IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 280/DEL/2021
[Assessment Year: 2008-09

Daya Sapra, H-1481, 1st Floor, C.R. park, New Delhi-110019 PAN- AQOPS3831R	Vs	Income-tax Officer, Ward-23(2), New Delhi.
APPELLANT		**RESPONDENT**
Assessee represented by	Shri R.S. Singhvi, Ld. Adv.	
Department represented by	Shri pradeep Singh Gautam, Ld. Sr. DR	
Date of hearing	30.01.2023	
Date of pronouncement	27.02.2023	

O R D E R

PER N.K. CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 31.07.2018 impugned herein , passed by the Ld. Commissioner of Income tax (Appeals)-31, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2008-09.

2. At the outset, we observe that there is delay of 906 days in filing of the instant appeal. The Assessee by filling an application for condonation of delay has submitted that physical copy of the impugned order passed by the CIT(Appeals) was not served upon the Assessee and as such the Assessee was not aware of the passing of the impugned order. Subsequently, on 12.3.2020 it was found that the learned CIT(Appeals) had passed the order on 31.7.2018 and the same was uploaded on ITBA portal on 3.8.2018. The Assessee had no intimation of the same. Thereafter, the Assessee took necessary steps to file the appeal before the Hon'ble ITAT, but due to announcement of lockdown owing to Covid-19 virus, the appeal could not be filed in the month of March, 2020. However, the same was filed on 24.3.2021. It is empathetically submitted that the inadvertent delay in checking the ITBA portal of the Assessee and in filing the appeal, was on account of omission on the part of Accountant Mr. Raj Kumar, who was in exclusive possession of password of ITBA portal and looking after the tax matters. There being no case of any deliberate default, the delay in filing the appeal being of technical nature may kindly be condoned.

2.1 On the contrary, the Revenue/Department refuted the claim of the Assessee.

2.2 We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the Assessee mainly claimed that delay was on account of omission on the part of the Accountant Shri Raj Kumar, who was looking after tax matters. We observe that the Assessee failed to file any document or affidavit of Mr. Raj Kumar (Accountant) in support of condonation of delay, therefore in our considered view, the allegations about the omission on the part of the Accountant are unethical. In the absence of supportive material, such type of allegation cannot be encouraged until and unless the person against whom allegation made, honestly and clearly concede the same.

Coming to other angle, in this case, the impugned order was passed on 31.7.2018 and the Assessee claimed that he came to know about the said order only in March 2020 when the lockdown was announced and thereafter the Assessee took necessary steps to file the appeal before the Hon'ble ITAT, however the same could not be filed in the month of March 2020 due to announcement of lockdown owing to Covid-19 virus. We observe that it is a fact that Form no. 36 having date 9.3.2021 and the appeal fee was also deposited on 23.3.2021. The Assessee after knowing the fact qua passing of impugned order, also waited for one year, though the said period was exempted by the Hon'ble Apex Court, but still the action of the Assessee does not speak about its bona fide efforts and cause shown by Assessee prior to March 2020, due to long delay, do not appears to be sufficient and reasonable, therefore in our view, the Assessee did

not act carefully and remained negligent. Even before the authorities below, most of the times the Assessee remained absent and did not file appropriate documents, hence considering the peculiar facts, the application for condonation of delay, is liable to be dismissed in order to give effect to the principle that law does not assist the person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant, without asserting them in a court of law. The, principle which forms the basis of this rule is expressed in the maxim vigilantibus, non dormientibus, jura subveniunt (Law assists those who are vigilant and not those who sleep over their rights), but even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human and is more a practical notion of human behavior than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine, therefore considering the peculiar facts and circumstances in totality and demand of substantial justice and the period of lockdown is also involved when the entire nation was on hold and the case of the Assessee also prima facie appears to be tenable, we are inclined to allow the condonation of delay in filing the instant appeal as an exceptional case, however, subject to deposit of costs of Rs. 25,000/- in the account of National Relief Fund Account, within 15 days of this order. Consequently, the delay stands condoned.

