

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No. 6278/Del/2017  
Assessment Year: 2010-11

Smt. Rashmi Bansal, W/o Dr. (Sh.) R N Bansal, C/o Bansal Hospital, Bajoria Road, Saharanpur-247001, UP	<b>Vs.</b>	Commissioner of Income Tax, Muzaffarnagar
<b>PAN :ABRPB2126Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Sushil Kumar, Adv.
Respondent by	Shri Pm Prakash, Sr. DR

Date of hearing	22.03.2023
Date of pronouncement	31.03.2023

**ORDER**

This is an appeal by the assessee against order dated 29.07.2017 of learned Commissioner of Income-Tax (Appeals), Muzaffarnagar.

2. Vide letter dated 21.01.2023, the assessee has raised the following additional grounds under Rule 11 of the Income-Tax (Appellate Tribunal) Rules, 1963:

1. That on the facts and circumstances of the case the Ld. Assessing Officer erred in law issued notice u/s 148 without obtaining the mandatory approval u/s 151 from the concerned officer.
2. That on the facts and circumstances of the case the Ld. Assessing Officer erred in law by recording ambiguous reasons, merely stating that long term capital gains which was not shown by the assessee has assessment without disclosing the valid reasons which led the Assessing Officer to take action under Section 147/148 of the Act.
3. The appellant craves leave to add, alter, amend or vary from the above grounds of appeal t or before the time of hearing.

3. Since, in the additional grounds, the assessee has raised purely legal and jurisdictional issues going to the root of the matter and since such issues do not require investigation into fresh facts, I am inclined to admit the additional grounds.

4. As could be seen from the additional ground no.1, the assessee has taken a specific plea that notice under Section 148 of the Income-Tax Act,1961 was issued without obtaining prior approval of the higher authorities in terms of section 151 of the Act.

5. Briefly, the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed her return of income on 05.07.2010 declaring income of Rs.3,03,670. Subsequently, the Assessing Officer received information that though the assessee had

sold immoveable property during the year, however, she has not offered capital gain to tax. Therefore, he reopened the assessment under Section 147 of the Act by issuing a notice under Section 148 on 18.02.2015. Ultimately, the Assessing Officer completed the assessment under Section 143(3)/148 of the Act vide order dated 23.02.2016 by adding short term capital gain of Rs.21,69,496. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals). However, the appeal was dismissed.

6. I have heard Shri Sushil Kumar, learned counsel appearing for the assessee and Shri Om Parkash, learned senior Departmental Representative.

7. The specific contention of learned counsel appearing for the assessee, qua, additional ground no.1 is, prior to issuance of notice under Section 148 of the Act, the Assessing Officer had not obtained any approval of the higher authorities in terms of section 151(2) of the Act. It is observed, while taking note of the aforesaid pleading of the assessee, the Bench vide order dated 13.01.2023 had directed the Assessing Officer to submit a report indicating whether approval

under Section 151 of the Act was obtained prior to issuance of notice under Section 148 of the Act.

8. Though, the Assessing Officer has not furnished any report, however, the assessment records are made available to the Bench through learned Departmental Representative. On careful perusal of the assessment records, it is observed that there is no such approval of the higher authorities in terms of section 151(2) of the Act available in the assessment record. Further, neither, there is any order sheet entry or any other documents available in the assessment record which can indicate that the Assessing Officer had obtained approval under Section 151(2) of the Act prior to issuance of notice under Section 148 of the Act. In fact, learned Departmental Representative could not controvert the aforesaid factual position.

9. It is further relevant to observe, in response to a letter of the assessee seeking various information including copy of approval, if any, under Section 151 of the Act, the Assessing Officer in letter dated 19.12.2022 has simply mentioned “not applicable”. Even, in the notice dated 18.02.2015 issued under Section 148 of the Act, the Assessing Officer has not even pointed out that approval was taken under

Section 151(2) of the Act. Rather, on perusal of the original notice issued under Section 148 of the Act, a copy of which is available in the assessment record, it is seen that the Assessing Officer has struck off the paragraph with reference to the approval under Section 151 of the Act. The aforesaid facts available on record, clearly demonstrate that prior to issuance of notice under Section 148 of the Act, the Assessing Officer has not obtained any approval of the higher authorities in terms of section 151(2) of the Act. On a reading of section 151 of the Act, it is very much clear that before issuance of notice under Section 148 of the Act, approval of the higher authorities is a mandatory statutory requirement.

10. In the facts of the present appeal, it is evident that the Assessing Officer has failed to follow such mandatory requirement in law. That being the factual position emerging on record, the issuance of notice under Section 148 of the Act is wholly without jurisdiction. Therefore, the proceedings initiated in pursuance to such notice culminating in the impugned assessment order, is also without jurisdiction. Therefore, I have no hesitation in declaring the assessment order null and void.

Accordingly, the impugned assessment order is quashed and the order of learned Commissioner (Appeals) is set aside.

11. In view of my decision on the legal issue, the other grounds raised by the assessee have become academic, hence, do not require adjudication.

12. In the result, the appeal is allowed as indicated above.

*Order pronounced in the open court on 31<sup>st</sup> March, 2023.*

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

Dated: 31<sup>st</sup> March, 2023.

**Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi