

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'A/SMC', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A/SMC" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member**

**I.T.A. No.765/Kol/2024**  
**Assessment Year: 2010-11**

**Savitri Devi Agarwala** ..... **Appellant**  
**AJ, 123, Sector-II, Salt lake City,**  
**Kolkata-700091.**  
**(PAN: AFJPA2365N)**

**vs.**

**ITO, Ward-63(4), Kolkata** ..... **Respondent**

**Appearances by:**

Shri Miraj D. Shah, AR appeared on behalf of the Appellant  
Shri Manas Mondal, Addl. CIT, Sr. DR appeared on behalf of the Respondent

Date of concluding the hearing: December 23, 2024  
Date of pronouncing the order: December 23, 2024

**आदेश / ORDER**

The captioned appeal has been preferred by the assessee against the order dated 12.02.2024 of the Ld. Commissioner of Income Tax, (Appeals), Addl./JCIT(A)-1, Coimbatore [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year (AY) 2010-11.

2. The assessee in her appeal has contested the confirmation of addition by the Ld. CIT(A) of Rs.8,01,866/- which was made by the AO on account of suppression of commodity profit. The assessee in this appeal has contested the addition not only on merits but also on legal ground that the reopening of the assessment in this case was bad in law.

3. At the outset, Ld. Counsel for the assessee has invited my attention of the reasons recorded by the AO for forming belief that the income of the assessee has escaped assessment. As per the reasons recorded, the AO

had received information that the assessee during the year had carried out certain commodity transactions, the details of which was as under:

Sl. No.	Sub-broker	Buying	Selling	Profit
1.	Sutanati Distributors	2,30,45,000/-	2,61,48,000/-	31,03,000/-
2.	Strong Suppliers	50,85,000/-	52,85,000/-	2,00,000/-
3.	Shivputra Vinimay Pvt. Ltd.	2,42,000/-	2,44,425/-	2,425/-
			Total profit	33,05,425/-

4. The Ld. Counsel, has invited my attention to the relevant paras of the assessment order to submit that the AO did not make any addition in respect of the aforesaid transactions. The AO in fact, had made addition of Rs.8,01,866/- in respect of any other alleged commodity transaction carried through broker M/s. Kishan commodities Pvt. Ltd. The AO noted that the assessee had shown an income of Rs.3,11,065/- only from the commodity transactions and suppressed the remaining profits of Rs.8,01,866/-. The assessee totally denied to have carried out any transaction and about earning of any other profit of Rs.8,01,860/- as alleged by the AO. The AO, however, without pointing out any information or evidence on record simply made the impugned additions holding that the assessee had failed to reconcile the difference, whereas, the case of the assessee had been that the assessee had not earned any such profit as alleged by the AO.

5. The Ld. Counsel has further invited my attention to the impugned order of the Ld. CIT(A) to submit that the assessee had taken a categorical plea before the Ld. CIT(A) that reopening of the assessment in this case was bad in law on account that the AO simply reopened the assessment on the basis of alleged information correlating the same with the accounts of the assessee. Further that the AO did not make any addition in respect

to the allegation which made him to believe that the income of the assessee has escaped assessment.

6. I agree with the above submission of the Ld. Counsel. The assessment in this case has been reopened on the basis of alleged information without application of mind by the AO. In this case, after receipt of information, the AO was supposed to co-relate the said information with the accounts of the assessee and thereafter, he was supposed to form the belief regarding escapement of income, if any, of the assessee. The Ld. AO, in this case, on receipt of alleged information without application of mind, straightaway reopened the assessment. The belief formed by the AO in this case of escapement of income was not based on any reliable material and the mere uncorroborated information received by the AO would not constitute a valid reason to form the belief of escapement of income.

7. It has been held time and again that reopening of the assessment can be made on the basis of 'reason to believe' and not on the basis of 'reasons to suspect'. Such belief of the escapement of income should be based on some cogent material and it must not be mere pretence of the AO. Moreover, finally, the AO did not bring any addition on the issues for which the assessment was reopened. The case of the assessee is thus, covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (2010) 195 taxmann 117 (Bom.) and also of the Hon'ble Calcutta High Court decision in the case of CIT Vs. Infinity Infotech Parks Ltd., ITAT 60 of 2014, GA 1736/2014, wherein the Hon'ble High Courts have held that in a case where the assessment has been reopened u/s. 147 of the Act and finally, no addition is made in respect of the reasons recorded of escapement of income, which was the foundation for reopening of the assessment, then it is not open to the AO to independently assess any other income which comes to his notice

subsequently. In view of the aforesaid settled position, reopening in this case is held to be bad in law. Even on merits, the assessee had duly furnished all the commodity contract notes, bank statement etc. to plead that the assessee had not entered into any other transaction except that has already been disclosed. The AO has not rebutted the aforesaid contention of the assessee. When the assessee had completely denied of having earned any other profit than that was disclosed by her, however, the AO alleges that the assessee had received such other profits, the burden shifts upon the AO to confront the assessee with such material and bring on record which may prove that the assessee had actually earned such profits, which have not been disclosed in the return of income by the assessee. The assessee was not supposed to prove the negative. In view of this, the addition is not sustainable on merits also. Accordingly, the impugned addition is ordered to be deleted. Appeal of the assessee is allowed.

8. In the result, appeal of the assessee stands allowed.

Order is pronounced in the open court on 23.12.2024.

**Sd/-[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 23.12.2024.

*JD Sr. P.S*

*Copy of the order forwarded to:*

1. **Appellant – Smt. Savitri Devi Agarwala**
2. **Respondent – ITO, Ward-63(4), Kolkata.**
3. **CIT (A), Addl/JCIT(A)-1, Coimbatore**
4. **CIT,**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar,  
ITAT, Kolkata

