EXCEL FINANCIAL CONSULTANTS PVT. LTD. vs. INCOME TAX OFFICER

IN THE ITAT KOLKATA BENCH 'B'

A. T. VARKEY, JM.

ITA No. 318/Kol/2020

Apr 9, 2021

(2021) 62 CCH 0013 KolTrib

Legislation Referred to

Section 147, 148

Case pertains to

Asst. Year 2011-12

Decision in favour of:

Assessee

Reassessment —Reason to reopen— Assessee company filed its return of income declaring income as business income — A.O noted that he received credible Information from ADIT in respect of DRS cash deposit and H cash deposit — According to A.O, modus operandi adopted by assessee was to bring back unaccounted money of assessee — Therefore, AO reopened assessment of assessee — A.O made addition — CIT(A) confirmed action of A.O. — Held, When assessee brought to notice of A.O that assessee company did not receive Rs.25,00,000/- from DRS and H, A.O finds that assessee company has received money from R — According to A.O, R has received money directly from K and Ko has received money from DRS — Thus, it is noted that factual foundation on which AO based his reason for reopening does not exist — This is where it has to be remembered that information adverse may trigger "reason to suspect" and not "reason to believe" — So AO should have conducted reasonable enquiry and collected material which could make him believe, that in fact there is escapement of income, which in this case AO did not do, so reopening based on reasons recorded by him to re-open is bad in law — When there is a credit entry in books of assessee, as per section 68, assessee is duty bound when called upon by Assessing Officer to explain nature and source of credit — Assessee is not required as per law to find out 'source of source' when it receives credit in its books — So, when law applicable for A.Y 2011-12 obliges assessee to only bring to notice of A.O source of its credit in this case, R, it is not obliged to find out from where R had received money for investing in assessee company i.e. in respect of K and even DRS — Therefore,

reasons recorded by A.O to legally reopen assessment by firstly alleging that assessee has received Rs.25,00,000/- from DRS and H, is not factually correct and when objected A.O has himself acknowledged that assessee has not received money from DRS and H — So reasons on which reopening of assessment was made is per-se erroneous and, therefore, reasons recorded by AO does not meet requirement of law to validly reopen assessment — Reasons, as recorded for reopening reassessment need to be examined on a standalone basis — Nothing can be added to reasons so recorded nor anything can be deleted from reasons so recorded — A.O on mistaken facts resorted to reopening which is an admitted fact on perusal of re-assessment order — Therefore, condition precedent for reopening assessment u/s 147 is found to be absent and, therefore, reopening itself is bad in law — Assessee's appeal allowed.

Held

Before the AO assumes jurisdiction to re-open it is necessary that the conditions laid down in the said section 147 has to be satisfied viz., AO should record "reason to believe" that the income chargeable to tax for that assessment year has escaped assessment.

(para 7)

Even if there is foundation based on information there must be some reason warrant holding the belief that income chargeable to tax has escaped assessment. Expression "reason to believe" occurring in sec. 147 "is stronger" than the expression "if satisfied" and such requirement has to be met by the AO in the reasons recorded before usurping the jurisdiction u/s. 147. Information adverse against the assessee may trigger "reason to suspect" then the AO is duty bound to make reasonable enquiry to collect material which would make him belief that there is in fact an escapement of income.

(para 8)

When the assessee brought to the notice of the A.O that the assessee company did not receive Rs.25,00,000/- from DRS and H, the A.O finds that the assessee company has received money from R. According to the A.O, R has received the money directly from K and Ko has received money from DRS. Thus, it is noted that the factual foundation on which the AO based his reason for reopening does not exist. This is where it has to be remembered that information adverse may trigger "reason to suspect" and not "reason to believe". So the AO should have conducted reasonable enquiry and collected material which could make him believe, that in fact there is escapement of income, which in this case AO did not do, so the reopening based on the reasons recorded by him to re-open is bad in law. When there is a credit entry in the books of the assessee, as per section 68 assessee is duty bound when called upon by the Assessing Officer to explain the nature and source of the credit. Assessee is not required as per law to find out the 'source of source' when it receives credit in its books. So, when the law applicable for A.Y 2011-12 obliges the assessee to only bring to the notice of the A.O the source of its credit in this case, R it is not obliged to find out from where R had received the money for investing in the assessee company i.e. in respect of K and even DRS. Therefore, the reasons recorded by the A.O to legally reopen the assessment by firstly alleging that the assessee has received Rs.25,00,000/- from DRS and H is not factually correct and when objected the A.O has himself acknowledged that the assessee has not received money from DRS and H. So the reasons on which the reopening of assessment was made is per-se erroneous and, therefore, the reasons recorded by AO does not meet the requirement of law to validly reopen the assessment. Reasons, as recorded for reopening the reassessment need to be examined on a standalone basis. Nothing can be added to the reasons so recorded nor anything can be deleted from the reasons so recorded. A.O on mistaken facts resorted to reopening which is an admitted fact on perusal of re-assessment order. Therefore, the condition precedent for reopening the assessment u/s 147 is found to be absent and, therefore, the reopening

itself is bad in law and therefore, the impugned notice u/s 148 is quashed and therefore, the consequent action of making addition of Rs.9,80,494/- is null in the eyes of law. Assessee's appeal allowed.

(para 11)

Conclusion

Reopening of assessment on the basis of mistaken facts is bad in law.

In favour of

Assessee

Cases Referred to

M/s. Gana Saran & Sons (P) Ltd. vs ITO (130 ITR 1) SC
National Thermal Power Corporation Ltd (NTPC) V/s. CIT (1998) 229 ITR 383 (SC)
Hindustan Lever Ltd. V/s ACIT [(2004) 268 ITR 332 (Bom)]

Counsel appeared:

Miraj D. Shah, AR for the Appellant.: Jayanta Khanra, JCIT, Sr. DR for the Respondent

ORDER

1. This is an appeal preferred by the assessee company against the order of the Ld. Commissioner of Income Tax(Appeals)-5, Kolkata dated 29.11.2019 for assessment year 2011-12.

2. The assessee has raised a legal issue wherein he has challenged the validity of reopening of the assessment by issuing notice u/s 148 read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

3. In a nutshell according to the Ld. AR, the reasons for which the A.O has reopened the assessment was factually wrong and therefore, he could not have validly reopened the assessment.

4. Brief facts of the case as noted by the A.O is that the assessee company filed its return of income for the assessment year 2011-12 on 04.11.2011 declaring total income of Rs.3,410/ as business income. According to the A.O, no scrutiny assessment was made against the assessee. The A.O noted that he received credible Information from the ADIT (Inv.), Unit-4(2), Kolkata dated 15.11.2017 in respect of M/s. DRS Enterprises Pvt. Ltd. (A/c. No.008808000000041), cash deposit of Rs.6,60,57,000/- and M/s. Hanuman Traders Pvt. Ltd. (A/C. No.008808000000022), cash deposit of Rs.59,16,68,000/-. According to the A.O, he issued summons to these two companies. However, it could not be served due to non-existence of the concerns at their respective given address. According to the A.O, as per the database available with department, these two concerns are interlinked and existing merely on paper having no real existence and are controlled and managed by well-known entry operators of Kolkata for the purpose of providing accommodation entries in the form of bogus share capital/share premium, pre-arrange bogus LTCG/STCL & unsecured loans etc. According to the A.O, he examined the bank statement of these two companies (M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd.). He observed that these accounts have been frequently used for depositing unaccounted cash which were layered through several bank accounts for jamakharchi/shell concerns and then ultimately

