

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.760/Del/2024
(ASSESSMENT YEAR 2012-13)**

Smt. Vibha Jain B-4/52, First Floor Pashim Vihar New Delhi-110063 PAN-AAAPJ2364A (Appellant)	Vs.	Income Tax Officer Ward-69(3) New Delhi (Respondent)
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Assessee by	Shri Sanjiv Jain, Adv.
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	14/05/2024
Date of Pronouncement	22/05/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 29/01/2024 for Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

“1. That the Id. CIT(A) has erred in upholding the assumption of jurisdiction u/s 147 of the Act by the A.O. even though no income escaped assessment in the instant case.

2. That the Id. CIT(A) has erred in upholding the impugned order passed u/s 147/143(3) of the Act even though the A.O. failed to dispose off the objections filed by the assessee against assumption of jurisdiction as per the judgement of Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. (259 ITR 19).

3. That the Ld. CIT(A) ought to have quashed the impugned order passed u/s 147/143(3) by the A.O. when no addition/disallowance was made by him in respect of the issue on the basis of which the jurisdiction u/s 147 of the Act was assumed. That the Id. CIT(A) has failed to appreciate that the A.O. did not have any jurisdiction to make addition/ disallowance on any other issue, when no income was found to have escaped assessment on the issue for which the case was reopened u/s 147 o the Act.

4. That the Id. CIT(A) has erred in upholding the arbitrary disallowance of expenses amounting to Rs.1,50,000/- on ad hoc basis. That the expenses incurred by the assessee were wholly and exclusively for the purposes of her profession and no valid basis was given by the A.O. for making such ad hoc disallowance.”

3. The brief facts of the case are, the assessee is working as an Associate Professor in Department of Commerce in Janki Devi Memorial College, Delhi University. The assessee had filed her income tax return on 02.07.2012 vide ack no. 40231400020712 for the relevant assessment year declaring income of Rs. 14,03,180/-. During the relevant year, she earned Salary income of Rs. 12,76,756/- and she had declared a net profit of Rs. 2,12,621/- from Profession on which TDS had been properly

deducted as per the provisions of the Income Tax Act. The above profit of Rs. 2,12,621/- was determined after claiming expenses of Rs. 3,18,930/- against gross income of Rs. 5,31,551/-.

4. Subsequently, the AO issued notice u/s 148 based on the AIR Report and recorded the reasons as under:

"Individual Transaction statement of the Assessee was generated, as per AIR information in ITS, Assessee has paid credit card bills to the tune of Rs. 7,46,487/- of American Express Banking Corp. As per ITS data, Assessee has filled Income Tax Return for the relevant A.Y. declaring total income of Rs. 14,03,180/-. During the year under consideration there was abnormality that Assessee had paid credit card bills of heavy amount which prima facie shows that such heavy amount of Rs. 746,487 can only be paid from undisclosed sources which need to be brought into tax net. Notice us 133 (6) was issued to the Assessee on 06.03.2019 vide speed post Tracking no. ED939200121IN but no reply has been received from the Assessee till date. Considering the factual matrix, statutory provisions and legal principles, the undersigned has reasons to believe that the Assessee has not disclosed fully and truly material facts necessary for assessment and there has been an escapement to tune of Rs. 746,487/- chargeable to tax for the A.Y. 2011-12 and hence it is a fit case for initiation of proceedings in terms of Section 147 of the IT Act, 1961."

5. The reasons were forwarded to the assessee and the assessee has filed objections vide letter dated 20/09/2019 and submitted that reasons for re-opening are not valid on several grounds and requested to drop the assessment proceedings.

6. The Assessing Officer issued notice u/s 142(1) and asked for various details. In response, the assessee submitted the relevant information as called for.

7. At the time of hearing, the Ld. AR submitted that, on the basis of her reply, the AO was fully satisfied that assessee and her husband has declared source of income to justify payment of Credit Card of Rs.7,46,487/-. Therefore, there was no escapement of income based on reasons recorded and the proceedings needed to be dropped forthwith. However, another show cause notice dated 29/11/2019 was issued by the AO in which she raised altogether new issue, which were not part of reasons for reopening of assessment, as to why income from profession should not be treated as salary income. The assessee replied to the aforesaid notice vide letter dated 02/12/2019 stated that since there was no employer-employee relationship, such income could not be taxed as salary.