3. Coming to merits of case, the Assessee declared her taxable income at Rs. 1,60,150/- by filing its return of income on dated 25.02.2010, which was processed u/s 143(1) of the Act. Subsequently on dated 13.03.2012 an information was received from ADIT(Inv.), Unit-V, New Delhi to the effect that Assessee had deposited unaccounted cash in her bank account to the tune of Rs. 1,56,000/- during the financial year 2007-08 and also made investment amounting to Rs. 27,27,350/- from unexplained sources. Consequently, the reasons for reopening the case u/s 147 of the Act were recorded and notice u/s 148 of the Act was issued to the Assessee on 28.3.2013, in response to which the Assessee claimed that the "original return filed" by the Assessee may be treated as return filed in response to the notice u/s 148 of the Act. Thereafter, notices u/s 143(2) of the Act were also issued by fixing the case for hearing on 21.11.2013 and 30.1.2014. In pursuance to the said notices, the Assessee attended the proceedings and filed some details. Thereafter, a questionnaire along with notice u/s 142(1) of the Act was issued on 19.2.2014 by fixing the case for hearing on 25.02.2014, which remained un-complied. As the case was getting barred by limitation a final show cause notice was issued on 27.2.2014 but still the Assessee failed to avail the final opportunity given to her and therefore the Assessing officer on the basis of information available on record computed the income of the Assessee by making additions of Rs. 1,56,000/- as unexplained credit u/s 68 of the Act, Rs. 27,27,350/- as unexplained investment u/s 69 of the Act and Rs. 1327/- as interest income.

4. The Assessee being aggrieved by filling first appeal before the Ld. Commissioner, challenged the addition of Rs. 1,56,000/- and Rs. 27,27,350/-. The Assessee by filing its letters dated 4.12.2015, 10.3.2016, 7.12.2017 and additional evidences, tried to substantiate its claim, and therefore the learned Commissioner sought the remand report from the Assessing Officer.

4.1 The Assessing Officer by filling its Remand Report dated 1.5.2018 which was received by the learned Commissioner on 4.5.2018, objected for admission of additional evidence and substantiated the additions made. The remand report was forwarded to the Assessee on 10.5.2018, however, no rejoinder or reply was filed by the Assessee. Thereafter, notice for appearance on 30.07.2017 was also issued to the Assessee which also remained un-complied. Therefore, on the basis of judicial principles, the learned Commissioner adjudicated the issue and ultimately dismissed the appeal of the Assessee by concluding as under:

> *"12. I find that the appellant in has return of income had claimed income only from the head income from House Property. However, the appellant claimed before the AO and before me that the books of accounts have been lost. On the one hand the appellant has not claimed any business income or even Capital Gains. On the other hand, the appellant claims that the books of accounts had been lost/stolen, and to that effect an FIR was lodged. However, the FIR does not have any mention of books of accounts at all.*

13. As such, the appellant's averments have remained unsubstantiated. The same has been brought forth by the AO in his remand report dated 01.05.2018 which has remained uncontroverted. The wrong doing of the appellant has been established. The investment in property at hand has remained unexplained as has been reported by the AO in the remand report. Further, the cash deposits in the appellant's bank account also remain unexplained. As such, grounds 2 and 3 are adjudicated against the appellant."

5. The Assessee being aggrieved is in appeal before us and in support of its case reiterated the contentions as raised before the authorities below.

6. On the contrary, the learned Sr. DR supported the orders passed by the authorities below.

7. Heard the parties and perused the material available on record. In this case, the Assessee has claimed that Shri S. N. Sapra (Husband of the Assessee) had entered into a collaboration agreement dated 13.09.2005 qua property no. H-1481, C.R. Park, New Delhi with Sh. Nilamber (original owner), for a consideration of Rs. 56,50,000/- and paid an advance of Rs. 46,50,000/-, however due to non- compliance of the terms & conditions of the collaboration agreement, the same

was cancelled and the arrangement was made between the parties to adjust the advance of Rs. 46,50,000/-.

7.1 Subsequently, in pursuance to the arrangement/memorandum of settlement, Smt. Daya Sapra i.e. Assessee along with her son Sh. Pankaj Sapra, vide sale deed dated 13/02/2008 purchased the rights of second floor with terrace of the property involved in this case on a consideration of Rs. 27,27,350/-. Similarly, on 14/02/2008, the Assessee along with Smt. Kamlesh Gupta having 50% share each, also purchased first floor of the said property from Sh. Nilamber vide agreement to sell for a consideration of Rs. 27,27,350/- in joint ownership. The balance amount of Rs. 5,58,975/- [46,50,000 - 27,27,350 - 13,63,675] was received by Sh. S. N. Sapra from Sh. Nilamber in full and final settlement of the transaction. The Assessee also drew our attention to the memorandum of understanding dated 14/02/2008 executed between the parties. The Assessee further claimed that the Assessee has not made any investment and as such the complete transaction is related to the collaboration agreement entered into between Sh. S. N. Sapra and Sh. Nilamber as per mutual settlement. Moreover, the Assessing Officer vide re-assessment order dated 19/03/2014 u/s 147 of the Act, has already made an addition of Rs. 46,00,000/- {which covers the amount/addition of Rs. 27,27,350/- as involved in this case as well} in the case of Sh. S N Sapra for A.Y. 2006-07 and accordingly, the impugned addition in this case is un-sustainable .

7.2 We observe that the similar addition of Rs. 27,27,350/- was also made in the case of Shri Pankaj Sapra (son of Assessee) as unexplained investment qua same agreement to sell dated 13/14.02.2008 as involved in this case, executed between the owner of the property and Shri Pankaj Sapra along with his mother Smt. Daya Sapra, who is Assessee/Appellant herein.

7.2.1 The Hon'ble Coordinate Bench of the Tribunal in the case of Pankaj Sapra Vs. ITO {ITA no. 5747/Del/2018 for A.Y. 2008-09} also considered the said facts to the effects that in the case of Shri S.N. Sapra, husband of the Assessee, the AO vide order dated 19.3.2014 passed u/s 143(3)/147 of the act, also made addition of Rs. 46,00,000/- with respect to the same property no. 1481 C.R. Park, New Delhi which was purchased by Shri S.N. Sapra vide agreement dated 13.09.2005 from Shri Nilambar Rudra Pal and ultimately vide its order dated 22.11.2019, quashed the Assessment order by holding that reasons given by the AO in notice u/s 148 of the Act are merely mechanical and the AO have not given any concrete reasons as to why the reopening is justified, therefore was not right in reopening the assessment.

7.2.2 The Hon'ble Coordinate Bench on merit with regard to the addition u/s 69 on account of unexplained investment, has also clearly held that the Assessee has given complete details of investment and the addition of said amount is already made in the hands of the father of the Assessee and, therefore, does not sustain in the hands of the Assessee (Pankaj Sapra).

7.3 For ready reference, the concluding part of the order passed by the Hon'ble Coordinate Bench is reproduced herein below:

> "*6. As regards Ground No.2 relating to an addition u/s 69 of the Act on account of unexplained investment of Rs.27,27,350/-, the Ld. AR submitted that Shri S. N. Arora (Father of the assessee) entered into a collaboration agreement in respect of property no. H-1481, C.R. Park, New Delhi with Sh. Nilamber vide the agreement dated 13.09.2005 for a consideration of Rs. 56,50,000/- and as such an advance of Rs. 46,50,000/- was paid by Sh. S. N. Sapra / Arora. The Ld. AR submitted the collaboration agreement during the course of hearing which was also before the CIT(A). In fact Assessing Officer in case of Sh. S N Sapra has made addition of Rs.46,00,000/- as unexplained investment in A.Y. 2006-07. The Ld. AR further submitted that due to non- compliance of the terms & conditions of the collaboration agreement, the aforesaid collaboration agreement was cancelled by Sh. S N Sapra & Sh. Nilamber and the arrangement was made between the parties to adjust the advance of Rs. 46,50,000/-. Subsequently, on 13/02/2008, Sh. Pankaj Sapra i.e. assessee along with Smt. Daya Sapra i.e. Mother of the assessee purchased rights of second floor with terrace that of property*

mentioned hereinabove vide sale deed for a consideration of Rs. 27,27,350/-. Similarly, on 14/02/2008, Smt. Daya Sapra along with Smt. Kamlesh Gupta having 50% share each purchased first floor from sale property from Sh. Nilamber vide agreement to sell for a consideration of Rs. 27,27,350/- in joint ownership. The Ld. AR further submitted that the balance amount of Rs. 5,58,975/- [46,50,000 - 27,27,350 - 13,63,675] was received by Sh. S. N. Sapra from Sh. Nilamber in full and final settlement of the transaction. The assessee has submitted memorandum of understanding before the Revenue authorities. The Ld. AR further submitted that the assessee has not made any investment and as such the complete transaction is related to the collaboration agreement entered into by Sh. S N Sapra and Sh. Nilamber as per mutual settlement. Moreover, the Assessing Officer has already made an addition of Rs. 46,00,000/- in the case of Sh. S N Sapra for A.Y. 2006-07 by passing re-assessment order u/s 147 of the Act and accordingly, the impugned addition is in the nature of double addition.

7. As regards Ground No.3 relating to addition u/s 68 of Rs. 23,48,615/- on account of unexplained cash deposits in the bank accounts, the Ld. AR submitted that cash deposits in the bank accounts is only to the extent of Rs. 60,835/- and as such whole basis of addition is highly arbitrary and without any basis. The Ld. AR further submitted that the assessee has taken a loan of Rs. 13,00,000/- from Sh. Arun Gupta and received two cheques of Rs. 3,00,000/- and Rs. 10,00,000/- respectively and the same were duly deposited in the bank account of the assessee. However, the cheque of Rs. 10,00,000/- was not cleared due to insufficient balance in the account of Sh. Arun Gupta and in fact, a new cheque of Rs. 10,00,000/- was given by Sh. Arun Gupta to the assessee. Thus the total deposits in the form of cheques was only to the extent of Rs. 13,00,000/-. The Ld. AR further submitted that the Assessing Officer in the remand report dated 01.05.2008 made an observation that the returned cheque of Rs. 10,00,000/- has to be considered. The CIT(A) ignored the said observations and upheld the additions made in the assessment order.

8. The Ld. DR, as regards Ground No.l submitted that the reasons are properly drafted and there is a proper satisfaction given by the Assessing Officer for reopening the matter. As regards Ground No.2, the Ld. DR submitted that the addition u/s 69 on account of unexplained investment has duly been added, as the fact remains that before the Assessing Officer, the assessee could not established any direct nexus about the investigation. As regards Ground No.3 the Ld. DR submitted that the addition u/s 68 on account of unexplained cash deposits in the bank account was not properly demonstrated before the Assessing Officer, therefore, the addition was properly made.

9. We have heard both the parties and perused all the materials available on record. The issue relating to proceedings initiated u/s 148 whether the same is valid or not, has already been decided in assessee's own case for A.Y. 2007-08 by the Tribunal. The Tribunal held as under:

> *"8. I have considered the rival submissions made by both the sides and perused the orders of the authority below. I find the AO on the basis of the information received from the investigation wing of the Department that the assessee has made cash deposit of Rs. 4,97,452/- reopened the assessment by issuing notice under section 148 and thereafter made addition of Rs. 4,97,452/- to the total income of the assessee by invoking the provisions of Section 68 of the I.T. Act, 1961. I find the learned CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned counsel for the assessee that there is complete non application of mind of the AO while recording the reasons and he has not verified the facts properly and the reopening was made on the basis of report of the investigation wing. Further the deposits in the bank accounts are fully explained and therefore no addition is*

called for.

