

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2642/DEL/2022

[Assessment Year: 2011-12]

Darshan Kumar Gupta, 25, South Park Apartments, Kalkaji, New Delhi-110019 PAN- ADOPG6642B	<u>Vs</u>	Income-tax Officer, Ward-67(6), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by:	Shri Darshan Kumar Gupta (Assessee)	
Department represented by:	Shri Ramdhan Meena, Sr. DR	
Date of hearing	12.01.2023	
Date of pronouncement	18.01.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 02.09.2022, pertaining to the assessment year 2011-12. The assessee has raised following revised and concised grounds of appeal:

“1. That the appellant had filed ITR for Asstt year 2011-12 u/s 139, wherein full and true details of funds for purchase of DDA Flat at Dwarka Delhi were reflected on page 2/7 of return. If these details had been considered by AO, there was no reason for reassessment and issue of notice u/s 148 of the IT Act 1961, on 14 March 2018.

2. That the AO issued notice u/s 148 on the basis of information

provided by DDIT (INV) Jammu that appealant has purchase a DDA Flat at Delhi Costing Rs. 78,00,500/- Ltd AO considered it as new tangible material and issued the said notice. Ld CIT(A) erred in sustaining the same in its order dated 02-09-2022.

3. That Ld AO did not supply reasons recorded u/s 148(2) of the I.T. Act 1961 on 20.3.2018 as demanded by appellant, and subsequently requested through four speed post letters for the same.

4. That the reopening of the case for reassessment is without jurisdiction, the notice issued u/s 148 of IT Act 1961 on 14.3.2018 be declared invalid and subsequent proceeding be quashed.”

2. Facts giving rise to the present appeal are that in this case the assessment was reopened u/s 147 of the Income-tax Act, 1961 (in short “the Act”) and an assessment u/s 143(3) read with section 147 of the Act was framed vide order dated 28.12.2018. The Assessing Officer assessed income at Rs. 27,30,548/- after making addition of Rs. 22,71,048/- in respect of capital gain. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal the assessee submitted that the reopening of the assessment is invalid and is contrary to the judicial pronouncements. He contended that despite request for supply of the reasons recorded for reopening of the assessment, the Assessing Officer did not supply the reasons. He submitted that the basis of reopening is ill founded. The assessee could not make proper objection

against such reopening as the reasons were not supplied to the assessee. The assessee took me through the documents filed in the form of paper book.

4. On the other hand, learned DR opposed the submissions of the assessee and submitted that the reopening was on the basis of the information received by the Assessing Officer regarding transaction in immovable property. He contended that the correctness of the claim regarding capital gains and deduction u/s 54F was required to be examined and verified. Therefore, the Assessing Officer had reason to believe regarding escapement of taxable income.

5. In rejoinder the assessee pointed out that in the return of income he had given a note regarding computation of capital gain. Therefore, it is not the case where the assessee had concealed and furnished inaccurate particulars of income.

6. I have heard rival contentions and perused the material available on record. As per the assessment order the case was reopened on the basis of the information relating to purchase of DDA flat at Dwarka in auction conducted by the learned Receiver appointed by the Hon'ble High Court during the financial year 2010-11. Verification of source of acquisition was the basis for reopening of the assessee. The assessee had stated that the investment was made out of the sale-consideration of two properties which he had sold.

7. So far as question of reopening of assessment is concerned, it is the contention of the assessee that there was no tangible material for reopening of the case and the reasons for reopening of assessment was not supplied. The assessee submitted that he had duly filed income-tax return and had submitted all details. He contended that non supply of reasons by the Assessing Officer vitiated the reopening of assessment. I find merit into the contention of the assessee that Assessing Officer was required to supply reasons of reopening of assessment. The assessee has a legal right to file objections against the re-opening of assessment. Non supply of reasons deprived the assessee from this valuable legal right to raise objection against the reasons for reopening of assessment. The issue relates to the assessment year 2011-12 and it would be too late to restore the matter for supply of reasons to the assessee. In my considered view the Assessing Officer ought to have supplied the reasons. Looking to the totality of facts, the reopening of assessment is not justified in the facts and circumstances of the present case. Since the action of Assessing Officer is contrary to ratio laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & others 259 ITR 19 (SC), wherein it was clarified that when a notice under section 148 of the Income Tax Act is issued, the proper course for the noticee is to file return and if so desires, to seek reason for issuing notices. The Assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons the noticee is

entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose the same by passing a speaking order. Undisputedly, in the present case the reasons were not furnished to the assessee. Therefore, he could not file any objection. Under these facts, I hereby set aside the impugned order. The grounds raised by the assessee are allowed.

8. Appeal of assessee is allowed.

Order pronounced in open court on 18th January, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**