

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20392 of 2019****HITESHKUMAR BABULAL RAMANI****Versus****ASSISTANT COMMISSIONER OF INCOME TAX****Appearance:****MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1****MRS MAUNA M BHATT(174) for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 04/02/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has assailed the legality and validity of the impugned notice dated 26.03.2018 issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 (for short "the Act, 1961"), whereby, the assessment for the assessment year 2014-15 is sought to be re-opened in exercise of the powers under Section 147 of the Act.

2. The brief facts leading to filing of this writ application are as follows:

(a) The writ applicant - assessee had filed his return of income for A.Y. 2014-15 on 26.03.2015 declaring total income of Rs.8,56,000/- and same

was processed under Section 143 (1) of the Act and thus, accepted without any scrutiny.

(b) Survey under Section 130 A of the Act was conducted on 02.12.2016 in the case of Aphrodite Infra Pvt. Ltd, Surat and back up of computer, laptop and mobiles were taken in Hard Disk and the gadgets were impounded. After verification of the back up data, the authority found one undisclosed bank account of the writ applicant bearing Account No.1002100006771 with the Prime Cooperative Bank Ltd. at Surat during the F.Y. 2013-14. During the course of survey, the statement of the writ applicant was recorded under Section 133 of the Act, wherein, he admitted that the alleged bank account was maintained by him and the same was opened and closed in the F.Y 2013-14.

(c) The Investigation Wing, Surat had reported the aforesaid facts to the respondent.

(d) After receiving the information, the respondent had verified the return of income and other documents related to the undisclosed bank account and the information was found correct as there was credit entries of Rs.85,11,543/-, which was not reflected in the IT return as this amount is chargeable to tax and has escaped assessment within the meaning of Section 147 of the Act.

(e) Before issuing the notice under Section 148 of the Act for re-opening of the assessment for the year under consideration, the Assessing Officer had recorded the following reasons on 15.05.2019, which reads as under:

"1. The assessee has filed his return of income u/s.139 of the IT Act for AY 2014-15 on 26.03.2015 declaring total income of Rs.8,56,600/-.

2. During the course of survey U/s. 133A of the IT Act on 02.12.2016 in the case of Aphrodite Infra Pvt. Ltd. Avenue 77, F.P 77, Deside L.P.Savani School, Canal Road, Vesu, Surat, back up of coimputer, laptop, mobiles etc were taken in Hard Disk and the same was impounded as per Annexure A5. In which, back up data and whatsapp images taken from mobile of Shri Hitesh Babulal Ramani were stored and it is seen from the same that Shri Hitesh Babulal Ramani had maintained a bank account No.10021001006771 with Prime Co.Op Bank Ltd, Bhulka Bhavan Branch, Surat during F.Y. 2013-14 which was not reflected either in the books or in the return of income of Shri Hitesh B. Ramani. Accordingly, statement of Shri Hitesh Babulal Ramani was taken u/s. 131 of the IT Act on 20.01.2017 during post search inquiry. Page No.15 and 16 of the seized annexure is related to bank statement for the F.Y. 2013-14 of book account No.10021001006771 with Prime Coop. Bank Ltd., Bhulka Bhavan Branch, Surat of Hitesh B. Ramani. On being asked about page No.15 & 16, assessee has stated that the same is bank statement of his Prime Coop. Bank Ltd, Bhulka Bhavan Branch, A/c. No.10021001006771.

3. On further verification by the Investigation wing, it is observed that Shri Hitesh Babulal Ramani has not shown

his Prima Coop. Bank Ltd. Bhulka Bhavan Branch, A/c. No.10021001006771 in his books for A.Y. 2013-14. The account has been closed on 22.10.2013. The total credit entries for the F.Y. 2013-14 of his Prime Coop. Bank Ltd. Bhulka Bhavan Branch, A/c. No. A/c. No.10021001006771 comes to Rs.85,11,543/-.

4. After the receipt of the information regarding the undisclosed bank account of Hitesh Babulal Ramani, his return of income and other details were verified by this office. On physical verification of the return of income and other documents i.e. ITS details, AIR information etc., the undisclosed bank account reported by the Investigation Wing of the Department was found to be undisclosed bank account of the assessee. As is evident from the statement recorded from Hitesh B. Ramani, wherein he has also stated that bank account with Prime Coop. Bank Ltd. Having A/c. No.10021001006771, is not shown in the return of income, the credit appearing in the bank statement at Rs.85,11,543/- becomes unaccounted income of the assessee. Thus, it is clear that income to the tune of Rs.85,11,543/- has escaped assessment for the F.Y. 2013-14.

5. In view of the above, I have reason to believe that income chargeable to tax for the above stated assessment year has escaped assessment within the meaning of Section 147/148 of the Act."

(f) Based on the aforesaid reasons for re-opening, the impugned notice dated 26.03.2015 seeking to re-open of the assessment of the writ applicant for the assessment year 2014-15 came to be issued.

(g) The writ applicant had filed return of income on 30.04.2019 in response to the notice issued under Section 148 of the Act declaring the same amount what he had declared in his earlier return.

(h) Pursuant to the notice, the writ applicant submitted written objections and raised the following main contentions, which reads as under:

(1) the facts regarding non-disclosure of the account in ITR is absolutely baseless and factually incorrect. It was further submitted that the alleged bank account maintained with the Prima Coop. Bank Ltd was duly reflected in his ITR filed on 26.03.2015. In this regard, it was pointed out that the alleged bank account was opened on 21.05.2013 and was closed on 22.10.2013. Therefore, the account which was closed in the same year was not in existence at the year end i.e. on 31.03.2014. In this circumstances, question does not arise to show the closed bank account and it cannot be said that, account was undisclosed.

(2) The second contention raised by the writ applicant that, the Assessing Officer has initiated the proceedings for re-opening on the basis of the information

received from the Investigation Wing, Surat and it is settled law that there cannot be re-opening of assessment solely relying upon the information as the Assessing Officer has not applied his mind and failed to consider material available with him. Therefore, while forming the belief with regard to income has escaped assessment, the Assessing Officer has not made any independent inquiry and therefore, re-opening proceedings may kindly be dropped.

(i) Vide order dated 20.09.2019, the respondent disposed off the objections of the writ applicant observing as under:

(1) After considering the reports of the Investigation Wing collected during search and survey action and the independent inquiry from this office based on the details/materials available in this office in the case of the assessee, the reason for re-opening was recorded and it is established in the said reasons that the income chargeable to tax has escaped assessment for the assessment year under consideration. The competent authority also satisfied with the reasons recorded and accordingly, given its concurrence to issuance of notice under Section 148 of the Act.

(2) At the stage of issuance of notice under Section 148 of the Act, the Assessing Officer is only required to form a belief based on the materials in his hand that the income of the assessee has escaped assessment. The existence of reason has already been mentioned in the reasons recorded for re-opening of the assessment and it is not required to completely establish the escapement of income by mentioning every details of the transactions at the stage of notice.

(3) The information supplied to this office was one of the primary source to make reason to belief. The assessment was not re-opened solely on the basis of the information supplied by the Investigation Wing of the Department. In fact, the entire record available in this office has been verified to reach at the *bona fide* conclusion that whether the income chargeable to tax has escaped assessment or not. Only after reaching to this conclusion, the reasons for re-opening of assessment were recorded, which were confirmed by the competent authority while according permission for issuance of notice under Section 148 of the Act, which can be seen from the reasons that the entire return of income, ITR details and

other documents available in this office has been verified before recording of the reasons.

(4) As regards the ledger account of other income and computation of income showing Rs.1 lakh without any documentary evidence, there are only accounting representation of data and has no basis of justify as to how huge amount of cash deposits in the bank accounts represents income to the extent of Rs.1 lakh only.

(5) The documents and various data of income thereunder by this office is clearly laid out in the reasons, also indicates and fully established that the income which is chargeable to tax has escaped assessment as the assessee has not offered true income in the return of income filed by him. It is also pointed out that in this case, no scrutiny assessment has been earlier made in this case, hence, the transactions appearing in the bank account has earlier not been verified by the department.

3. Being aggrieved with the proceedings of re-opening of the assessment undertaken by the respondent, the writ applicant has come up before this Court by filing this writ application.

4. We have heard Mr. Hardik Vora, learned counsel appearing for the writ applicant and Mrs. Mauna M. Bhatt, the learned Standing Counsel appearing for the respondents.