9. I find force in the above arguments advanced by the learned counsel for the assessee. A perusal of the notice issued under section 148 shows that the notice has been issued in a very casual manner, Clause 3 of the notice reads as under:-

> *"Notice under section 148 of the Income Tax Act, 1961.*
>
> *3. This notice is being issued after obtaining the necessary satisfaction of the commissioner of Income Tax/the Central Board of Direct Taxes."*

10. Similarly, a perusal of the bank account maintained with Vijaya Bank account no. 004427, copy of which has been placed at page no. 25 and 26 of the paper book, shows that an amount of Rs. 2,50,000/- was by way of clearing of Cheque No. 719443 and not cash deposit. If the same is excluded from the total deposits made during the year from the two bank accounts then there is no such cash deposit of Rs. 4,97,452/- in the two bank accounts maintained by the assessee. Therefore, I find force in the argument of learned counsel for the assessee that the reasons recorded are either vague reasons or not based on ITA No. 4253/Del/2018 8s ITA No. 4254/Del/2018 6 any application of mind. In any case, the assessee has explained the source of each deposit made both in cash as well as in cheque and therefore, even on merit also no addition is called for. I, therefore, set aside the order of the learned CIT(A) and direct the AO to delete the addition. The ground raised by the assessee is allowed. "

Thus the reasons given by the Assessing Officer in notice u/s 148 of the Act are merely mechanical and have not given any concrete reasons as to why the re-opening is justified. As regards Ground No. 2 relating to addition u/s 69, the assessee has given a detail of investments and the fact that ***the addition of the said amount is already made in the hands of the father of the assessee does not sustain in the hands of the assessee****. As*

regards Ground No.3 relating to addition u/s 68 in respect of cash deposits, the Assessing Officer himself admitted that the cheque of Rs. 10,00,000/- has been returned back which was not at all considered by the CIT(A). The reasons are mechanical as all the investment as well as the loans were demonstrated by the assessee as per the audited balance sheet itself. ***Therefore, the Assessing Officer was not right in reopening the assessment which is bad in law and without any justified reasons for the additions****. Thus, the appeal of the assessee is allowed.*

10. In result, appeal of the assessee is allowed."

{ highlighted by us for better appreciation }

7.4 As the amount/addition of Rs. 27,27,350/- under consideration, has already been considered by the AO *in making the additions in the hands of husband (Sh. S N Sapra) and son (Shri Pankaj Sapra) of the Assessee and the Hon'ble coordinate Bench vide order dated 22/11/2019 in ITA no. 5747/Del/2018 (supra) has already taken note of the facts referred to above and quashed the assessment order in the case of Sh. Pankaj Sapra (son of the Assessee) which was the outcome of the initiation of proceedings u/s 147/148 of the Act mainly on the basis of Agreement to sell dated 13/14.02.2008 as involved in this case, executed between the owner of the property and Shri Pankaj Sapra along with his mother Smt. Daya Sapra, who is Assessee herein,* the Assessment Order involved in this case, is also liable to be quashed, hence the same is quashed.

7.5 As we have quashed the Assessment order itself, hence are inclined, not to decide other grounds raised by the Assessee, as the adjudication of same would become academic exercise only.

8. In the result appeal filed by the Assessee stands allowed.

Order pronounced in open court on 27.02.2023.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

Draft dictated	09.02.2023
Draft placed before author	10.02.2023
Approved Draft comes to the Sr. PS/PS	
Order signed and pronounced on	
File comes to P.S.	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk	
Date of dispatch of Order	
Date of uploading on the website	