to the bank accounts of the beneficiary. According to the A.O, during the process of investigation it was found that the assessee company M/s. Excel Financial Consultant (P) Ltd. is one of the beneficiary which received a fund of Rs.25,00,000/- from these two shell companies. According to the A.O, from a perusal of the records and return of the assessee, he noted that the assessee company has no real business activities as no purchase and sales were found during the relevant F.Y. 2010-11 (AY 2011-12). However, according to the A.O, the assessee company has shown Rs.20,93,972/- as interest income and there is no logic for receiving of Rs. 25,00,000/- from the aforesaid two companies which are Shell companies. According to the A.O, the modus operandi adopted by the assessee was to bring back the unaccounted money of the assessee. Therefore, he reopened the assessment of the assessee by issuing notice u/s 148 of the Act and the reasons were furnished to the assessee vide letter dated 02.07.2018. Thereafter, the A.O has made the addition of Rs.9,80,494/- by observing as under:

"2. Accordingly, the case was reopened u/s. 147 of the 1.T. Act, 1961 by issuing of notice u/s. 148 of the Act, by the ITO Ward 13(1), Kolkata, my predecessor after obtaining prior approval of the Ld. Pr. CIT-5, Kolkata and was duly served upon the assessee. In compliance, the assessee filed return of income on 07/04/2018. Accordingly, notices u/s, 143(2) and 142(1) of the Act, along with letter informing the reasons for reopening the case were issued on 18.07.2018 & 14.08.2018 were duly served upon the assessee. Assessee submitted his objection against the notice u/s 148 on 11.08.2018 and a rebuttal was also issued on 27.08.2018 against the objection. Show Cause notice was issued on 03.11.2018 to substantiate the amount of Rs.25,00,000/- which was received from M/s DRS Enterprises (P) Ltd & Hanuman Traders (P) Ltd. which are shell companies.

The assessee company by an Affidavit has stated that they have not received any fund from M/s. DRS Enterprises Pvt. Ltd. or Hanuman Traders Pvt. Ltd. From the cash trail of Sri Usheswar Singh (PAN: CEMPS3998R) it is found that funds were transferred from DRS Enterprise (Layer 1, Dhana Laxmi Bank A/c No.008808000000022) to Kokila Trading Co. (Layer 2) and Radharani Vyapaar (P) Ltd. (Layer 3) who have maintained their Ac with same Bank. The funds were transferred from their account to Excel Financial Consultants Pvt. Ltd. who also maintained their account with Dhanalaxmi Bank.

Summon U/s 131 was issued to Sri Rashmi Garg who is one of the director of the assessee company and liable to substantiate the amount of Rs. 25,00,000/-. But the summon was returned with postal comment "moved ".

On verification of the Bank Statement of Excel Financial Consultants Pvt. Ltd. maintained with Dhanlaxmi Bank (A/c No. 060102000092816) it is found that there was total credits of Rs.19,60,98,794/- into their accounts and then transferred to various A/cs through RTGS within that day or very next day. From the transaction it is found that only huge funds were routed through the assessee company's account for providing accommodation entries without any logic and unaccounted income of other business activities which the assessee company has brought back into its books of accounts through shell companies.

From the cash trail it is found that Funds were transferred to M/s DRS Enterprises (P) Ltd. then transferred to Radharani Vyapaar's account after that finally transferred to assessee company's A/c. and all are maintained in Dhanalaxmi Bank. From the Bank statement of assessee company's A/c No. O60102000092816. It is found that during the F.Y. 2010-11, 82 Lakhs were transferred to assessee's A/c from Radharani Vyapaar's A/c. From the transaction of the Bank A/c it is clear that the assessee company is a "Jama-kharchi" company as huge funds were credited & debited during the day or very next day.

Show cause notice on 29.11.2018 issued to the assessee company as to why @0.5% (as per prevailing market rate) on Total credits of Rs.19,60,98,794/- i.e. 9,80,494/- should not be treated as their deemed income under the head income from Other Source. Hence, Rs.9,80,494/- is added to the total income of the assessee company for the A.Y. 2011-12."

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who has confirmed the action of the A.O. Against the impugned decision of the Ld. CIT(A), the assessee is before us.

6. However, I note that the assessee has raised a legal issue in respect of validly reopening the assessment. In other words, according to Ld. AR, the AO has restored to re-opening of the assessment without satisfying the condition precedent as prescribed u/s 147 of the Act. According to Ld. AR, as per section 147 of the Act, the AO can validly re-open an assessment, only if he has reason to believe escapement of income. According to Ld. AR, "reason to believe" postulates a foundation based on information and belief based on reason. According to him, even after a foundation based on information is made, there still must be some reason warrant holding of a belief that income chargeable to tax has escaped assessment. Further according to Ld. AR, information adverse may trigger "reason to suspect", then the AO to make reasonable enquiry and collect material which could make him believe that there is in fact an escapement of income. According to Ld. AR, the Hon'ble Supreme Court in M/s. Gana Saran & Sons (P) Ltd. vs ITO (130 ITR 1) SC has held that the expression "Reason to believe" as is occurring in section 147 of the Act 'is stronger" than the expression "is satisfied" and such requirement has to be met in the reasons recorded by the AO before re-opening an assessment. However according to Ld. AR, the reasons recorded in the instant case does not satisfy the requisite condition precedent, so the legal issue is being raised which will go to the root of the impugned AO's action. Since it is a legal issue even though it has not been preferred before the Ld. CIT(A), this Tribunal has to adjudicate this issue first; And even though the Ld DR objected to this issue being raised for the first time without being raised before the First Appellate Forum, it is noted that a legal issue can be raised even for the first time before this Tribunal as held by the Hon'ble Supreme Court in National Thermal Power Corporation Ltd (NTPC) V/s. CIT (1998) 229 ITR 383 (SC). In order to examine the legal validity and the reasons recorded after reopening the assessment, let us have a look at the reasons recorded by the A.O for reopening the assessment u/s 147 of the Act which is given at Page 2 of the paper-book as under:

> *"The assessee company filed its return of income for the A.Y. 2011-12 on 04.11.2011 declaring a total income of Rs 3,410/- as business income. The assessee has not assessed on regular assessment. The said return was duly processed u/s 143(1) of the IT. Act'1961 on 24.01.2012.*
> *Subsequently, information has been received from the ADIT (inv.),Unit-4(2), Kolkata vide letter bearing No. DDIT(Inv)/Kol/Unit.4(2)/Umeshwar Singh/2017-18/6683- 83A. dated 15.11.2017, regarding credible sources in respect of M/s. DRS Enterp rises Pvt. Ltd.(A/c. No 008808000000041), cash deposit of Rs. 6,6,57,000/- and Human Traders Pvt. Ltd. (A/C. No 008808000000022), cash deposit of Rs. 59,16,68,000/-*
> *During investment summons were issued u/s. 131 of the I.T. Act, 1961, to the above mentioned companies to furnished their books of accounts, source of the credit amount and nature of transactions that were made through their bank accounts. Summonses could not served due to non-existence of the concerns on their respective given address.*
> *As per the database available with department, it is gathered that both the concerns mentioned in the information are interlinked and existing merely on paper having no real existence & no real existence & business activities and are controlled & managed by some well known entry operators Kolkata for the purpose of providing accommodation entries on the form of bogus share capital/share premium, pre-arrange bogus LTCG/STCL & unsecured loans etc.*
> *During the course of enquiries this companies are paper/shell companies which were formed with the sole purpose of providing arranged bogus L!CU/STCL etc. to different beneficiaries in lieu of commission which are controlled and managed by him. Directors of these companies are Dummy Directors These companies have not business activities.*
> *On examination of bank statements of the above mentioned concerned, it is observed that these accounts have frequently been used for depositing of unaccounted cash which were layered through the several bank accounts for jamakharchi/shell concerns' including transferred to the interlinked bank accounts and then ultimately to the bank accounts of the beneficiary.*
> *During the process of investigation it is found that the assessee company M/s. Excel Financial Consultant (P) Ltd. one of the beneficiary received a fund of Rs. 25,00,000/- from the above shell companies.*
> *I have gone through the records and return of the assessee it is seen that the assessee company has no real business activities as no Purchase & Sales find during the FY. 2010-11. However*

the assessee company shown Rs. 20,93,972/- as interest income only. Therefore, there is no logic of received of Rs. 25,00,000/- from the above companies which are shell companies. By this modus operand actually the unaccounted money of the assessee has back to the books of the assessee.

By the reason of the failure on the part of the assessee to disclose fully and truly all material fact necessary for assessment and from this material on record, there is enough reason to believe that income has escaped assessment in the hand of M/s. Excel Financial Consultant (P) Ltd. amounting to Rs. 25,00,000/- for the A.Y. 2011-12 as per provision of section 147 of the I.T. Act, 1961.

Since more than four years have elapsed from the end of the relevant assessment year 2011-12 the case is put up to the Pr. CIT-5, Kolkata for his kind perusal and grant of sanction u/s 151(1) of the I.T. Act, if satisfied."

7. Having perused the reasons recorded by the AO before reopening and when the validity of the order u/s. 147 of the Act depends upon the AO rightly assuming jurisdiction as contemplated by law to make an order of assessment u/s. 147 of the Act, let us understand the settled position of law on the legal issue at hand. We note that before the AO assumes jurisdiction to re-open it is necessary that the conditions laid down in the said section 147 has to be satisfied viz., AO should record "reason to believe" that the income chargeable to tax for that assessment year has escaped assessment. If this condition is not satisfied at the first place, then it cannot be said the AO has validly assumed jurisdiction u/s. 147 of the Act. Therefore, the question for consideration is whether on the basis of the reasons recorded by the AO, he could have validly reopened the assessment. For that it has to be seen as to whether the AO on the basis of whatever material before him, [which he had indicated in his "reasons recorded"] had reasons warrant holding a belief that income chargeable to tax has escaped assessment. It is important to remember that the reasons recorded by AO to reopen has to be evaluated on a stand-alone basis and no addition/extrapolation can be made or assumed, while adjudicating the legal issue of AO's usurpation of jurisdiction u/s. 147 of the Act. Moreover, the Parliament has given power to AO to reopen the assessment, if the condition precedent as discussed above are satisfied, and not otherwise. It should be kept in mind that the concept of assessment is governed by the time-barring rule and the assessee acquires a right as to the finality of proceedings. Quietus of the completed assessment is the Fundamental Rule and exception to this rule is Re-opening of assessment by AO under section 147 or exercise of Revisional jurisdiction by CIT under section 263 of the Act. Therefore, the Parliament in its wisdom has provided safeguards for exercise of the reopening of assessment jurisdiction to AO; and revisional jurisdiction of CIT by providing condition precedent which is sine qua non for assumption/usurpation of jurisdiction. In the case of reopening of assessment, the reason to believe escapement of income is the jurisdictional fact and law (mixed question of fact and law) and for revisional jurisdiction the order of the AO should be erroneous as well as prejudicial to the revenue. Unless the condition precedent is not satisfied, the AO or the CIT can exercise their reopening jurisdiction or revisional jurisdiction respectively. The legislative history is that in respect to the reopening u/s. 147 of the Act, the Parliament by Direct Tax Laws (Amendment) Act 1987 w.e.f. 01.04.1989 had substituted "for reason to believe escapement of income" to 'for reasons to be recorded by him in writing, is of the opinion" which gave unbridled subjective satisfaction to the AO was later reversed to 'reason to believe escapement of income", by the Direct Tax Laws (Amendment) Act, 1989. The Hon'ble Apex Court as well as the Hon'ble jurisdictional High Court as well as other Hon'ble High Courts have already held in plethora of cases the test of a prudent person instructed in law in understanding jurisdictional fact and law (mixed question of fact and law) the reason to believe escapement of income (supra).