5. Mr. Hardik Vora, learned counsel appearing for the writ applicant has raised the following contentions:

- a) The action of the respondent to re-open of the assessment for the year under consideration and issuance of the impugned notice are absolutely bad in law and against the provisions of the statute.
- b) It was submitted that, Assessing Officer has mainly relied upon the information received from the Investigation Wing, Surat, while recording the reasons for re-opening of the assessment as the documents like computation of income, statement of bank account and the income earned from the alleged bank account had already been submitted with the return of income filed earlier. Therefore, no any new materials available to the Assessing Officer while forming the belief that, the income has escaped assessment. It was submitted that, the Assessing Officer ought to have applied his mind with regard to bank accounts and other documents which were already available with him. In this regard,

it was submitted that, had it verified by the Assessing Officer, then he would have found the facts of the bank account. Therefore, while recording the reasons for re-opening of the assessment, the Assessing Officer did not have applied his mind properly and no any independent formation being made, so far escaped assessment. In this regard, reliance has been placed upon the decision of the Bombay High Court in the case of **Ankita A. Choksi Vs. Income Tax Officer [Writ Petition No.3344/2018]** to submit that, the notice under Section 148 is without jurisdiction when the Assessing Officer proceeded on fundamentally wrong facts to come to the reasonable belief that the income chargeable to tax has escaped assessment.

- c) It was pointed out that, the applicant had disclosed all material facts necessary for his assessment for the year under consideration fully and truly, so far details of bank statements etc is concerned. In this regard, it was submitted that, there is no any specific column in the ITR to indicate the closed account. Thus, it is evident that, the writ applicant had disclosed all the bank details and have not suppressed anything and as such no duty cast on the part of the writ applicant to

disclose further facts. In this regard, reliance has been placed upon the decision of this Court in the case of **Bhavik Bharatbhai Pandya Vs. Income Tax Officer [2019 TIOL 2298-HC-AHM-IT]** to further submit that, the assessee is not under legal duty to disclose about the undisclosed bank account as there is no any separate column for such disclosure in the ITR and therefore, omission to disclose the account cannot lead to the re-assessment.

- d) It was contended that, most of the transactions of the account maintained with the Prime Coop. Bank Ltd., were done through cheque and all the entries of said transactions were reflected in the bank statement. Therefore, the reasons for re-opening of the assessment that the writ applicant failed to disclose the alleged bank account and the amount mentioned in the account was unaccounted income are factually incorrect.

6. In view of the above contentions, learned counsel appearing for the writ applicant submits that present petition deserves consideration and hence, the same may kindly be allowed.

7. Mrs. Mauna Bhatt, the learned Standing Counsel appearing for the Revenue has vehemently opposed

this writ application and urged that, after receiving the information, the Assessing Officer had physically verified the return of income and other details with regard to bank account as reported by the Investigation wing and it was found correct in respect to credit entries to the tune of Rs.85,11,543/- and thereafter, the Assessing Officer has applied his mind independently and had formed the opinion that the income chargeable to tax has escaped assessment. She further pointed out that, by opening and closing the bank account in the same financial year involving huge cash transactions itself is a sufficient reason to believe that the income has escaped assessment. Therefore, considering the reasons for re-assessment and non-disclosure of the material facts, the procedure for reassessment having been rightly initiated. In view of the above, above, she urged that, the writ application may not be entertained.

8. Considering the submissions canvassed by learned counsel for both the sides and perusing the materials placed on record of this case, it is an undisputed fact that, the writ applicant being an individual assessee had filed his return of income for the A.Y 2014-15 declaring total income of Rs.8,56,600/- and the same was accepted without any scrutiny by the department. It is also an undisputed fact that during the

course of search in the case of Aphrodite Infra Pvt. Ltd., undisclosed bank account of the writ applicant being A/c. No.10021001006771 maintained with the Prime Coop. Bank, Surat was detected and the same was opened and closed in the year under consideration i.e. 2013-14 and the credit entries for the amount of Rs.85,11,543/- was also reflected in the same account.

9. At this stage, we may refer to the settled law with regard to re-opening of the assessment. Section 147 of the Act deals with the income escaping assessment. As per Section 147 of the Act, if the Assessing Officer has reason to believe that, any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of Sections 148 to 153 of the Act, assess or re-assess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the reassessment proceedings. As per the first proviso, where an assessment under Section 143 or under Section 147 has been made for the relevant assessment year, no action shall be taken under Section 143 after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to

make a return under Section 139 or in response to a notice issued under Section 142(1) of the Act or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. Therefore, before re-opening of the assessment, two conditions are required to be satisfied viz. (I) the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment and (ii) he must also have reason to believe that such escapement occurred by reason of either failure on the part of the assessee to make return of his income or omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year.

10. After having heard the learned counsel appearing for the respective parties and considering the material on record, the issue arise in the present case, whether before re-opening of the assessment, reasonable belief formed by the Assessing Officer with regard to escaped income is based on the some material or not ?
11. We have perused the reasons for re-opening, wherein, the Assessing Officer had specifically recorded that, *"the bank account maintained with Prime Coop. Bank was not reflected either in the books or in the return of income and upon physical verification of the IT return and other*

documents like ITS details, AIR information, the undisclosed bank account as reported by the Investigating Wing, wherein, credit of Rs.85,11,543/- which was unaccounted and finally came to the conclusion that, the income to the tune of Rs.85,11,543/- has escaped assessment for the F.Y.2013-14."

12. After perusal of the aforesaid reasons, it appears that, the authority concerned had relied on the primary information of the undisclosed account and after independent inquiry and upon verification of the return of income and other documents, recorded his satisfaction and formed a reasonable belief that, the income of the writ applicant has escaped assessment and therefore, the reasons recorded for re-opening of the assessment as referred to above, we are of the view that, the Assessing Officer was justified to re-open the assessment.
13. We also take the notice of the fact that, the income of return for the year under consideration, was not taken on further scrutiny as provided under Section 143(3) and the same was accepted under Section 141 of the Act. It is required to be noted that, Section 139 of the Act impose an obligation on the assessee to furnish voluntarily a return of his total income and further makes it obligatory to disclose all material facts necessary for his assessment for

that year fully and truly.

14. The contention of the writ applicant is that, after submitting the bank statement etc at the time of filing return of income and had disclosed the facts relatable to the bank account. We are of the view that, it was the duty of the assessee to bring to the notice of the respondent with regard to transactions made in the bank account which were relevant for the assessment for that year. Merely submission or production of books of accounts or other documents is not sufficient. It is profitable to refer the explanation 1 of Section 147 of the Act, which explains that, the production before the Assessing Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of foregoing proviso.
15. We may refer to and rely upon the case of **Calcutta Discount Company Ltd. Vs. Income Tax Officer, Companies District & Anr. [1961 AIR 372]**, the relevant observations made in para-9 are as under:

"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been

produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax officer Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example:" I have produced the account books and the documents: You, the Assessing Officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account-books and the documents". His omission to bring to the Assessing Authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed."

16. Therefore, in view of the explanation of Section 147 of the Act and the law propounded by the Apex Court, the plea with regard to production of bank statement and computation of income which amounts to disclosure of bank account cannot be sustained and acceptable.
17. In view of the legal provisions as referred to above and considering the facts and circumstances of the present case, we hold that, details available in the books of account for balance sheet or profit or loss account cannot absolve the assessee from his disclosure obligation under Section 147 of the Act as in the instant case, without any scrutiny, the original return was process under Section 143(1)

of the Act.

18. In the facts and circumstances of the case, we may also refer to and rely upon the case of **Assistant CIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [(2007) 161 Taxmann.com 316]**, wherein, the Supreme Court explained the term "reason to believe". Paras 19 and 20 thereof reads thus:

"19. *Section 147* authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer 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 Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.

20.....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 Assessing Officer is within the realm of subjective satisfaction."

19. Thus, in overall consideration of the matter, it cannot be said that there was no material before the Assessing Officer to re-open the assessment and he proceeded mechanically based on the sole information received from the Investigation Wing and the impugned notice is without jurisdiction

and contrary to Section 147 of the Act. Therefore, we are satisfied that, there was enough material before the Assessing Officer and he was justified to re-open the assessment for the year under consideration.

20. For the foregoing reasons, no case is made out and accordingly, present writ application deserves to be dismissed and is hereby dismissed. Notice is discharged. Interim relief, if any, stands vacated. No order as to costs.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

SUCHIT

