

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H': NEW DELHI)
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 1667/DEL/2021
(Assessment Year: 2011-12)**

M/s Vishram Sahakari Awas Samiti Limited, 85, Sarin Farm, Gautam Budh Nagar, Uttar Pradesh-201301.	Vs.	ITO, Ward-2(5), Noida.
APPELLANT		RESPONDENT
PAN No: AADAV4408K		

Assessee By : Shri Ved Jain, Adv.
Revenue By : Shri Amit Katoch, Sr. DR

Date of Hearing : 08.01.2024
Date of Pronouncement : 07.02.2024

ORDER

PER SHAMIM YAHYA, A.M.

This appeal by the Assessee is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/ NFAC, New Delhi, dated 15/09/2021 and pertains to Assessment Year 2011-12. The grounds of appeal are as under:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reopening of the assessment proceedings as well as the re-assessment order passed by the AO is illegal & without jurisdiction as the same has been passed without there being valid service of notice issued under section 148 of the Income Tax Act.*

3. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.*

4. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO ignoring the contention of the assessee that the Assessing Officer has completed the assessment without furnishing the reasons recorded for reopening of assessment to the assessee.*

5. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.*

6. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are illegal, as the same have been made without assumption of valid jurisdiction.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO without obtaining approval of the prescribed authority under the Act is bad in law and liable to be quashed.*

9. (1) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is illegal and void-ab-initio in the absence of any addition made by the AO for the income which he has initially formed a reason to believe had escaped assessment.*

(ii) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO*

has no jurisdiction to make an addition on any other issue not included in the reasons to believe for reopening the assessment.

(iii) That the above action of the learned CIT(A), is against the judicial pronouncements relied upon by the assessee in this regard.

10. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law, in confirming the addition of Rs. 51,85,000/- on account of subscriptions received from members of AOP treating the same as unexplained under section 68 of the Income Tax Act.

(ii) That the abovesaid addition has been confirmed rejecting the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.

11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition by indulging in surmises only on the basis of presumption and assumption.

12. Without prejudice to the above and in the alternative, the learned CIT(A) has erred in ignoring the contention of the assessee that addition made by the AO cannot be taxed in the hands of the assessee (Association of Persons) in view of the doctrine of Mutuality.

13. The appellant craves leave to add, amend or alter any of the grounds of appeal."

2. The assessee has raised several grounds of appeal. The Ld. Counsel for the assessee, at the outset, challenged the jurisdiction in this case. He stated that, since for the reason for which reopening was done, no addition has been done on that account. He further submitted that the addition is with respect to an item which is not mentioned in the reason recorded for reopening. Hence, relying on several case laws, including Hon'ble jurisdiction High Court in the case of Ranbaxy Laboratories Limited vs. Commissioner of Income Tax, the Ld. Counsel for the assessee submitted that the assessment needs to be quashed in this case.

3. Per contra, the Ld. DR could not dispute the proposition that no addition has been done on the issue for which reopening was done and the addition pertains to something not mentioned in the recorded reason.

4. In this case, the assessee is corporate society and the reasons recorded for reopening are mentioned as follows:

"In this case, Non-PAN AIR has been received that the assessee had purchased immovable property of Rs. 1,00,00,000/- during the financial year 2010-11 relevant to A.Y. 2011-12.

Therefore, to ascertain the assessment particulars of the assessee and to verify the transaction, query letter and verification letter u/133/6) of the Income Tax Act, 1961 were issued to the assessee on 31/07/2017 and 26/02/2018 to explain the source of this high value transaction. However, no plausible explanation has been furnished by the assessee with respect to the aforesaid high value transaction. Even the assessee has not furnished its PAN. Thus, the source of this high value transaction entered into by the assessee during the F.Y. 2010-11 Le relevant to AY 2011-12 remained unexplained. Hence, the source of this investment amount of Rs 1,00,00,000/- remained unexplained and therefore, the same is liable to be added the income of the assessee as unexplained/undisclosed investment for the FY 2010-11 relevant to AY 2011-12.

The provisions of clause (a) of explanation 2 of section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. In view of the above, on the basis of information available on record. I have reason to believe that the income of Rs 1,00,00,000/-, chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 on account of unexplained/undisclosed investment made by the assessee during the FY 2010-11 relevant to AY 2011-12".

5. Perusal of the above clearly shows that the case of the Revenue for reopening of the assessment is regarding the source of investment of Rs. 1,00,00,000/- made for the purchase of immovable property. However, no addition on this issue was done by the AO. The only addition done by the AO reads as under:

"3. Further, during the course of assessment proceedings, the assessee was required to file a valid confirmation with the details of each Members such as complete Name & address, PAN, details of their business/profession, their relations with each other, their ITR and copy of bank account of the members evidencing such transactions. But the assessee was failed to prove their identity, creditworthiness and genuineness and the explanation offered was not satisfactory found. Hence, the receipts of Rs. 51,85,000/- shows as received from members of the society, are to be added to the income of the society as unexplained income."

6. It is abundantly clear that no addition was made on the recorded reasons but addition was made on some other issue, which is not permissible. In this regard, we rely on case law, in the case of commissioner of Income Tax vs. Monarch Educational Society [2016] 387 ITR 416. The Hon'ble jurisdictional High Court expounded as follows:

"8. The issue urged by the Revenue stands covered in favour of the assessee by the decision of this court in *Ranbaxy Laboratories Ltd. v. CIT* [2011] 336 ITR 136 (Delhi) which has been followed in *CIT v. Software Consultants* [2012] 341 ITR 240 (Delhi). In sum, if no addition is made on the basis of the reasons to believe recorded by the Assessing Officer for reopening the assessment under section 148 of the Act, resort cannot be had to Explanation 3 to section 147 of the Act to make an addition on any other issue not included in the reasons to believe for reopening the assessment. No substantial question of law arises. The appeal is dismissed."

7. From the above, we find that the issue is squarely covered in favour of the assessee, and the assessment order is liable to be quashed. Therefore, the same is quashed accordingly.

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

Order Pronounced in the Open Court on 07.02.2024

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 07/02/2024
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	