8. Further, the AO issued another show cause notice dated 06/12/2019 asking the assessee to produce books of accounts in respect of expenses claimed. The Ld. AR submitted that the issues

raised by the AO in the show cause notice were not part of the reasons recorded for reopening the assessment and hence not permissible as per decision of jurisdictional High Court *Ranbaxy Laboratories Ltd. Vs CIT 336 ITR 136 (Del)* and Honorable Bombay High Court in the case of *CIT VS JET Airways India Ltd. 331 ITR 236 (Bom)*. However, the assessee vide letter dated 15/12/2019 submitted details of all the expenses claimed against Income from profession. He submitted that the Assessing Officer ignored the legal objection and proceeded to disallowed 50 percent of total expenses i.e. Rs. 150,000/- on *ad-hoc* basis. She has passed the order of assessment dated 19/12/2019 (Received on 24/12/2019). The AO has also wrongly charged interest u/s 234B and 234C of the Income Tax Act.

9. No other issue/ground was argued by the Ld. AR.

10. On the other hand, the Ld. DR relied on the orders of lower authorities.

11. Considered the rival submissions and material placed on record, we observed that the case of the assessee was reopened by issue of notice u/s 148 of the Act and in the reasons recorded, the

Assessing Officer observed from AIR information that assessee has paid Credit Card bills to the tune of Rs.7,46,487/-. Since, the AO has observed the abnormality in the income declared by the assessee and making such heavy amount of payment in Credit Card bills, the AO recorded the above reasons and reopened the same. In response to the notices issued by the Assessing Officer, the assessee filed the relevant information and supporting evidence to show that assessee and her husband has proper source of income to make such Credit Card payments. After satisfying the issue raised by the Assessing Officer against the reasons recorded for reopening of the assessment, However, Assessing Officer has proceeded to make the verification of the other issues which were not the issues raised in the reasons recorded for reopening of the assessment and proceeded to make the *ad-hoc* disallowance relating to the expenditure claimed by the assessee. From the facts and submissions of both the parties, we observed that the Assessing Officer has proceeded to make the addition which were not the subject matter of reasons recorded by the AO for reopening of the assessment. In the similar facts, it was

held in the case of *CIT vs. Living India Ltd.* (356 ITR 106) by relying on the decision of *JET Airways India Ltd.* (*supra*) by the Hon'ble Jurisdictional High Court as under:

"9. Having heard the counsel for the parties, the first point which needs to be examined is whether the proceedings under Section 147/148 were validly initiated or not. We have already noticed above that the purported reasons recorded on 19.01.2010 only contain the issue with regard to bad debts. It is only subsequently that, sometime in October 2010, additional reasons were recorded with regard to the issue pertaining to unabsorbed depreciation and the disallowance under Section 14A of the said Act. In our view, the additional reasons could not have been recorded. The notice under Section 148 would stand or fall depending upon the reasons prior to the issuance of the notice. In the present case, according to the learned counsel for the respondent/Assessee, no notice under Section 148 of the said Act has been issued pertaining to the purported additional reasons which were allegedly recorded sometime in October 2010 and served upon the Assessee on 29.10.2010. Therefore, the additional reasons cannot be looked into for the purposes of determining the validity of the proceedings initiated under the notice dated 19.01.2010 issued under Section 148 of the said Act.

10. That being the position, the only thing that has to be seen is whether the reasons recorded on 19.01.2010 could, at all, form the basis of reopening of an assessment under Section 148 of the said Act. One point is clear, in that so far as the issue of bad debts is concerned the present appeal is not concerned with it and therefore, the deletion of the addition made on account of bad debts has become final. Until and unless, there was an addition on the basis of the original reasons, no other additions could be made in view of the expression "and also" used in Explanation 3 to Section 147. This was the subject matter of the decision of the Bombay High Court in the case of **CIT v. Jet Airways: 331 ITR 236 (Bom)**. This was followed by this Court in *Ranbaxy Laboratories Limited v. CIT: 336 ITR 136 (Delhi)* and also in **CIT v. Software Consultants: 341 ITR 240 (Delhi)**.

It was also subject matter of a recent decision of this court in the case of **CIT v. Cheil Communications India Pvt. Ltd.: ITA No. 578/2012** decided on 17.04.2013. Therefore, no additions in absence of any addition on the issue of bad debts could have been made by the Assessing Officer."

12. Respectfully following the above decision, we are inclined to allow the claim and grounds raised by the assessee. Accordingly, the ground No.3 raised by the assessee is allowed.

13. Other grounds raised by the assessee are not adjudicate at this stage as no submissions were made. Accordingly, the appeal filed by the assessee is partly allowed.

14. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 22/05/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI