

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

**Before Sh. C. M. Garg, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 685/Del/2020 : Asstt. Year : 2008-09**

Ms. Santosh Kaushik, 1/27A, Near Hanuman Mandir, East Punjabi Bagh, New Delhi-110026 (APPELLANT)	Vs	Income Tax Officer, Ward-41(5), New Delhi-110002 (RESPONDENT)
<b>PAN No. AMTPK4230D</b>		

**Assessee by : Sh. Manish Malik, Adv. &  
Sh. Vinod Gupta, Adv.  
Revenue by : Sh. Anuj Garg, Sr. DR**

<b>Date of Hearing: 05.07.2023</b>	<b>Date of Pronouncement: 18.09.2023</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-14, New Delhi dated 12.12.2019.

2. Following grounds have been raised by the assessee:

*"1. That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustaining the action of the Assessing Officer in reopening of the case of the appellant u/s. 147 of the I.T. Act, 1961.*

*1(a) That the Ld. CIT(A) failed to appreciate the fact that the AO had not recorded proper reasons to believe" within the meaning of the provisions of Sec. 147 of the Act to assume jurisdiction to pass re-assessment order u/s. 143(3)/147 of the Act.*

*1(b) That the Ld. CIT(A) failed to appreciate the fact that the order passed u/s. 147/143(3) of the Act by wrongly assuming jurisdiction without proper reasons*

*to believe being recorded. The impugned order was to be declared as a nullity in law.*

*2. That without prejudice, the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustaining the addition of Rs. 32,00,000/- alleged by the Assessing Officer as alleged investment in cash for purchase of 1/4th share in property no. 4244/14, New Subzi Mandi, Bara Hindu Rao, New Delhi.*

*3. That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustaining the addition of Rs.16,59,447/- out of the total addition of Rs. 37,93,881/- in respect of the deposits made in cash by the appellant in bank account no. 530010007623 with ING Vysa Bank Ltd. Arya Samaj Road, New Delhi, alleged by the Assessing Officer to be made out of explainable sources u/s. 68 of the Act."*

**Reopening u/s 147:**

3. The assessee has contended that the AO resorted to proceedings u/s 148 in a mechanical manner without bringing on record any evidence of escapement of income. We have gone through the order of the Id. CIT(A) on this issue which reads as under:

*"It is seen from the order that the reasons were recorded by the AO on the basis of specific information received from the DDIT(Inv.)/Unit-VI(3)/New Delhi. The DDIT had sent a report vide which it was communicated to the AO that an agreement was seized during the course of search. As per the said document, the cost of purchase of immovable property No. 8244/14, Nai Anaz Mandi was shown to be Rs.2,30,00,000/- although the deed was prepared on total consideration of only Rs.1,02,00,000/-. Thus there was a concealment of Rs.1,28,00,000/- out of which Rs.32,00,000/- belong to the assessee Smt. Santosh Kaushik. On the basis of said information, the AO formed a valid belief that Rs.32,00,000/- has escaped assessment in the case of assessee. Accordingly, it was*

*recorded and notice u/s 148 was issued after obtaining the approval of the Addl. CIT who was the competent authority in this case.*

*Once, a detailed enquiry and investigation was made by a team of investigation wing and such information was received by the Assessing Officer then the Assessing Officer definitely had prima facie reasons to believe that income has escaped assessment after verifying the assessment record of the appellant. Nowhere does the act lay down the requirement that such an investigation is to be made by the Assessing Officer himself. The AO therefore, had sufficient material and information for forming 'Reasons to Believe' against the appellant. Reliance is placed on the decision of Hon'ble Court in the case of Amit Polyprints (P.) Ltd. Vs DCIT (Gujarat) wherein it was held that reassessment proceedings initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, was justified. Similarly, in the case of Aaspas Multimedia Ltd. Vs DCIT (Gujarat) Hon'ble Court has held that reassessment made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, was justified. Reopening was also upheld in similar situation by the Hon'ble courts in the case of Paramount Communication Ltd. vs. PCIT 2017-TIOL-253SC-IT. In that case, information regarding bogus purchase by assessee was received by DRI from CCE which was passed on to revenue authorities and court considered it as 'tangible material outside record' to initiate valid reassessment proceedings. In the case of Raymond Woollen Mills Ltd. vs. ITO And Others (236 ITR 34) Hon'ble SC has held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage."*

4. Having gone through the entire facts, we find no reason on facts or on law to interfere with the order of the Id. CIT(A).

**Addition of Rs.32,00,000 – Investment in cash – Property:**

5. Based on the seizure of hard disk during the proceedings u/s 132, the case of one person namely Sh. Naresh Gupta, a document deed writer, the case of the assessee has been reopened u/s 147 and based on the unsigned draft sale deed found in the hard disk of the deed writer, an addition of Rs.32,00,000/- has been made in the hands of assessee being the 1/4<sup>th</sup> share of a property transaction.

6. From the record, produced before us, we find that the Co-ordinate Bench of ITAT in the case of Sh. Bharat Singh Vs. ACIT in ITA No. 2001/Del/2017 for A.Y. 2008-09 deleted the addition made by the AO on the similar issue of unaccounted investment in the property. We also find that in the case of Lalit Narayan Sharma, the Co-owner of the property alongwith the assessee has been adjudicated by the Id. CIT(A) and the addition made has been deleted.

7. The ratio given by the authorities namely, ITAT and the Id. CIT(A) in the above mentioned case of Sh. Bharat Singh and Sh. Lalit Narayan Sharma is as under:

*"5.13 It is undisputed that the draft agreement to sell is not signed either by the purchaser or the seller. The author of the draft has denied any knowledge of alleged payment recorded in the draft. No other evidence, like a statement of the buyer or any valuation report regarding the sale value of the property are available on-record. In our opinion, unless there are enough corroborative evidence to show that the payments as noted in the draft agreement to sell was actually received by the assessee, no addition can be made in the*

*hands of the assessee merely on the basis of unsigned draft agreement to sale. The finding of the Ld. CIT(A) that part of the document is found to be true and thus the balance should also be treated as true is not correct and instant case the entire document found is a draft prepared by the deed writer, which is not signed by any of the party mentioned in the said draft. Such an unsigned document cannot be made basis of presumption that the assessee received cash on sale of the property. The assessee has been subjected to search but no other documentary evidence of receipt of cash by the assessee has been found in the course of the search. We also note that no attempt has been made by the Assessing Officer to make an enquiry from the buyer or to ascertain the prevalent market value of the property sold by the assessee.*

*5.14 In view of the aforesaid discussion, we are of the opinion that no addition can be sustained only on the basis of the unsigned draft agreement to sell found from the premises of the third party and that too without any corroborative evidences. Accordingly, we set aside the order of the Ld. CIT(A) and the ITA No.2001 & 3256/Del/2017 Assessing Officer on the issue in dispute and direct the Assessing Officer to delete the addition of Rs. 83,50,000/- for alleged cash received on sale of 1<sup>st</sup> floor of the property under reference. The grounds No. 2 and 3 of the appeal are, accordingly, allowed.*

*6. In ground 4 and 5 of the appeal, similar addition of Rs.83,50,000/- has been made in respect of the ground floor of the same property sold by the assessee on the basis of the draft agreement to sale discussed in Grounds No. 2 and 3 of the appeal. The Grounds No. 2 and 3 of the appeal have already been allowed and thus, to have consistency in our decision on the issue in dispute, the ground no. 4 and 5 of the appeal are also allowed.”*

8. Since, the facts of the issue before us are similar to that of the above mentioned cases, we hold that the same ratio

applies to the appeal before us and in the absence of any change in the facts, we decline to deviate from the settled issue. The appeal of the assessee on this ground is allowed.

**Addition of Rs.16,59,447- Cash Deposits – ING Vysa Bank**

9. The assessee had total deposits of Rs.37,93,881/- in the bank account. The assessee explained that Rs.10,21,948/- were the proceeds out of the maturity of Kissan Vikas Patras realized on 03.07.2007 to 12.11.2007. The fact of investment in the KVPs in the year 2001 was not in dispute. However, the Id. CIT(A) confirmed the addition on the sole reason that the investments of the year 2001 were never reflected in the Income Tax Return. Since, the fact of purchase of KVPs in the year 2001 is no more in dispute, no addition can be made on the amount of investment in the A.Y. 2008-09. We hold that only the interest earned during the year is taxable on accrual basis and direct the AO to compute only the interest accrued during the year.

10. The Id. CIT(A) confirmed an amount of Rs.1,37,500/- out of the amount of Rs.37,93,881/- on the grounds that the explanation of the assessee that the amount received was the refund of the amount given to Ram Leela Committee for booking of stalls in the earlier years. Since, the investments made in the earlier year is not in dispute, we hold that no addition can be made of Rs.1,37,500/- during this year. The Id. CIT(A) has confirmed an amount of Rs.5,00,000/- out of Rs.37,93,881/- claimed to be the loan received by his mother-in-law (Late) Smt. Rajkishori holding that the lender did not have an explanation and the funds were merely entered into our bank account and then further transferred to the assessee's account. In the absence of any tangible evidences filed before

us to counter the decision of the Id. CIT(A), we decline to interfere with the order of the Id. CIT(A).

11. In the result, the appeal of the assessee is partly allowed.  
Order Pronounced in the Open Court on 18/09/2023.

Sd/-

**(C. M. Garg)**  
**Judicial Member**

**Dated: 18/09/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**