IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 6/Asr/2021
Assessment Year: 2010-11

Sh. Arnesh Kumar Shakar, Ex MLA Prabhakar Chowk, Mukerian, Hoshiarpur. [PAN:-AMMPS9590B] **(Appellant)**	Vs.	ITO, Ward, Dasuya.. **(Respondent)**

Appellant by	Sh. J. S. Bhasin, Adv.
Respondent by	Smt. Rajinder Kaur, CIT DR.

Date of Hearing	12.07.2023
Date of Pronouncement	26.07.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the ld. Commissioner of Income-tax (Appeals) -1, Jalandhar, (in brevity 'the CIT(A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2010-11. The impugned order was emanated from the order of Income Tax Officer, Ward, Dasuya,(in brevity 'the AO') order passed u/s143(3) r.w.s. 147 of the Act.

2. The assessee filed the appeal with delay of 683 days. The assessee filed condonation petition and explained the delay. The cause of delay is related to medical emergency and also covered by the order of Hon'ble Apex Court in the case of **Suo Motu WP (C) No.3 of 2020 dated 23/03/2020**. The ld. DR has accepted the submission of the ld. AR. Reasonable cause is explained. So, the delay for 683 days is condoned.

3. The assessee has taken the following grounds:

> *"1. That neither in facts nor in law, the ld.CIT(A) was justified in upholding the validity of proceedings, wrongly initiated u/s.148 by the ld. ITO.*
>
> *2. That sans any order passed by the ITO, giving effect to CIT(A) order for 2007-08, prior to recording of reasons, allowing deduction u/s.54, reasons recorded to withdraw such deduction, were invalid being without material on record.*
>
> *3. That when no specific direction was given by ld.CIT(A) in her order for AY 2007-08 to reopen the case for this year, reopening of case u/s.148, by relying upon such directions, being misplaced and illegal, has been wrongly upheld by the ld.CIT(A)*
>
> *4. That without prejudice to above, the CIT(A) grossly erred in mechanically confirming the entire addition of Rs.33,00,000/- in one year, though relatable to two years, besides being inflated one, without proper appreciation of the facts and submissions filed by assessee.*

5. That the impugned order, being against law and facts and in violation of the principles of natural justice, deserves not to be sustained."

4. Brief fact of the case is that the assessee has sold the ancestral property amount to Rs.18 lacs and Rs.15 lacs. The payments were received on dated 24.02.2007 and 30.04.2007. The total amount of Rs.33 lacs was received on account of transfer of property. The assessee invested this amount in capital gain benefit fund and intended to invest this for purchasing the new property. Accordingly, the assessee purchased a residential house amount to Rs.35,64,000/- on dated 16.02.2010. The assesseehad contravened of provision of 54F of the Act for not investing the amount within two years from the date of receiving the payment therefore, the benefit of section 54F was withdrawn and the total sale amount of Rs.33 lacs was added back with the total income of the assessee. Further, the grievance of the assessee was that the case was reopened u/s 148 pursuing the order of the ld. CIT(A) for assessment year 2007-08 on the year the property was transferred. But the addition would be attracted to the assessment year 2010-11 on which year the assessee violated the provision of 54F of the Act. The ld. CIT(A) made this opinion in his order. On basis of this order, the reopening was executed. Accordingly, the ld. AO framed assessment u/s 147/143(3) of the Act. Aggrieved assessee filed an appeal before the ld. CIT(A) by challenging both legal and factual ground. The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

5. The ld. AR submitted the written submissions which are kept in the record. The ld. AR first invited our attention in the appeal order for A.Y. 2007-08 where the ld. CIT(A) had expressed his opinion related to calculation of tax for assessment year 2009-10. The ld. AR has drawn our attention in assessment order page 2 to 3 related to reasons of reopening of the assessment u/s 148. The relevant paragraph of the assessment order was read out and is reproduced as below:

> *"As per the direction of the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar, the proceedings u/s 147/148 were initiated against the assessee. The notice u/s 148 of the Income Tax Act, 1961, dated 17.03.2017 was issued to the assessee after recording the reasons as under: -*
>
> *"............ It came to notice that the assessee was a member of the Punjabi Co-op House Building Society Ltd. and as a member of the said society, the assessee was having 500 square yard plot in the land owned by the society in village Kansar near Chandigarh. It was also noticed by the Assessing Officer that a tripartite Joint development agreement dated 25.02.2007 was entered into between Punjabi Co-op House Building Society Ltd., M/s HASH Builders (P) Ltd., Chandigarh and M/s Tata Housing Development Company Ltd. for transfer of land of the society situated at Village Kansar according to which each member of the society having plot of 500 sq. yards shall receive Rs. 82,50,000/- as monetary consideration and one furnished flat measuring 2250 sq.ft. to be constructed by M/s Tata Housing Company Ltd. Mumbai, the cost of which @ Rs.*

4500/- per sq. ft. was Rs. 1,01,25,000/- and as per the above said tripartite agreement, the assesee was to receive total consideration of Rs. 1,83,75,000/- and a part payment of Rs. 15,00,000/- was received by the assessee on 24.02.2007 and another payment of Rs. 18,00,000/- on 30.04.2007 which has been shown in the return. But the Assessing Officer was of the view that the capital gain earned on the transfer of plot was taxable during the period relevant to assessment year 2007-08 as per provisions of section 45 of the Act.

2.1 Accordingly, proceedings u/s 147/148 of the Act were initiated for the assessment year 2007-08 and while framing the assessment proceedings for the assessment year 2007-08 on 22.07.2016 vide order passed u/s 143(3)/147 of the Income Tax Act, 1961 the Assessing Officer inter alia observed that the above said sale consideration of Rs.18,00,000/- and Rs. 15,00,000/- was received by the assessee on 24.02.2007 and 30,04.2007 respectively and the residential house is claimed to have been purchased by the assessee on 16.02.2010 i.e. beyond the period of two years from the date of transfer of original asset exemption u/s 54F of the Income Tax Act, 1961 was not allowed to the assessee.

3. The assessee preferred appeal before the Commissioner of Income Tax(Appeals), Jalandhar and Ld. Commissioner of Income Tax (Appeals), Jalandhar vide appellate order dated 31.01.2017 in Appeal No. 1/10057/16-17/CIT(A)-I/Jal. allowed the exemption u/s 54F on account of deposit in the Capital Gains Scheme but directed that since the assessee had invested the said capital gains beyond the period of two years from the

date of transfer of original asset, the entire capital gain would be taxable in the financial year 2009-10 relevant to assessment year 2010-11 i.e. the previous year in which the period of three years from the date of transfer of original assets expired.

4. So with a view to comply with the above said directions of the Commissioner of Income Tax (Appeals), Jalandhar approval may kindly be given to invoke the provisions of section 147/148 of the Income Tax Act, 1961 in respect of assessment year 2010-11."

5.1 Further, the ld. AR vehemently argued and placed that the ld. AO has not verified the issue before reopening. Only on mere borrowed satisfaction and direction of ld. CIT(A), the assessment was reopened. The issue was agitated before the ld. CIT(A) and the ld. CIT(A) has rejected this legal ground of the assessee.

5.2 The ld. AR further argued that this viewpoint is fully supported by the decisions of **Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd vs CIT (2011) 336 ITR 136 and of Gujrat High Court in CIT vs Mohmed Juned Dadani (2013) 214 Taxman 38 (Guj), followed by ITAT Amritsar in the case of Joginder Singh vs ITO (2015) 174 TTJ 888 (Asr).** The relevant paragraph of the order is extracted here: -

"19. As is evident from the discussions earlier in this order, here is a case in which the very reasons on account of which the CIT(A) has deleted the quantum additions were also good enough to hold that the initiation of reassessment proceedings is bad in law and yet the CIT(A) was fighting shy of the logical

conclusions thereto and natural corollaries to these findings. It is also important to bear in mind the fact that the relief so granted by the CIT(A), on the basis of which the additions in respect of the reasons recorded for reopening the assessment were deleted and which were, in our considered view, good enough to quash the reassessment itself, is not even challenged in further appeal. These findings of the CIT(A) have thus reached finality, and are not even in dispute before us. If such be the facts, there can be no justification for taking these findings to its logical conclusions and, based on these uncontroverted findings, quash the reassessment itself. What held good for deleting the additions on the basis of the reasons recorded the assessment, on the fact of this case and in our humble understanding, was good enough to hold the reasons for reopening the assessment to be incorrect as well. We are unable to see any legally sustainable reasons to come to different conclusions. In our considered view, therefore, the CIT(A) ought to have quashed the reassessment as well."

