

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' NEW DELHI  
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.6633/Del/2014**  
**Assessment year 2006-07**

<b>Smt. Kusum Kapoor, 37/8, Ground Floor, Old Rajender Nagar, New Delhi. PAN: AJKPK 0066F</b>	Vs.	<b>ITO, Ward-33(4), New Delhi.</b>
(Appellant)		(Respondent)

Revenue by :	S/Shri Kapil Goel and Mukul Gupta, Adv.,
Assessee(s) by :	Ms. Bedobani Chaudhuri, Sr.D.R.

सुनवाई की तारीख/**Date of Hearing** : **29/03/2017**  
घोषणा की तारीख/**Date of Pronouncement**: **06/04/2017**

**ORDER**

This appeal of the assessee arises from the order of learned CIT(A)-XXVI, New Delhi vide order dated 27.10.2014 for the assessment year 2006-07.

2. The assessee is an individual. The return of income for A.Y. 2006-07 was furnished declaring an income of Rs. 2,33,580/- comprising of income from business, short term capital gains and income from other sources. An action under section 133A of the Act was conducted in the case of the husband of the assessee Sh. Sanjeev Kapoor on 05.12.2005 and on the basis of the information revealed from the survey, notice under Section 148 dated 27.02.2013 was issued to the assessee. In the survey conducted, an agreement pertaining to a plot in Kundli measuring 500

sq. yrds. was found. According to the AD, the assessee had failed to disclose the capital gain/ profit on the sale of the aforesaid booking made.

3. The assessment was completed under section 147/143(3) of the Act and an addition of Rs. 13,74,750/- was made under the head undisclosed short term capital gains.

4. Aggrieved by the assessment order dated 28.01.2014, the appellant preferred appeal before CIT(A). The CIT(A) dismissed the grounds raised by the assessee pertaining to the aforesaid addition vide impugned order dated 27.10.2014.

5. The assessee is in appeal before us and has raised the following grounds of appeal:

*“Invalid reopening u/s.148 of the Act*

1. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not quashing the instant reopening being made in apparent violation of mandatory jurisdictional conditions stipulated under the law.*

2. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not holding that extant reasons recorded on page 1 of impugned order suffers from various factual and legal errors viz*

a. *By not conducting any meaningful enquiry from any of the party involved in extant transaction from beginning (that is, conduct of survey) till end (till, conclusion of assessment/first appeal) on loose documents marked as Annexure A-14 (pages 20 to page 24) nor recording any statement from any of the concerned party;*

b. *Acting on mere basis of uncorroborated and unsubstantiated unsigned photocopies and on mere basis of conjectures and surmises without "live nexus" having been established;*

c. *By not appreciating the limited scope of presumption u/s*

292 Only applicable to party under survey and that too with effect from 1.4.2008 and said presumption do not extend to present appellant as survey only on husband of assessee u/s 133A was conducted on 15.12.2005 that too before prospective amendment in section 292C by Finance Act, 2008 (11412008)i

d. On vague estimation of income of Rs 500,000 without adequate evidence, in routine and ordinary manner instant reopening is made

Addition of Rs 13,74,750 as undisclosed short term capital gains

3. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the wrongful addition made by Ld AO amounting to Rs 13,74,750 on mere basis of untested and hearsay allegations without an iota of independent corroborative, confirming and clinching evidence and enquiry so as to fasten any valid tax liability on appellant.

Addition of Rs. 75,000 and Rs 78,000 on account of unexplained cash and income from undisclosed sources respectively

4. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the wrongful and tenuous additions of Rs 75,000 on ek: of alleged unexplained cash and merely telescoping it against alleged short term capital gains.

5. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not deleting the wrongful and tenuous additions of Rs 78,000 on elc of income from undisclosed sources u/s 69 ignoring evidences placed on records.”

6. Ground no. 1 and 2 pertain to the validity of reassessment proceedings initiated against the assessee under section 148 of the Act. The Ld. AR submits that the notice under section 148 cannot be issued if no meaningful enquiry is conducted and that too on the basis of loose documents found during the course of survey. He further submits that

the document found was nothing but an uncorroborated and unsigned photocopy. The Ld. DR, on the other hand, relied upon the order passed by the CIT(A) to submit that the reassessment proceedings were valid.

7. I have heard the submissions made by the parties and have also gone through the reasons recorded before issuance of notice under section 148 of the Act. In the survey conducted on the husband of the assessee, agreement belonging to the assessee was found in which booking rights pertaining to a plot in Kundli were agreed to be sold to the seller therein for a total amount of Rs. 37,83,250/-. In the said agreement, the amount received by the assessee was also disclosed. The said amount in the opinion of the AO was not disclosed in the return of income filed by the appellant. The addition too has been made on the aforesaid factual scenario. It cannot be said that there was no live nexus between the material/information with the AO and the reasons to believe. It is not a case where the AO had issued the notice on a mere change of opinion. The Court cannot go into the sufficiency of reasons in the aforesaid facts and circumstances. The action of the AO does not appear to be arbitrary as he had reasonable belief that there was non-disclosure by the assessee resulting in escapement of income.

8. In the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. the Hon'ble Apex Court held as under:-

*"16. Section 147 authorizes and permits the Assessing Officer to assess or assess income chargeable any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped*

*assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers. As observed by the Delhi High Court in Central Provinces Manganese Ore Company. Ltd. v. ITO [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction.*

*The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clause (a) and (b) laid down the circumstances under income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words, if the AO for whatever reason has reason to believe that income has escaped assessment. It confers jurisdiction to re-open the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.”*

9. In view thereof, grounds no. 1 and 2 raised by the assessee are dismissed.

10. Ground no. 3 relates to the addition of Rs.13,74,750/- as undisclosed short term capital gains. The Ld. AR submits that the reliance was incorrectly placed on the document impounded during the course of survey, which was only a photocopy and was not signed by the

appellant. It was further submitted that the same was only a draft agreement and was prepared by the purchaser in order to facilitate him for arranging finance towards the said property. According to the Ld. AR, the document at page 24 specifies the total amount payable as Rs. 19 lacs only, which was duly executed by the husband of the assessee and therefore, the sale price of Rs. 37,83,250/- cannot be looked into.

11. The Ld. AR submitted that the aforesaid agreement was never acted upon by the assessee and she received only Rs. 5,08,250/- from the booking rights in the aforesaid plot. He further argued that the reliance placed on section 292C of the Act by the revenue was misplaced as the document impounded was merely a photocopy and the contents were also mutilated. The Ld. DR, on the other hand, relied upon the order passed by the AO and the CIT(A).

12. I have heard the rival submissions and perused the record and the judgments relied upon. In the document found during the course of survey from the husband of the assessee, the sale price agreed to be paid was shown to be Rs.37,83,250/- and the amount received by the assessee as stated to be Rs.18.83 lacs. The remaining amount was to be paid directly to M/s. Intime Promoters Pvt. Ltd. by the purchaser. Page 24 of the said agreement was signed by the husband of the assessee, Sh. Sanjeev Kapoor, stating himself as the agent of the assessee and affixing his stamp of the firm M/s Tirupati Marketing. We do not agree with the contention of the assessee that the said agreement was not acted upon as the booking rights of the plot of the assessee were infact sold to the

purchaser mentioned in the agreement. The assessee on one hand subscribes to the content of one of the pages of the agreement i.e. page 24, however, denies the content of the other pages of the same agreement. This clearly shows that the submissions made assailing the authenticity of the document impounded are only afterthoughts. The agreement on the face of it reveals the consideration received by the assessee in sale of the booking rights of the plot. I agree with the reasoning given by the CIT(A) in dismissing the ground of appeal with respect to the aforesaid addition. In view thereof, Ground No.3 is dismissed.

13. Ground nos.4 and 5 are already allowed by the CIT(A) in the impugned order in favour of the assessee. They do not require any adjudication in this appeal.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this day 06<sup>th</sup> April, 2017

**Sd/-**

**(B.P. JAIN)**

**ACCOUNTANT MEMBER**

Dated: 06/04/2017

*Prabhat Kumar Kesarwani, Sr.P.S.*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**