the AO does not assess income for which reasons were recorded u/s. 147 of the Act, he cannot assess other income u/s. 147 of the Act Similar view was taken by the Hon'ble Delhi High Court in the case of *Ranbaxy Laboratories Ltd Vs. CIT 336 ITR 136(Del)*.

11. In that view of the matter and respectfully following the above mentioned judicial precedence, we are incline to hold that since the Id. AO has not made any addition on the basis of reasons recorded for which the notice was issued, we cease to have jurisdiction to proceed, as such notice u/s. 148 was not valid. Thus, re-assessment proceedings carried out by the AO u/s. 143/147 dt. 26-08-2015 are hereby quashed and additional ground raised by the assessee is allowed.

12. As regards remaining grounds of appeal nos. 1 to 5 dealing with the same is merely academic in nature as we have already quashed the reassessment proceedings. Therefore, these grounds become infructuous.

परिणामतः निर्धारिती की अपील (ITA No. 2435/Kol/2019 for the AY 2008-09)_मंजूर की जाती है।

13. In the result, the appeal of assessee is allowed.

आदेश खुले न्यायपीठ में दिनांक 31-10-2022 को उद्घोषित।
Order pronounced in the open court on 31-10-2022

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :31-10-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/: **Sri Satyen Saraswat**, L/H of Late Smt. Anjana Saraswat C/o Sri Jitendra Kaushik, Advocate, 19D Muktaram Babu Street, Kolkata-700 007.

2. प्रत्यर्थी/Respondent/:**DCIT, Cir-33, Kolkata, 10B, Middleton Row, Kolkata-700 071.**

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata

6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata

7.

ITA No. 2435/Kol/2019

AY 2008-09

Smt. Anjana Sarasat

Through L/H: Sri Satyen Saraswat