Hon'ble High Court of Punjab and Haryanain **Vipin Khanna vs. CIT 255 ITR 220**, the relevant paragraph is extracted as follows: -

"14. In view of the above discussion, we are satisfied that the letter dated 30-7-1998 issued by the Assessing Officer insofar as it relates to matters unconnected with the issue of depreciation as also the directions issued by the Dy. Commissioner under section 144A of the Act dated 26-10-1998 cannot be sustained. The same are hereby vacated. The Assessing Officer will now proceed with the assessment under section 147 in accordance with law. For the sake of clarification, we may repeat that nothing observed by us in this case would debar the Assessing Officer to bring to tax any other item of income which may have escaped assessment and which comes to his notice during the course of the proceedings under section 147. However, for this purpose he cannot be allowed

to make fishing inquiries to probe if any other income had escaped assessment or not. Such inquiries can only be permitted if in the first instance some material comes to his notice to suggest that some other item of income may have escaped assessment or had been underassessed. In that event he would be perfectly justified in requiring the petitioner to furnish the requisite information on such other issue as well.

Hon'ble Delhi High Court, in **CIT v Living Media India Ltd (2013) 89 DTR 93 (Del),** held that "*148 notice would stand or fall depending upon reasons recorded prior to issuance of notice - no addition beyond the reasons recorded would stand in view of expression 'and also' used in Explanation 3 to section 147.*"

In the same context, in **CIT vs Mohmed Juned Dadani (2013) 85 DTR (Guj) 12**, the Hon'ble Gujrat High Court held as follows:

> *"Issue not subject matter of notice u/s.148 - Tribunal was right in law in coming to the conclusion that when on the ground on which the reopening of assessment is based, no additions are made by the AO in the order of assessment, he cannot make additions on some other grounds which did not form part of the reasons recorded by him".*

6. The ld. DR vehemently argued and relied on the order of revenue authorities.

7. We heard the rival submission and considered the documents available in the record. The assessee was violated the provision of section 54F for purchasing the property after two years. The addition was made in assessment year 2007-08 where the property was transferred. The quantum addition was deleted by the ld. CIT(A) for AY 2007-08 and opinion was formed related to addition on AY 2010-11. Later, as per the opinion formed by the ld. CIT(A), the reopening was done by the ld. AO related to assessment year 2010-11. There is no evidence from the assessment order that the ld. AO had made investigation from his end and in mechanical manner reopened the assessment u/s 148. We respectfully relied on the order of the **Hon'ble JurisdictionalHigh Court** in the case of **Vipin Khanna** (supra), the order of **Hon'ble Guj High Court** in the case of **CIT vs Mohmed Juned Dadani (2013) 85 DTR (Guj) 12**, (supra)and the **Coordinate Bench** in case of **Joginder Singh** (supra).The same AO had taken the different opinion in same transaction in two different years. In the first opinion the amount should be taxed in AY 2007-08. But after the appeal order, the opinion of the ld. AO is changed and proposed to tax for AY 2010-11. But issue was never be agitated before the ld. AO during assessment. The assessee has not filed any objection before the ld. AO. We remit back the matter to the file of the ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity to be heard.

7.1 Considering the above discussion the assessee's ground nos. 1, 2 and 3 are allowed for statistical purposes.

7.2 Ground No. 4 is only in the academic purposes, no need for discussion.

7.3 Ground No. 5 is general in nature.

8. In the result, appeal of the assessee **ITA No. 6/ASR/2021** is allowed for statistical purposes.

Order pronounced in the open court on 26.07.2023

Sd/- Sd/-

(Dr. M. L. Meena)
Accountant Member

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By order