

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

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No.896/DEL/2021
(Assessment Year: 2012-13)**

Smt. Vinod Kohli,
C.W. – 66, Malibu Town,
Sohna Road,
Gurugram – 122 018 (Haryana).

vs.

ACIT, Circle 35 (1),
New Delhi.

(PAN : AMIPK8299D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Monalisa Maity, Advocate
REVENUE BY : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 13.03.2025

Date of Order : 21.05.2025

ORDER

1. The assessee has filed this appeal against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short] dated 24.03.2021 for the Assessment Year 2012-13 raising following grounds of appeal :-

“1. That based on the facts and circumstances of the case and in law, the impugned order is erroneous in so far as it is based on incorrect assumptions, conjectures and surmises.

2. That based on the facts and circumstances of the case and in law, the reassessment in the captioned matter is invalid because -

2.1. The reasons recorded for initiation of the proceedings were undated, thereby defying the mandatory requirements laid down under section 148(2) of the Act and therefore, the Ld. AO has grossly erred in assuming jurisdiction over the Appellant.

2.2. The comprehensive objections raised by the Appellant against the reasons recorded by the Ld. AO, were outright rejected vide a non-speaking order by falsely invoking the provisions of section 292B of the Act. Also, the disposal of the reasons was in violation of decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs Norton Motors (2005) 275 ITR 595.

2.3. The Appellant was not granted four weeks' time to rebut the disposal of objections in as much as the objections were never disposed off vide a speaking order, but merely addressed in the impugned reassessment order itself.

3. That the impugned appellate order deserves to be quashed in as much as it violates the principles of natural justice because -

3.1. The order was passed without taking cognizance of the detailed written submissions and documentary evidences furnished by the Appellant before the Hon'ble-CIT(A).

3.2. The Appellant was not afforded a sufficient opportunity of being heard despite requesting for the same vide her written submission.

4. That the impugned addition amounting to Rs. 8,61,000/- made to the income of the Appellant is grossly erroneous because-

4.1. The amount of addition computed by the Ld. AO and further corroborated by the Hon'ble CIT(A), is arbitrary in nature and therefore, has no cogent basis of calculation.

4.2. The Hon'ble CIT(A) has erroneously held that the Ld. AO provided a reasoning for calculation of Annual Lettable Value while calculating income from house property, without appreciating that the same are merely estimated values.

4.3. The addition has been made in complete disregard of the submission and documentary evidences produced before the Hon'ble CIT(A) and the Ld. AO.

5. That the Hon'ble CIT(A) has grossly erred in passing a non-speaking order blatantly rejecting the judicial decisions relied upon by the Appellant by stating that the same were not applicable to her case, without actually placing on record, any justification or cogent reasoning for the same.

6. That the above grounds of appeal are without prejudice to one another.”

2. Ground Nos.1, 5 & 6 are general in nature, hence do not require any adjudication.

3. At the time of hearing, ld. AR of the assessee submitted that the reassessment proceedings were initiated without adhering to the decision of GKN Driveshafts (India) Ltd. vs. ITO (2002) 259 ITR 19 (SC). He submitted that the reassessment proceedings were initiated in the case of assessee's husband in exactly similar fashion. The written submissions given by the assessee is reproduced for the sake of repetition :-

“RE: REASSESSMENT PROCEEDINGS IN THE GIVING FACTS ARE BAD IN LAW

1. The reasons recorded are undated: It is submitted that the reasons recorded for reopening the assessment proceedings were undated. In this regard, kind attention is invited to...page no. 4 of the assessment order dated 27.12.2019 whereunder the ld. Assessing Officer has grossly erred in stating that undated reason is a minor mistake curable under section 292B of the Act. It is strongly contended that the provision of section 292B of the Act can be resorted to only if there is a technical defect or omission in any notice de. The non-recording of the reasons prior to issue of notice u/s 148 flouts the provisions of law and clearly depicts non-application of mind on the part of the ld. Assessing Officer.

2. Objections against the reassessment proceedings, were not disposed of in accordance with the ratio laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer [2002/259 ITR 19 (SC), pertaining to reassessment proceedings: In this regard it is humbly submitted that the Ld. AO never disposed the objections of the Appellant, rather than he preferred to comment on the objections while framing the reassessment order. Before moving further, it is relevant to reproduce the relevant excerpts from the said judgment of GKN Driveshafts (India) Ltd. (supra). In the said case, the Hon'ble Supreme Court has observed that "the Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order". When the said direction of the Supreme Court is read in the present context of the matter, it shall be clear that in this case, the objections were not disposed of by way of a separate order, rather the same is only dealt/ reproduced in the reassessment order. The argument is therefore that the ratio laid by the Hon'ble Supreme Court is not followed by the Ld. AO which vitiates the entire assessment proceedings.

RE: THE ADDITION? EVEN ON MERITS ARE NOT SUSTAINABLE

3. The addition made by the Assessing Officer, determining the ALV of the house properties is not backed on plausible reasoning and has been made in an arbitrary manner: It is submitted that the Ld. AO made additions to the income of the Appellant by alleging that the Appellant had earned income from House property. The exact reasons recorded by the Assessing Officer have been reproduced in the preceding paras. The specific submissions of the Appellant in regard to the aforesaid four properties are stated as under:

3.1 At the outset it is submitted that the Assessing Officer had wrongly assessed the annual lettable value of the property viz. "A2/29, Ground Floor, Sector-8, Rohini, Delhi" at Rs.1,20,000/-. In this regard, it is submitted that there is no mention of this property in the reasons recorded by the Assessing Officer and hence, the Assessing Officer did not have the jurisdiction to determine the value of this property while framing the assessment order. No separate reasons in this regard were recorded and no separate approval of the competent authority was procured. Without prejudice, it is submitted that the said property was sold out by Mrs. Vinod Kohli (the assessee) on 31st March, 2008 i.e., prior to the relevant assessment year under consideration. Kind attention in this regard, is invited to the paragraph 7 & 10 of the ITAT order dated 10.01.2022 bearing ITA no.6963/DEL/2019 for A.Y 2011-12 of Mr. Inderjeet Kohli (spouse of the present appellant). The copy of the same is enclosed. Hence, the addition is clearly non-sustainable.

3.2 In regard to the second property i.e. the property "Rajpur Residency, Dehradun" mentioned in the reasons for reopening, the Assessing Officer has wrongly determined the value of such property at Rs.7,20,000/- (page 2 of the assessment order). Whereas in the reasons recorded by the Investigation Wing, the annual lettable is stated to be of Rs.1,30,000/-. No logical/reasonable basis for escalating the value of such property has been mentioned in the reassessment order.

3.3 With respect to the third property i.e. "Kothi, Sector-10, Faridabad" it is submitted that the Assessing Officer has taken annual lettable value at Rs.60,000/- same as given in reasons recorded. However, the value taken is on an arbitrary basis without having any reasoning. In this regard, it is relevant to slate that in paragraph 4 of the assessment order dated 27.12.2018 for the A.Y 2011-12 of Mrs. Vinod Kohli, it is clearly stated that the said property i.e. Kothi, Sector-10, Faridabad had not been acquired by the appellant for renting purpose. The copy of the same is enclosed. The fact is that the same was demolished and floors were constructed and sold out. Thus, the said property was not in a condition to fetch rental income for the current assessment year i.e., A.Y. 2012-13.

3.4 With respect to fourth property i.e. "R.C Mall Floor, Moradabad (U.P)", the appellant hereby submits that the appellant had no such property located at / in R.C Mall, Moradabad (U.P.). Therefore, there is no occasion on the part of the Ld. AO to determine the annual letting value of such property. The Ld. AO has taken annual let-table value at Rs.3,30,000/- on an arbitrary basis without having any reasoning. The ALV of a property, which is not in

the legally owned by the appellant cannot be added to the income of the appellant.”

4. On the other hand, ld. DR objected to the same and relied on the findings of lower authorities.
5. Considered the rival submissions and material available on record. We observed that the issue is squarely covered in favour of the assessee by decision of ITAT in assessee’s husband case in ITA No.6963/Del/2019 for AY 2011-12 order dated 10.01.2022. For the sake of clarity, we reproduce the relevant findings of the order dated 10.01.2022 (supra) as under :-

“7. He thereafter submitted that the reasons recorded by the AO for reopening the assessments cannot be said to be valid reasons as they were no wrong facts as the addition with respect to the deemed rental income made for two shops in the Mall at Ludhiana was not owned by the Assessee but was owned by the firm, S. K. Interiors, in which the assessee was one of the partner. With respect to the addition in respect of the property at Rohini, Delhi, he submitted that the aforesaid property was not owned by the assessee but was owned by his wife, Mrs. Vinod Kohli and further, the said property was sold by her on 31st March 2008, i.e. prior to the relevant assessment year. He therefore submitted that the AO did not have the jurisdiction under Section 147/148 to reopen the proceedings based on incorrect facts.

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10. With respect to the property at A2/29, Rohini, New Delhi, and in respect of which the addition of Rs. 4 lac has been made u/s 23(1)(a) of the Act, he submitted that the aforesaid property did not belong to the assessee but belonged to his wife, Mrs. Vinod Kohli and the said property was sold by her on 31st March 2008 i.e. prior to the relevant assessment year. He further submitted that during the course of assessment and appellate proceedings, assessee had brought the aforesaid facts before the authorities but the same was ignored by the concerned authorities.

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14. I have heard the rival submissions and perused the material on record. The assessee is challenging the assumption of jurisdiction for reopening the assessment u/s 147/148 of Act and also challenging on merits the addition made. The law on reopening of an assessment under the Act, is fairly settled. The Assessing Officer (AO) can re-open an assessment only in accordance with the express provisions provided in Section 147/148 of the Act. It is only on the AO strictly satisfying the provisions of Section 147 of the Act that he acquires jurisdiction to re-open an assessment. Section 147 of the Act, clothes the AO with jurisdiction to reopen an assessment on satisfaction of the following: (a) The AO must have reason to believe

that (b) Income chargeable to tax has escaped the assessment and (c) In cases where the assessment sought to be reopened is beyond the period of four years from the end of the relevant assessment year, then an additional condition is to be satisfied viz: there must be failure on the part of the Assessee to fully and truly disclose all material facts necessary for assessment.

15. In the present case, notice u/s 148 of the Act has been issued on 29.03.2018 in relation to A.Y. 2011-12. Hence, the reopening of assessment is beyond the period of four years from the 9 end of relevant assessment year. In such a scenario, as per the 1st proviso to Sec.147 of the Act, no action for initiation of reassessment proceedings for A.Y. 2011-12 could have been taken unless the AO had reason to believe that income chargeable to tax had escaped the assessment for a reason of failure on the part of assessee to disclose fully and truly all material facts necessary for assessment.

16. It is a settled law that the reasons which are recorded by the Assessing officer for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned and that the reasons which are recorded by the A.O. for reopening the assessment are the only reasons which can be considered and no substitution or deletion is permissible. The reading of the reasons placed by the assessee in the Paper Book shows that there is not even an allegation that there was any failure on the part of the assessee to disclose any material facts which lead to any income chargeable to tax had escaped the assessment. Further, even on the reading of the reasons recorded, it cannot be said that it suggests about any failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment.

17. The reading of the reasons placed by the assessee in the paper book reveals that the reopening has been initiated for 2 reasons. The first allegation of the AO is that he had received 10 information from ADIT (Inv.) that the assessee owns 8 properties listed in the reasons recorded out of which from the 4 properties (namely, property at Rajapur Residency, Dehradun, 2 properties at Rohini Delhi and two shops in Mall in Ludhiana) no deemed rental income has been declared by the assessee. The second allegation is that the assessee had entered into commodity transactions aggregating to Rs 125.91 lacs and its source and income was required to be checked.

18. As far as the first allegation, namely not disclosing the deemed rental income from the 4 properties is concerned, I find that before me, Ld. AR has pointed out that the properties from which the AO wants to tax the deemed rental income does not belong to the assessee.

19. It is a settled position that even where an assessment has been only processed under Section 143(1) of the Act, the reopening notice must satisfy the test of having reason to believe that the income chargeable to tax has escaped assessment. The reason to believe has to be arrived at after applying one's mind to the material available and to reach a prima facie view that income chargeable to tax has escaped assessment. Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessment. Before me, Ld. AR has submitted that the property from which the deemed rental income the Revenue proposes to 11 add does not belong to the assessee. When the property does not belong to the assessee, the question of taxing the deemed rental income does not arise. Revenue has not placed any material on record to demonstrate that the submission of the assessee of it not being the owner of the aforesaid properties is false/ incorrect. In the present case the AO prima facie has not done the bare necessary enquiry into the material received before he concluded that income chargeable to tax has escaped assessment.

20. I further find that the Hon'ble Bombay High Court in the case of Ankita A. Choksey vs. ITO [2019] 411 ITR 207 (Bom) has held that the reasons to believe that income chargeable to tax has escaped Assessment must be on correct facts. If the facts, as recorded in the reasons are not correct and the assessee points out the same in its objections, then the order on objection must deal with it and prima facie, establish that the facts stated by it in its reasons as recorded are correct. In the absence of the order of objections dealing with the assertion of the assessee that the correct facts are not as recorded in the reason, it would be safe to draw an adverse inference against the Revenue.

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23. Considering the totality of the aforesaid facts and in view of the decision cited herein above, I am of the view that in the present case, notice for re-opening of the assessment u/s 147 of the Act is not as per the mandate of Sec.147 of the Act and therefore the re-opening is not permissible. I am therefore of the view that the notice issued for reopening has to be set aside and the same deserves to be quashed.

24. I therefore quash the impugned re-assessment proceedings for A.Y. 2011-12 and thus, set aside the same. Since I have hereinabove set aside the assessment framed u/s 143(3) r.w.s 147 of the Act and held it to be void and therefore, the issue on merits have been rendered academic and requires no adjudication. Thus, the ground No.1 of the assessee is allowed.”

6. Respectfully following the coordinate Bench decision aforesaid, I therefore quash the impugned re-assessment proceedings for AY 2011-12 and thus, set aside the same. Since I have hereinabove set aside the assessment framed u/s 143(3) r.w.s 147 of the Act and held it to be void and therefore, the issue on merits have been rendered academic and requires no adjudication. Thus, the ground No.1 of the assessee is allowed.
7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 21st day of May, 2025.

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 21.05.2025/TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI