

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1414/Kol/2023
Assessment Year: 2012-13

Rani Goenka (PAN: ADTPG 6619 F)	Vs.	ITO, Ward-44(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.02.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11.03.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Katatuka, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 06.12.2023 for the AY 2012-13.

2. The assessee has challenged the re-opening of assessment u/s 147 r.w.s 148 of the Act by the AO on the basis of borrowed satisfaction without any independent application of mind which has been upheld by the Id CIT. Besides , the assessee has challenged the confirmation of addition of Rs. 1,37,00,000/- as made by the AO u/s 68 on account of unexplained investment which is contrary to the evidences on record and has to be deleted.

3. Facts in brief are that the assessee has filed return of income on 26.07.2012 declaring total income of Rs. 3,27,391/- which was duly processed u/s 143(1) of the Act. Thereafter the AO received from information from DDIT(Inv), Unit-3(3), Kolkata vide letter dated 08.03.2019 to the effect that the assessee has maintaining the saving bank account No. 400710110002120 with Bank of India, Dharamtalla Street Branch, Kolkata and during the year the assessee has invested Rs. 1,37,00,000/- through banking channel. It was also noted that the assessee is a house wife on the basis of assessee's bank account as collected by DDIT(Inv), Unit-3(3). The AO observed that the assessee has made Rs. 1.30 crores investments. IT was also noted that from the Mutual Fund statement of Morgan Stanley Short Term Bond Fund that the assessee had Rs. 69,18,803/- as opening balance as on 08.04.2011 which was transferred/redeemed on 18.04.2011 and redemption of proceeds was to the tune of Rs. 69,33,459/- this was the basis for the reopening of assessment of the assessee. The notice u/s 148 was issued on 28.03.2019 which was duly served the said notice remained non-complied with. During the course of assessment proceedings the assessee was called upon to furnish the evidence to explain the various points as raised in questionnaire. After a couple of notices and written submission dated 20.12.2019 were filed by the assessee counsel were taken into account and finally the sum of Rs. 1,37,00,000/- was added to the income of the assessee as unexplained investment u/s 68 of the Act.

4. The case of the assessee was simply dismissed on legal issue as well as on merit by the First Appellate Authority after taking into account the contention and submission of the assessee and hence the assessee is in before us.

5. During the course of hearing, the Id. counsel for the assessee took us through the reason recorded to reopen the assessment which were informed to the assessee vide letter dated 13.11.2019 noting and stating therein that the assessee was maintaining a savings bank account No. 400710110002120 with Bank of India, Dharamtalla Street Branch during FY 2011-12 and has deposited/invested money to the tune of Rs. 1.37 crores which were not commensurate with the total income and

the source of deposit to the total income and thus the concerned investment/ deposits remained unexplained. We note that the assessee has income from other source and also by way of short term and long term capital gain on sale of investments . We note that the assessee has been filing returns of income regularly and all these investments ,which were referred by DDIT(Inv), Unit-3(3), Kolkata in the letter sent to the AO, were duly shown in the balance sheet. We have also examined the bank account of the assessee with all debits and credits entries and find that all the credits/deposits were on account of maturity of investments and debits due to investments made in various schemes. Having observed so we find that the AO has not applied his mind independently to the report of the Investigation Wing and has recorded a fallacious conclusion that income of the assessee has escaped to the tune of Rs. 1.37 crores. We have also examined the details of statement showing short term and long term capital gain and found that the assessee has duly shown the taxable short term capital gain of Rs. 1,46,206.45/- with STT paid. Similarly we note that the assessee has short term capital gain [without STT amounting to Rs. 8,46,026.05] which were duly offered in the computation of income to tax. We have also examined the balance sheet of the assessee and noted that the balance in the capital account as on 31.03.2012 of Rs. 1,37,67,033/-. Therefore the observations of the AO that the assessee is a house wife and does not have income to invest is wrong and against the facts on records . Considering all these aspects we are of the view that the reopening by AO is purely on the basis of borrowed satisfaction without any application of mind.The case of the assessee finds supports from the decision of Hon'ble Delhi High Court in the case of *ACIT vs Meenakshi Overseas Pvt. Ltd.* [2017] 82 taxmann.com 300 (Del) and coordinate bench in the case of *DCIT vs Great Wall Marketing Pvt. Ltd.* in ITA No. 660/KOL/2011 for AY 2002-03 order dated 03.02.2016. In the said decision, Hon'ble Delhi High Court has held that *where the reasons to believe contain not the reasons but the conclusions of the AO one after the other and there was no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment.* The Hon'ble High Court has held that *the conclusions of the AO are at best a reproduction of the conclusion in the*

investigation report. Indeed it is a borrowed satisfaction. Accordingly we set aside the order of Ld. CIT(A) and hold the re-opening as bad in law.

6. Similarly on merit also both the authorities have failed to apply their mind to facts as available on record. Undisputedly the assessee had sufficient sources available to make investments in securities and found that all the debit and credit entries were nothing but a redemption and fresh investments made by the assessee. Therefore even on merit, the assessee's case is full proof and open and shut case and no addition was warranted u/s 68 of the Act.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 18th March, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 18th March , 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rani Goenka, 84, Ellora Apartments, 2, Gariahati Road (South), Kolkata-700068
2. Respondent – ITO, Ward-44(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata