

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.4083/Del/2019
[Assessment Year : 2010-11]**

Manju Gupta, H.No.9/6654, Nehru Street Gandhi Nagar, New Delhi-110032. PAN-AAJPG8890R	vs	ACIT, Circle-4(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Saurabh Rohtagi, CA	
Respondent by	Ms. Smita Singh, Sr. DR	
Date of Hearing	09.09.2024	
Date of Pronouncement	27.11.2024	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 27.02.2019 passed by Ld. Commissioner of Income Tax (A)-2, New Delhi [“Ld.CIT(A)”] u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 13.12.2017 passed u/s 147 of the Act pertaining to assessment year 2010-11.

2. Grounds of appeal raised by the assessee read as under:-

1. *“That under the facts and circumstances, invoking of Sec. 147 and consequential proceedings u/s. 148 culminating into Asstt. Order U/s. 147/144 is without jurisdiction, illegal and unsustainable in law as well as on merits.*
2. *That in the absence of prior approval as required u/s. 151, the whole proceedings are without jurisdiction.*
3. *That without prejudice, the approval of appropriate authority, if do not show the application of mind while granting approval, such approval should not be taken as a valid approval, so as to allow the AO to proceed for initiating further proceedings u/s. 147 and notice u/s. 148.*

4. *That the Asstt. and CIT (A) order has been framed without affording reasonable opportunity of hearing, therefore, un-sustainable in law as well as on facts.*
- 5.1.1. *That under the facts and circumstances of the case, Ld AO and CIT (A) grossly erred in law as well as on merits in adding Rs. 79,30,000/- for unexplained investment in property.*
- 5.1.2. *That Ld AO and CIT (A) has erred in law and facts in not considering the documents and facts filed during the proceedings in correct perspective.*
6. *That the whole re-asstt. Proceedings are bad in law for non service of notice U/s. 148 within statutory time limit.*
7. *That the asstt. is without jurisdiction for non service of statutory notice U/s. 143 (2) within the prescribed time limit.”*

3. When the matter was called for hearing, the Ld. Counsel for the assessee fairly submitted that he does not seek to press Ground Nos. 2, 3, 6 & 7 raised in the appeal memo. Ld. Counsel for the assessee further pointed out that other grounds relate to challenge towards assumption of jurisdiction under section 147 of the Act and merits of the impugned additions towards unexplained investment in property.

4. The Ld. Counsel for the assessee assailed the assumption of jurisdiction under section 147 of the Act at the outset and submitted that pre-requisites for such assumption of jurisdiction is not clearly fulfilled in the facts of the case and therefore, the proceedings initiated and completed under section 147 r.w.s. 148 of the Act is bad in law.

5. Since the assessee has challenged assumption of jurisdiction under section 147 of the Act which goes to the root of the matter. This grievance gain primacy for adjudication purposes.

6. The reasons recorded under section 148(2) of the Act which provides foundation to the issuance of notice under section 148(1) of the Act is reproduced hereunder for ready-reference:-

“The assessee appears in Non filer Management System Cycle-2. A system generated notices have already been issued on 12.11.2014 &10.05.2016 In this regard, no compliance has been made by the assessee either online or through any written submission. But on verification on ITD, it is seen that the assessee has fled e-return of income for AY 2010-11 vide acknowledgement No 287164260200911 on 20.09.2011 at an income of Rs. 157000/-.

2. As per NMS pilot project information summary the assessee i.e. Manju Gupta has purchased Immovable Property valued of Rs.9041000/- on 11.09.2009, which pertains to the Financial Year 2009-10 relevant to AY 2010-11.

3. In order to verify the information of Non Filer Management System Cycle-2 in respect of purchase of Immovable Property by Manju Gupta valued at Rs.9041000/-on 11.09.2009, the analysis of the ITRs of the assessee is as under:

S.No.	Name of Assessee	AY	Total income
1.	Manju Gupta	2010-11	157000
2.	Manju Gupta	2011-12	157000

From the table above, it can be seen that financial figures of the assessee is so meek that it is not even remotely possible for the assessee to invest Rs.9041000/-towards acquisition of Immovable Property.

4. In view of above discussion and findings, it is clear that genuineness and creditworthiness of purchase of Immovable property by the assessee remained unexplained. I have therefore, reason to believe that income amounting to Rs 9041000/- has escaped assessment in the case of **Manju Gupta** within the meaning of section 147/148 of the Income Tax Act., 1961.

Submitted for kind perusal and approval.”

7. A bare perusal of the reasons recorded as noted above, it is manifest that the AO collected some information towards purchase of high value property which do not coincide with the capacity of the assessee as per the return of income. As per para 3 of the assessment order, information collected towards purchase of property was compared with the returned income and it was

observed that 'it is not even remotely possible for the assessee to invest INR 90,41,000/- towards acquisition of immovable property.'

8. Apparently, the threshold for the AO to meet the pre-requisites of re-opening of assessment has not been met. The AO has proceeded to take drastic action of re-opening under section 147 on surmises and conjectures wholly extraneous 'to expression reasons to believe' embedded in section 147 of the Act. The AO has concluded that since the returned income is quite low, the assessee is not in a position to acquire an immovable property of high value. Such belief without any material is clearly based on suspicions and conjectures. A taxpayer is not necessarily expected to make investment out of his returned income of a particular year. The source of investment could be out of debt or out of past capital or out of tax free income etc. Mere declaration of low taxable income is not the reason *per se* to hold such belief towards escapement of income. The belief of the AO is in the arena of 'probable escapement' rather than 'definite escapement'. The case of 'probable escapement' do not satisfy the requirement of section 147 of the Act. The power of the Income Tax Officer to re-open the assessment though very wide, are not plenary. The words of statute are 'reason to believe' and not 'reason to suspect'. The 'reason to believe' apparently is a pretence in the instant case and no more. The foundation for re-opening the assessment is thus void *ab-initio*. The consequent notice issued under section 148 of the Act is a nullity and the re-assessment order passed based on such nonest notice under section 148 of the Act, is bad in law.

9. We thus find potency in the plea for quashing the jurisdiction as agitated in Ground No.1 of the appeal of the assessee. Having adjudicated the assumption of jurisdiction under section 147 of the Act for framing re-assessment order against the Revenue and in favour of the assessee, other grounds raised by the assessee do not require separate adjudication.

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

Order pronounced in the open Court on 27th November, 2024.

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI