

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

SA No. 410/DEL/2023  
(A/o ITA No. 2806/DEL/2023 [A.Y. 2012-13])

&

ITA No. 2806/DEL/2023 [A.Y. 2012-13]

Shri Rohit Manoj Mehra  
32-E, Ashoka Avenue  
Sainik Farm, Delhi

Vs.

The A.C.I.T.,  
Circle 71(1)  
New Delhi

PAN - AAIPM 8888 Q

(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Sr. Adv  
Shri Shailesh Gupta, CA  
Shri Madhur Aggarwal, Adv

Department By : Shri Vivek Vardhan, Sr. DR

**Date of Hearing : 18.12.2023**

**Date of Pronouncement : 20.12.2023**

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 26.09.2023 by the NFAC, Delhi pertaining to A.Y. 2012-13.

2. The assessee has challenged the assumption of jurisdiction u/s 147 of the Income-tax Act, 1961 [the Act, for short] by issuing notice u/s 148 of the Act and has further challenged the addition of Rs. 8,72,50,059/- on account of long-term capital gain.

3. Since the assumption of jurisdiction goes to the root of the matter, we decided to adjudicate it first.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

5. Briefly stated the facts of the case are that the assessee filed his return of income on 30.07.2012 electronically, declaring total income of Rs.43,62,956/-, which included income from salary, income from

house, property, income from capital gain, and Income from other sources.

6. Income from capital gains consisting of sale consideration of property at NEA, Pusa Road, New Delhi amounting to Rs.10.50 crores with cost of acquisition as on 01.04.1981 at Rs.1,43,68,400, /-, which was indexed at Rs. 11,27,91,940/-, making a net capital loss of Rs. 7, 791, 940/-.

7. Return was selected for scrutiny assessment and assessment was framed u/s 143 (3) of the Act vide order dated 23.02.2015 by which returned Income was accepted as such.

8. Assuming jurisdiction u/s 147 of the Act, notice dated 30.03.2019 u/s 148 of the Act was issued and served upon the assessee.

9. Approval was taken vide order dated 29.03.2019. This approval is exhibited at page 50 of the paper book, which is full of factual errors. A.Y in respect of which reopening is proposed has been mentioned as A.Y 2011-12 whereas the impugned A.Y is 2012-13. The quantum of income which has escaped assessment has been mentioned as Rs.

10,15,79,973/- whereas the addition has been made for Rs. 8,72,50,059/-. Under Sl. No. 8 whether assessment is proposed to be made for the first time, it has been mentioned as “Yes”, whereas as mentioned elsewhere, assessment is framed u/s 143(3) vide order dated 23.02.2015.

10. This clearly shows non application of mind not only by the Assessing Officer for issuing notice u/s 148 of the Act, but also by the Additional CIT, Range - 17 and PCIT, Delhi- 24 for according approval on such erroneous form for recording reasons for initiating proceedings u/s 147/148 of the Act.

11. Now, coming to the reasons for reopening of assessment, the same read as under:

Annexure-A

(Ref: CBDT SOP in F.No.247/140/2017-A&amp;PC-1 dated 10.01.2018, Return filed)

1	Name of the assessee	Sh. Rohit Mahoj Mehra,
2	Address of the assessee	32-E/F, Ashoka Avenue, Sainik Farm, New Delhi-110062
3	PAN of the Assessee	AAIPM8888Q
4	Assessment Year	2012-13
5	Details of the Assessing Officer having jurisdiction over the assessee	Asstt. Commissioner of Income Tax, Circle-71(1), New Delhi

**Reasons for reopening of the assessment in case of Sh. Rohit Manoj Mehra, for AY 2012-13 u/s 147 of the Income Tax Act, 1961**

1. **Brief Details of the Assessee:** The assessee is an individual deriving income from salary from M/s Mohan Brothers Pvt. Ltd. during the assessment year under consideration.

2. **Brief details of information collected/received by the AO:** Vide letter F.No. DDIT(I&CI)/Verification /2016-17/1573 dated 21.04.2017, below mentioned information has been received from Intelligence & Criminal Investigation, Jhandewalan, New Delhi:-

During the year under consideration assessee sold a property at B-33, NEA, Pusa Road, New Delhi on 27.06.2011 at sale consideration of Rs. 10,50,00,000/- claimed indexed cost of acquisition of Rs. 11,27,91,940/- taking cost of acquisition as on 01.04.1981 at Rs. 1,43,68,400/- as per valuation report dated 05.07.2009 and claimed loss on sale of capital asset of Rs. 77,91,940/-. In this connection finding of investigation wing is as under:

" The value/cost of acquisition of entire property measuring 666.67 aq. Yards has been taken at Rs. 1,43,68,400/- as per Valuation Report dated 05.07.2009 by M/s HCA Technical Services. The value of land has been taken at Rs. 1,33,33,400/- considering the market rate of land at Rs. 20,000/- per Sq Yards whereas the rate of land in the karol Bagh area was Rs. 2,200/- per sq meter as per circular/Chart of land & Development Office, Ministry of Urban Development available at its site. (L&DO Circulars: 1. For 1.4.1981 to 31.3.1983 Letter No J-22011/3/80-LD(DOI) dated 21.10.1981 and 2. For 01.04.1979 to 31.1981 Letter No. J-22011/1/75-LII(i) dated 21.6.1979). Hence the cost of land as on 01.04.1981 comes to Rs. 12,26,139/-(557.34 sq. mtrs X Rs. 2,200 per sq.mtr.) as per letter/circulars and not Rs. 1,33,33,400/- as claimed by the assessee. The value of construction has been calculated at Rs. 10,35,000/- by the assessee taking the cost of construction at Rs. 150/- per sq. Feet. Considering the rate of construction prevalent at that time (Rs. 80-150 per square ft.), cost of construction claimed by the assessee may be accepted. However, the Valuer has not satisfied the requirements of Column 41 to 44 of the Valuation Report. (Further the valuer has not cited any instance in support of value/cost of the said land as on 01.04.1981 determined by him) In the absence production of documentary evidence and keeping in view the facts of the case, the cost of property as on 01.04.1981 is taken at Rs. 22,61,139/- (Cost of land: Rs. 12,26,139/-+cost of construction : Rs. 10,35,000/-) only and the claim of the assessee taking the cost of acquisition at Rs. 1,43,68,400/- as on 01.04.1981 is squarely denied.

**INDEXED COST OF ACQUISITION** The indexed cost of acquisition of entire property has been taken at Rs. 11,27,91,940/- on the basis of valuation report valuing the property as on 01.04.1981 at Rs.

53

1,43,68,400/- taking CII @ Rs.100/- for the year 1981-82 being the year of acquisition of property and CII @ Rs. 785/- for the year 2011-12 being the year of transfer of capital asset. However, the claim of the assessee is not correct. It is to be noted that as per sale deed, the property was mutated/ transferred in the name of Rs. Rohit Manoj Mehra and he was recorded as owner in the records of DDA on 09.02.2007 and the land was converted from leasehold to freehold on 03.11.2010 by the assessee. Hence as per records, he became the owner of the property in the year 2006-07 and CII for the year 2006-07 is to be taken for computation of indexed cost of acquisition as per explanation (iii) of section 48 of the I.T. Act. Considering the provisions of section 48 and keeping in view the cost of acquisition of Rs. 22,61,139/- calculated above, the indexed cost of acquisition of the entire property comes to Rs. 34,20,027/- i.e. (Rs. 22,61,139/- being the value of property as on 01.04.1981 X Rs. 519/- i.e. CII of the year 2006-07 X Rs. 785/- T.e. CII for the year 2011-12).

Thus long term capital loss of Rs. 77,91,940/- claimed by the assessee is totally wrong and without any basis. Instead, the assessee has earned long term capital gain of Rs. 10,15,79,973/-."

On the basis of the above information, it was communicated that the assessee is found to have made some transactions which is escaped during the year under consideration.

3 ✓ **Analysis of information collected/received:** Assessee has not declared Long Term Capital Gain of Rs. 10,15,79,973/- on the contrary he claimed Long Term Capital Loss of Rs. 77,91,940/-.

4 ✓ **Enquiries made by the AO as sequel to information collected/received:** Here reliance has been placed in the case of *Jyoti Goyal vs ITO (ITA NO. 1259/Del/2010)* wherein the Hon'ble ITAT Delhi held that:-

*"As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity of reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement with the finding of the Ld. CIT(A) that the reopening of assessment u/s 147 of the Act was valid."*

Furthermore, in the case of *Agr Investment Ltd. vs Addl. Commissioner Of Income Tax*, wherein the petitioner raised objection, that the assessing officer has assumed jurisdiction to initiate the proceedings under Section 147 and issued notice under Section 148 of the Act solely on the basis of certain statements recorded by the Directorate of Investigation without forming an independent opinion. However, the Hon'ble High Court of Delhi the held that:-

*"In the case at hand, as we find, the petitioner is desirous of an adjudication by the writ court with regard to the merits of the controversy. In fact, the petitioner requires this Court to adjudge the sufficiency of the material and to make a roving enquiry that the initiation of proceedings under Sections 147 and 148 of the Act is not tenable"*.

However, the Hon'ble High Court of Delhi did not accept the intention of the assessee to challenge the 147/148 which was re-opened on the basis of transfer of information from the Investigation Wing. The Court held that:-

54

*"It is open to the assessee to participate in the re-assessment proceedings and put forth its stand and stance in detail to satisfy the assessing officer that there was no escapement of taxable income."*

In the present case, the live link between the material provided by the Investigation and the reasons for belief that income has escaped assessment has been sufficiently demonstrated.

**5. Findings of the AO:**

5.1 It is pertinent to mention that in the case of **CIT v Nova Promoters & Finance (P) Ltd (ITA No. 342 of 2011)** dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

*"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment"*

5.2 Also, in the case of **Phoolchand Bajrang Lal v. ITO 203 ITR 456 (SC)**, the Hon'ble Apex Court has held that:-

*"An assessment completed u/s 143(3) but later on information received which was indefinite, specific and reliable and the AO duly recorded the reasons for his belief that the assessee had not fully and truly disclosed particulars of his income and hence there was escapement of income. Held that the reopening of the case was valid."*

5.3 Also, in the case of **Raymond Woollen Mills Ltd. 236 ITR 34 (SC)**, the Hon'ble Apex Court has held that:-

*"Assessee did not include certain direct manufacturing costs and fiscal duties in the valuation of closing stock. This came to light in the subsequent years assessment proceedings. We have only to see 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 the stage of issue of notice u/s 148."*

5.4 As described in the above paragraphs, there is prima - facie evidence that there is escapement of income in the present case.

**6. Basis of forming reasons to believe and details of escapement of income:**

In the wake of the above, based on first impression, the total LTCG of Rs.10,15,79,973/- is an escapement of income.

7. Seventh paragraph will include escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India: N/A

**8. Applicability of the provisions of section 147/151 to the facts of the case:**

In this case return of income was filed for the year under consideration and in this case, no assessment was made and the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded in above paragraphs.

~~This case is within four years from the end of the assessment year under consideration. Hence, necessary sanction to issue the notice u/s 148 has been obtained separately from Joint Commissioner of Income Tax as per the provisions of section 151 of the Act.~~

Or

In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act.

Date: 30-03-2018

(Archana Bhagat)  
Asstt commissioner of Income Tax  
Circle-71(1), New Delhi

12. Since the reopening is done four years after the end of the impugned A.Y, first proviso to Section 147 of the Act is squarely applicable.

13. We have given thoughtful consideration to the reasons recorded for reopening assessment (supra). We could not find any averment/reference by the Assessing Officer to show that there was a failure on the part of the assessee to disclose fully material facts. On the contrary, we find a questionnaire dated 03.12.2014 issued at the time of original assessment proceedings wherein at Point 11, the assessee was specifically asked to furnish details of movable and immovable properties and sale/purchase of immovable properties with evidence and the assessee has filed sale deed of the impugned property.

14. The assessee also filed a Valuation Report for adoption of fair market value as on 01.04.1981. The valuation report is at pages 41 to 45 of the paper book.

15. After considering all these documentary evidences, the Assessing Officer framed the assessment order dated 23.02.2015 by accepting the returned income.

16. At this stage, it would be pertinent to refer to the observations of the Hon'ble High Court of Delhi in the case of Shourya Infrastructure Private Limited WP(C) 12709/2018 wherein at para 50, the Hon'ble court observes :

*"According to us, reopening of the concluded scrutiny assessment is a serious business. Act provides for layered approach precisely for this reason. Senior officers like the ACIT/PCIT are expected to apply their minds to such requests and, only after that, approve the initiation of reassessment proceedings. Several pitfalls that Court's notice can be avoided if the concerned authorities were to look closely at the request made for reopening".*

17. In light of the above obiter, when we see the approval form at Page 51 of the book, we find that the PCIT rubber stamped the request made by the Assessing Officer for initiating assessment proceedings without applying his mind to the requisite aspects.

17. The Hon'ble Jurisdictional High Court of Delhi in Atma Ram Properties Private Limited 343 ITR 141 has, inter alia, held that reasons recorded do state that the assessee had failed to fully and truly disclose the facts but do not indicate why and how the assessee had failed to make full and true disclosure of material facts.

18. Mere repetition or quoting the language of the proviso is not sufficient. The basis of averment/ statement should be either stated or should be apparent/lucid/explained from the record.

19. In the instant case, reasons do not state that the assessee had failed to fully and truly disclose the material facts and also failed to mention how the assessee had failed to make full and true disclosure of material facts.

20. On careful consideration of reasons for reopening the assessment mentioned elsewhere, there is no mention of any new tangible material evidence brought on record. Whatever has been referred therein was already placed on record during the course of original assessment proceedings. Therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Kelvinator of India 320 ITR 561 squarely applies wherein the Hon'ble Supreme Court has held as under:

*"When a regular order of assessment is passed in terms of section 143 (3) of the Act, a presumption can be raised that such an order has been passed on application of mind. An order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong. Section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion."*

21. Similar view was taken by the Hon'ble Jurisdictional Delhi High Court in the case of Usha international 3 48ITR 485 wherein it has been held as under:

"11. Accordingly, we hold that the following observations in Consolidated Photo and Finvest Limited (supra) do not reflect the correct legal position:

"In the light of the authoritative pronouncements of the Supreme Court referred to above, which are binding upon us and the observations made by the High Court of Gujarat with which we find ourselves in respectful agreement, the action initiated by the Assessing Officer for reopening the assessment cannot be said to be either incompetent or otherwise improper to call for interference by a writ court. The Assessing Officer has in the reasoned order passed by him indicated the basis on which income exigible to tax had in his opinion escaped assessment. The argument that the proposed reopening of assessment was based only upon a change of opinion has not impressed us. The assessment order did not admittedly address itself to the question which the Assessing Officer proposes to examine in the course of reassessment proceedings. The submission of Mr. Vohra that even when the order of assessment did not record any explicit opinion on the aspects now sought to be examined, it must be presumed that those aspects were present to the mind of the Assessing Officer and had been held in favour of the assessee is too far-fetched a proposition to merit acceptance. There may indeed be a presumption that the assessment proceedings have been regularly conducted, but there can be no presumption that even when the order of assessment is silent, all possible angles and aspects of a controversy had

been examined and determined by the Assessing Officer. It is trite that a matter in issue can be validly determined only upon application of mind by the authority determining the same. Application of mind is, in turn, best demonstrated by disclosure of mind, which is best done by giving reasons for the view which the authority is taking. In cases where the order passed by a statutory authority is silent as to the reasons for the conclusion it has drawn, it can well be said that the authority has not applied its mind to the issue before it nor formed any opinion. The principle that a mere change of opinion cannot be a basis for reopening completed assessments would be applicable only to situations where the Assessing Officer has applied his mind and taken a conscious decision on a particular matter in issue. It will have no application where the order of assessment does not address itself to the aspect which is the basis for reopening of the assessment, as is the position in the present case. It is in that view inconsequential whether or not the material necessary for taking a decision was available to the Assessing Officer either generally or in the form of a reply to the questionnaire served upon the assessee. What is important is whether the Assessing Officer had based on the material available to him taken a view. If he had not done so, the proposed reopening cannot be assailed on the ground that the same is based only on a change of opinion."

12. The said observations have been rightly held to be contrary to the Full Bench decision of the Delhi High Court in Kelvinator of India Limited (supra) in Eicher Limited (supra). The said decision in Eicher Limited (supra) makes reference to the decision of [KLM Royal Dutch Airlines vs. Assistant Commissioner of Income Tax](#) [2007] 292 ITR 49 (Delhi). KLM Royal case (supra) deals with some other issues on which we do not express or make any observation approving or disapproving. Some of these aspects have been considered and explained in other decisions in light of the judgment of the Supreme Court in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500".

22. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we are of the considered view that the assumption of jurisdiction is bad in law. Notice u/s 148 of the Act is hereby set aside and resultant assessment order is quashed.

23. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

24. Since the stay petition has not been pressed by the assessee, the same is dismissed.

25. In the result, the appeal of the assessee in ITA No. 2806/DEL/2023 is allowed whereas the Stay Application is dismissed as not pressed.

The order is pronounced in the open court on 20.12.2023.

Sd/-

[SAKTIJIT DEY]  
VICE PRESIDENT

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 20<sup>th</sup> DECEMBER, 2023

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	