



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.01.2025

+ **W.P.(C) 7940/2024 & CM APPL. 32747/2024**

SARIKA KANSAL

..... Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. V.P. Gupta and Mr. Anunav Kumar,
Advocates.

For the Respondents : Mr. Anurag Ojha, SSC alongwith Ms.
Hemlata Rawat, JSC, Mr. V.K. Saxena, JSC,
Mr. Dipak Raj, Mr. Kuldeep Mishra and Mr.
Swastik Mishra and Subham Kumar,
Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE TUSHAR RAO GEDELA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 22.04.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as the notice dated 22.04.2024 (hereafter *the impugned notice*) issued under Section 148 of the Act in respect of assessment year (AY) 2017-18.



2. The petitioner's challenge to the impugned order and the impugned notice is two-fold. First, that the impugned order has been passed without considering that the information on the basis of which it is premised was the subject matter of reassessment proceedings, which culminated in an order dated 29.03.2022 passed under Section 147 read with Section 144B of the Act. The petitioner's contentions were accepted, and no addition was made. The petitioner contends that assessment cannot be opened twice for the same reason.

3. The second ground is that the impugned notice is beyond the period of limitation. According to the petitioner, the limitation for issuance of the impugned notice expired on 31.03.2024.

4. The grounds on which the petitioner's assessment is sought to be reopened revolves around transactions, whereby the petitioner had sold 1,70,000 (One Lac Seventy Thousand) shares of a company named Trustline Real Estate Private Limited (hereafter *TREPL*) to one Mr Samir Dev Sharma at the rate of ₹42/- per share. The Assessing Officer (hereafter *AO*) suspects that the said shares were sold at an apparent consideration, which is below the fair market value with an intent to avoid tax.

5. The petitioner disputes the same and contends that her income for AY 2017-18 has been reassessed for the same reason that she had sold the shares of *TREPL* at a value, which was less than the fair market value.



6. Thus, the first and foremost question to be addressed is whether the AO had reopened the assessment for AY 2017-18 for the same reason that has led the AO to pass the impugned order holding that it is a fit case for issuance of the impugned notice.

7. The petitioner is an individual and there is no dispute that she files her income tax returns regularly. She had filed her return for AY 2017-18 on 02.08.2017 declaring her taxable income as ₹74,77,750/-. The said income also included income arising from sale of 1,70,000 (One Lac Seventy Thousand) shares of TREPL at the rate of ₹42/- per share. The petitioner claims that the said rate was settled on the basis of valuation report, whereby the shares of TREPL were valued taking into account its underlying assets including the first and third floor of the property bearing the address A-20, Friends Colony East, New Delhi (hereafter *the Friends Colony property*). The petitioner's return was processed under Section 143(1) of the Act.

8. On 31.03.2021, the AO issued a notice under Section 148 of the Act, as in force at the material time, calling upon the petitioner to file her return for AY 2017-18 within a period of fifteen days from the date of the said notice. Subsequently, the AO furnished the reasons for reopening the assessment. The relevant extract of the reasons as furnished, is set out below:

**“Reasons for reopening of the assessment in the case of
Sarika Kansal for AY 2017-18 u/s 147 of the Income Tax
Act, 1961**



The assessee is an individual residing at **C-647, New Friends Colony, New Delhi - 110025**, having PAN: **AAKPK2388K** and the territorial jurisdiction over the case pertain to Circle-28(1), New Delhi. For AY 2017-18, the assessee had offered to tax in his ITR a gross total income of Rs.74,77,750/-.

For AY 2017-18, the Assessing Officer received information on the Insights portal after risk assessment by the Systems Directorate which was made available to all AOs, which stated that the assessee had made undervaluation of shares transferred.

As per information received, assessee: Sarika Kansai (PAN No.AAKPK2388K) was a shareholder in the following companies:

- CTA Apparels Pvt. Ltd.
- Trustline Securities P. Ltd.
- Trustline Real Estate P. Ltd.

Assessee has during the year sold part of her share in these companies. Assessee made transfer of 170,000 shares of Trustline Real Estate Pvt Ltd to Mr. Samir Dev Sharma during the year. Further, M/s Trustline Securities Ltd. Also transferred its 17,30,000 shares to Mr. Samir Dev Sharma during the year. It is to be noted here that assessee: Sarika Kansai is a shareholder and director in the company: M/s Trustline Securities Ltd. by transferring shares by Trustline Securities Ltd. There is also an indirect transfer of shares by Sarika Kansal to Mr. Samir Dev Sharma. It is mentioned in the information received from investigation wing that assessee has grossly undervalued her shares in these companies and transferred it to Mr. Samir Dev Sharma at a throw away prices. This was done by the assesses to avoid payment of taxes on such transfer of shares. Assesses has made undervaluation of her shares and declared less capital gains on such transaction. Assesses made undervaluation of shares transferred amounting to Rs. 18,91,41,050/- during the AY 2017-18. Assesses has filed his return of income for the relevant assessment year by declaring a total taxable income of Rs. 74,77,750/-. From the above, it is clear that the assessee did not declare its true income during the year. Also, the amount of transactions undertaken by the assessee during the year for direct



and indirect transfer of shares to Mr. Samir Dev Sharma needs to be further investigated.

In view of the above information, other related facts available on record and preliminary enquiries conducted by this office, I have reasons to believe that an income to the tune of **Rs.18,91,41,050/-** or more on account of undervaluation of shares transferred for AY 2017-18, has escaped assessment for Assessment. In order to assess the above income or any other income which comes to notice subsequently in the course of proceedings u/s 147, issue of notice u/s 148 of the income-tax, 1961 is necessary in this case.”

9. It is apparent from the above that the petitioner’s assessment was reopened on the premise that the petitioner as well as certain other companies had sold the shares of TREPL to one Mr. Samir Dev Sharma during the Financial Year 2016-17 at an abysmally low value.

10. During the course of the reassessment proceedings, the AO issued a notice under Section 143(2) read with Section 147 of the Act calling upon certain information including the information that was relevant for determining the market value of the Friends Colony property.

11. The petitioner responded to the said notice and provided the information as sought for. The petitioner had explained that TREPL owns two floors of the Friends Colony property – first and third floors each having covered area of 2248.44 sq. ft.

12. The petitioner asserted that the market value of the Friends Colony property, as determined by the government approved valuer,



was ₹8,58,90,408/- (Rupees Eight Crores Fifty-eight Lakhs Ninety Thousand Four Hundred and Eight only) and she had also furnished the copies of the valuation report, balance sheet and profit and loss account of TREPL. A letter dated 24.03.2022 furnished by the petitioner to the AO in response to the notice issued under Section 143(2) of the Act is reproduced below:

“Dated : 24-03-2022

Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
National Faceless Assessment Centre
Delhi

Subject: Notice under section 143(2) read with section 147 of the Income-tax Act, 1961, in case of Mrs. Sarika Kansal (PAN: AAKPK2388K)

Ref: ITBA/AST/F/142(I)/2021-22/1041373848(I) Dated 24-03-2022

Dear Sir,

With reference to your above referred letter dated 24-03-2022, and further to our letter dated 27-11-2021, 27-01-2022 & 21-3-2022, we are hereby submitting the below required information and documents as required by your good self:

- 1) The Area of Property Held by M/s Trustline Real Estate Private Limited Situated at A-20, Friends Colony (East), New Delhi-110065 is as under:
Covered Area First Floor: 2248.44 SQ.FT.
Covered Area Third Floor: 2248.44 SQ.FT.
Total Covered Area: 4496.88 SQ. FT.
- 2) The Market value of the property above mentioned property as per Govt Approved Valuer valuation report was Rs.8,58,90,408/-.



- 3) The fair value of property was taken on the basis of Valuation report from Govt Approved Valuer Dated 29-04-201. The value of the property was Rs.8,58,90,408/- as per the property valuation report, and on the basis of the same Rs.8,60,00,000/- was taken as fair value of property in the unquoted share valuation report dated 31-05-2016 as per rule 11UAA of the Income Tax Rules. The property valuation report is attached as **Annexure A**.
- 4) Audited balance sheet and profit & loss account of the of M/s M/s. Trustline Real Estate Pvt Ltd.is attached as **Annexure B**. Further it is being submitted that the form 3CEB is not applicable on the company.

We hope you find the above reply satisfactory to your concern, and kindly let us know in case any other information or explanation required by yourself in this regard and you are further requested to kindly close the proceedings and accept the ITR filed and in case there is any deviation, than kindly provide the reasonable opportunity to explain.”

13. The explanation as provided by the petitioner was accepted and the AO passed an assessment order dated 29.03.2022 accepting the petitioner’s returned income.

14. The AO once again issued a notice dated 28.03.2024 under Section 148A(b) of the Act enclosing therewith an annexure containing information which according to the AO, suggested that the petitioner’s income had escaped assessment and accordingly, called upon the petitioner to show cause why her assessment for AY 17-18 not be opened. It would be apposite to refer to the information contained in the annexure to the notice dated 28.03.2024. The same is reproduced below:

“ANNEXURE



Information has been made available to this office with respect to SARIKA KANSAL PAN: AAKPK2388K in accordance with Risk Management strategy formulated by the Board on Insight Portal under High Risk CRIU/VRU information for AY 2017-18.

2. Information as available on Insight Portal with respect to assessee reads as under:-

Information Details					
Information FY	Information Source Type	Information Source Description	Information Type	Information Description	Information Value
2016-17	TEP	TEP	Sale of Shares	Sale of shares	32,35,81,536

3. Information as provided to this office communicates that a Tax Evasion Petition was received by the department in case of the assessee wherein it was stated that Sh. Samir Dev Sharma has purchased a company M/s Trustline Real Estate Pvt. Ltd. (Sister concern of M/s CTA Apparels Pvt. Ltd.) by way of transfer of 100% shareholding from the shareholders of M/s Trustline Real Estate Pvt. Ltd. on consideration of Rs.10,00,17,900/-.

4. On perusal of the information above, it is found that the only asset in the company having any worth is a property No.A-20, Friends Colony East (about 500 sq.yards). Also, the turnover and the profits of the company during the preceding years are negligible. Thus, in essence, vide the transaction of shares of M/s Trustline Real Estate Pvt. Ltd., the said property has been transferred as there is no intrinsic value of shares of M/s Trustline Real Estate Pvt. Ltd. and these shares derive their value only from the underlying asset i.e the aforesaid property.

5. Therefore, in view of above, it is evident that this entire arrangement of transfer of shares is facade and sham and effectively a transaction for transfer of property through which assessee has sought to evade paying stamp duty on transfer of property as well as concealed the actual amount involved in the transaction, which would have also entailed a substantial tax liability. Therefore, stamp duty value of the land upon which property No. A-20, Friends Colony East, Delhi exists is calculated as under:

Area=500 Sq.yrds = 418.064 Sq.Mtrs @ Circle rate Rs.7,74,000/- per Sq Mtrs.= Rs.32,35,81,536/-



6. Based on the above discussion, prima facie it appears that the income chargeable to tax to the tune of **Rs.32,35,81,536/-** has escaped assessment in the assessment year under consideration. The stated transactions qualify the requirements specified u/s149 (1)(b) of the Income Tax Act.”

15. It is apparent from the above that the notice under Section 148A(b) of the Act was issued on the assumption that the petitioner had sold the shares of TREPL at an apparent value which was less than its fair value. It is important to note that whereas in the earlier round of proceedings, the AO had reasoned that income amounting to ₹18,91,41,050/- for AY 2017-18 had escaped assessment, the AO now stated that the information available suggested that the income amounting to ₹32,35,81,536/- had escaped assessment. The said view was premised on the basis that the value of the Friends Colony property was ₹32,35,81,536/- and the petitioner had sold the entire Friends Colony property to Mr. Samir Dev Sharma by transferring the shares of TREPL, which owned the said property. It is material to note that this was clearly the subject matter of examination in the previous round of the reassessment proceedings that had commenced by virtue of the notice dated 31.03.2021 issued under Section 148 of the Act.

16. The petitioner responded to the notice by a letter dated 10.04.2024. Once again, the petitioner reiterated that TREPL owned only two floors of the Friends Colony property – first and third floors and each of the said floors measured 2248 sq.ft. The petitioner also explained the following:



- (i) That the Friends Colony property comprised of built-up building consisting of basement, ground floor, first floor, second floor and third floor. Whereas TREPL owned the first floor and third floor, the other floors namely basement, ground floor and second floor were owned by other parties;
- (ii) The petitioner furnished a valuation report – which was furnished earlier disclosing the value of the two floors of the Friends Colony property which was owned by TREPL as ₹8,60,00,000/- (Rupees Eight Crores Sixty Lac Only). She reiterated that the fair market value of the shares sold by her and as determined in terms of Rule 11UAA of the Income Tax Rules, 1962 would amount to ₹42/- per share after considering the market value of the two floors of the Friends Colony property.

17. The AO passed the impugned order holding that it is a fit case for issuance of notice under Section 148 of the Act. The impugned order proceeds on the basis that the entire shareholding (25,00,000 shares) of TREPL were transferred to one Mr. Samir Dev Sharma by three persons for a consideration of ₹10,50,00,000/- as under:

“Shares	Share holders name	Amount
1,70,000	Sarika Kansal	71,40,000
17,30,000	Trustline Securities Ltd.	7,26,60,000
6,00,000	Trustline Commodities Pvt. Ltd.	2,52,00,000
25,00,000	TOTAL	10,50,00,000”



18. The impugned order proceeds on the assumption that TREPL owned the entire Friends Colony property ad-measuring 500 sq. yds. (418.064 sq. mtrs.) and the circle rate in the given area is ₹7,74,000/- per sq. meter. Thus, the value of the immovable property owned by TREPL is ₹32,35,81,536/- and the same had been transferred indirectly by sale of shares of TREPL. The impugned order on the aforesaid basis computes the fair market value of the shares of TREPL sold by the petitioner as under:

“Property Share of Sarika Kansal is as under:-

Cost of property as per Stamp Duty divided by total no. Of shares multiplied by shares of Sarika Kansal i.e. $32,35,81,536/25,00,000 \times 1,70,000 = \text{Rs.}2,20,03,544/-$. Therefore, it is evident to mention here that Smt. Sarika Kansal has transferred aforesaid property at a low cost of Rs.71,40,000/- however, actual share of assessee in property was valued at Rs.2,20,03,544/-.

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8. In view of observation made above, it is seen that assessee being director of the company has sold property, for which F.M.V. as on 31.03.2016 at Rs.32,35,81,536/- in which share of assessee is Rs.2,20,03,544/-, by way of transfer of shares of Rs.10,00,17,900/- only (assessee shares were Rs.71,40,000). Therefore, assessee has shown low cost of property shares amounting to Rs.1,48,63,544/- (2,20,03,544/- minus already shown as sale of shares of Rs.71,40,000/- in ITR) for AY 2017-18. Aforesaid transactions are further of the nature, Sale of immovable property, which are duly mentioned as an Immovable Property as per Explanation to Provisions of S.149(1)(b). Therefore, cumulative amount which has escaped assessment in the case of assessee in the form of asset at Rs.1,48,63,544/- is likely to amount to fifty lakhs rupees or more for the year under consideration, AY 2017-18. ”



19. It is at once clear from the above that the information on the basis of which the impugned order has been passed was subject matter of examination in the earlier round of reassessment under Section 147 of the Act. The AO's reason to believe that the petitioner's income had escaped assessment, which had led to the issuance of notice dated 31.03.2021, was founded on an assumption that the petitioner had sold the shares of TREPL at a price below its correct value. The notice issued under Section 143(2) of the Act during the said proceedings and the petitioner's response dated 24.03.2022 issued to the said notice clearly establishes that the examination revolved around the value of the immovable property held by TREPL (Friends Colony property). The petitioner's response dated 24.03.2022 indicates that the petitioner had forwarded the audited balance sheet and the profit and loss account of TREPL and had also explained that TREPL owned only two floors of the Friends Colony property. The AO had examined the said response and accepted the same. Clearly, the impugned order has been passed in respect of the same issue that was subject matter of examination in the earlier round.

20. Mr. Anurag Ojha, the learned counsel appearing for the Revenue contended that there was a difference in the issue involved as the impugned order has been passed on the information that TREPL had owned the entire Friends Colony property. He contended that in the earlier round, the AO had accepted that TREPL held only part of the Friends Colony property, however, information now available suggests that TREPL owns the entire Friends Colony property.



21. Undisputedly, the impugned order has been passed on the basis that TREPL owns the entire Friends Colony property. However, the same was clearly an issue in the earlier round as well and the petitioner had clearly explained the extent of property owned by TREPL. In her response to the notice dated 28.03.2024 issued under Section 148A(b) of the Act, the petitioner had reiterated that TREPL owns only two floors of the Friends Colony property and there is no material on record available with the AO to contradict the same. The impugned order does not discuss why the petitioner's assertion that TREPL owns only two floors of the Friends Colony property had been ignored. The counter affidavit filed on behalf of the Revenue also does not address the said issue. The counter affidavit merely reiterates what is stated in the impugned order.

22. This court had pointedly asked Mr. Ojha whether there was any material with the AO to indicate that TREPL owned the entire Friends Colony property. He also sought time for instructions and responded by pointing out that one of the schedules of the balance sheet of TREPL reflects that TREPL owns the entire Friends Colony property. The said contention is insubstantial. First of all, the balance sheet of TREPL as referred to was furnished by the petitioner in response to the notice issued under Section 143(2) of the Act in the earlier assessment proceedings. Thus, the same does not constitute any new information with the AO to reinitiate the reassessment proceedings for the second time. Second that the schedule to the balance sheet of TREPL as referred by Mr Ohja is a schedule relating to calculation of depreciation,



which indicates the assets of the said company in broad terms such as “Land”, “Computers”, “Office Equipment” and “Motor car”. In the said context, the building is reflected as “building - A-20 Friends Colony East, New Delhi”. The depreciation schedule does not purport to describe the entire Friends Colony property as an asset of TREPL. It is apparent from the above that the impugned order has been passed on surmises without any cogent material to controvert that TREPL owns only two floors of the Friends Colony property and not the entire building at the material time.

23. The question whether the TREPL owned the entire Friends Colony property is one that is easily verifiable by the AO. However, as noted above, the AO has completely ignored the petitioner’s response to the notice issued under Section 148A(b) of the Act in this regard in the impugned order. Similar approach has also been adopted in the counter affidavit as well.

24. Section 148A(d) of the Act mandates that the AO is required to pass an order on the basis of record and considering the response to the notice under Section 148A(b) of the Act. In this case, the record indicates that the information on the basis of which the assessment is sought to be reopened was fully examined in the earlier round of reassessment under Section 147 read with Section 144B of the Act. The petitioner’s response clearly stated that TREPL owned only two floors of the Friends Colony property and there is nothing credible on record that controverts it. The impugned order does not even advert to the said issue.



25. Thus, the impugned order and the impugned notice are unsustainable and are accordingly, set aside.

26. In view of aforesaid decision, it is not necessary for this court to examine whether the impugned notice has been issued beyond the period of limitation.

27. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

JANUARY 30, 2025

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