8. The AO, who is a quasi judicial authority is empowered to reopen the completed assessment only in a given case wherein there is reason to believe escapement of chargeable income to tax which is the jurisdictional fact & law and sine qua non to assume jurisdiction to reopen a completed assessment. It must be kept in mind that 'reasons to believe' postulates foundation based on information and belief based on reason. Even if there is foundation based on information there must be some reason warrant

holding the belief that income chargeable to tax has escaped assessment. It has to be kept in mind that the Hon'ble Supreme Court in Ganga Saran & Sons P. Ltd. Vs. ITO (1981) 130 ITR 1 (SC) held that the expression "reason to believe" occurring in sec. 147 "is stronger" than the expression "if satisfied" and such requirement has to be met by the AO in the reasons recorded before usurping the jurisdiction u/s. 147 of the Act. It must also be kept in mind that information adverse against the assessee may trigger "reason to suspect" then the AO is duty bound to make reasonable enquiry to collect material which would make him belief that there is in fact an escapement of income.

9. So the condition precedent as discussed above is the jurisdictional fact & law, which is sine qua non for the AO to successfully usurp the jurisdiction u/s. 147 of the Act and it has to be also kept in mind that the jurisdictional fact (mixed question of fact and law) referred to in section 147 of the Act i.e Reason to believe escapement of income should be that of AO and not that of any other authority, or else it will in- derogation of one of the basic feature of the Constitution of India ie, the Rule of Law, wherein the Parliament has empowered this reopening jurisdiction only to that of Assessing Officer and that is why if the reason to believe escapement of income is not that of AO, the assumption of jurisdiction to re-open, has been held to be vitiated and resultantly bad in law, since it will be on the basis of borrowed satisfaction, which is not permissible.

10. From the aforesaid understanding of law governing the issue at hand, we have to examine the reasons already set out above and test whether the condition precedent necessary to usurp the re-opening jurisdiction can be discerned from perusal of the reasons recorded by the AO in the instant case (supra).

11. From the gist of the reasons recorded by the A.O, I discern that the A.O was informed by the Investigation Wing that two companies namely M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd. are controlled by well- known entry operators of Kolkata (who are the entry operators ? AO didn’t specify) for the purpose of providing accommodation entry in the form of bogus share capital/share premium, pre-arrange bogus LTCG/STCL and unsecured loans etc., which are paper/shell companies having dummy directors (who are the dummy directors not specified by AO) and these companies does not have any business activities. According to the A.O, on examination of the bank statements of these two companies, he noted that these accounts have been frequently used for depositing of unaccounted cash which were layered through the several bank accounts for jamakharchi/shell concerns ultimately to the bank accounts of the beneficiary. According to the A.O, the assessee company is one of the beneficiaries and has received a fund of Rs.25,00,000/- from the two companies (M/s. DRS Enterprises Pvt. Ltd. and Hanuman Traders Pvt. Ltd.). Thereafter, the A.O noted that the assessee company has no real business activities since there are no purchase and sales found during the relevant F.Y and the assessee company has shown interest income of Rs.20,93,972/- and there is no logic of receiving of Rs. 25,00,000/- from the aforesaid two shell companies (M/s. DRS Enterprises Pvt. Ltd. and Hanuman Traders Pvt. Ltd.). By this modus operandi, the assessee’s unaccounted money has been brought back to the books of the assessee. After recording these reason the AO issued notice u/s 148 for re-opening the assessment of AY 2011-12. It is noted that after receiving reasons recorded by the Assessing Officer for reassessing the assessment, the assessee filed its objection and also filed an affidavit dated 10.11.2018 (page 8 of paper-book) wherein it has been clearly asserted that it has not received Rs.25,00,000/- from M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd. The Assessing Officer pursuant to the objection raised by the assessee against reopening, changed his factual allegation stated therein the reasons recorded that the assessee had received Rs.25,00,000/- from M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd. The Assessing Officer proceeded to pass the assessment order wherein according to him, he found from the cash trail of Sri Usheswar Singh which revealed that funds were transferred from M/s. DRS Enterprise (Layer 1) [Dhana Laxmi Bank A/c No.008808000000022)] to M/s. Kokila Trading Co. (Layer 2) and to M/s. Radharani Vyapaar (P) Ltd. (Layer 3). And according to the A.O, these companies have maintained their account with same bank and the funds were transferred from their account to assessee i.e M/s. Excel Financial Consultants Pvt. Ltd. which also maintained their account

with Dhanalaxmi Bank. Thus, I note that the Assessing Officer in the reasons recorded had specifically stated that the assessee had received Rs.25,00,000/- from M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd. which according to him was nothing but the unaccounted money of the assessee company which prompted him to believe that there is escapement of income, and therefore, he resorted to reopening u/s 147 of the Act by issuing notice u/s 148 of the Act. So it should be noted that this was the factual basis/foundation based on information from Investigation Wing, which was the basis and reason for him to form a belief that income of assessee which is chargeable to tax has escaped assessment. However, when the assessee brought to the notice of the A.O that the assessee company did not receive Rs.25,00,000/- from M/s. DRS Enterprises Pvt. Ltd. and M/s. Hanuman Traders Pvt. Ltd., the A.O finds that the assessee company has received money from M/s Radharani Vyapaar (P) Ltd. According to the A.O, M/s Radharani Vyapaar (P) Ltd. has received the money directly from M/s Kokila Trading Co. and M/s Kokila Trading Co. has received money from M/s. DRS Enterprise. Thus, it is noted that the factual foundation on which the AO based his reason for reopening does not exist. This is where it has to be remembered that information adverse may trigger “reason to suspect” and not “reason to believe”. So the AO should have conducted reasonable enquiry and collected material which could make him believe, that in fact there is escapement of income, which in this case AO did not do, so the reopening based on the reasons recorded by him to re-open is bad in law. In this context, it has to be noted that the assessment year under consideration A.Y 2011-12 and as per the law in force, when there is a credit entry in the books of the assessee, as per section 68 of the Act, the assessee is duty bound when called upon by the Assessing Officer to explain the nature and source of the credit. In A.Y 2011-12, the assessee is not required as per law to find out the ‘source of source’ when it receives credit in its books. So, when the law applicable for A.Y 2011-12 obliges the assessee to only bring to the notice of the A.O the source of its credit in this case, M/s Radharani Vyapaar (P) Ltd., it is not obliged to find out from where M/s Radharani Vyapaar (P) Ltd. had received the money for investing in the assessee company i.e. in respect of M/s. Kokila Trading Co. and even M/s. DRS Enterprise. Therefore, the reasons recorded by the A.O to legally reopen the assessment by firstly alleging that the assessee has received Rs.25,00,000/- from M/s. DRS Enterprise and M/s Hanuman Traders Pvt. Ltd., is not factually correct and when objected the A.O has himself acknowledged that the assessee has not received money from M/s. DRS Enterprise and M/s. Hanuman Traders Pvt. Ltd. So the reasons on which the reopening of assessment was made is per-se erroneous and, therefore, the reasons recorded by AO does not meet the requirement of law to validly reopen the assessment. And it is well-settled that reasons, as recorded for reopening the reassessment need to be examined on a standalone basis. Nothing can be added to the reasons so recorded nor anything can be deleted from the reasons so recorded, as held in the Hon’ble Bombay High Court in the case of Hindustan Lever Ltd. V/s ACIT [(2004) 268 ITR 332 (Bom)] Their Lordship has inter alia observed that “.....it is needless to mention that the reasons are required to be read as they were recorded by the A.O. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by the A.O. He has to speak through the reasons”. Their lordships added that “the reasons shall be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and evidence.....” Therefore, reasons are to be examined only on the basis of reasons as recorded. Here, in this case, I note that the A.O on mistaken facts resorted to reopening which is an admitted fact on {SUB TOPIC}REGULATION perusal of re-assessment order (supra). Therefore, the condition precedent for reopening the assessment u/s 147 of the Act is found to be absent and, therefore, the reopening itself is bad in law and therefore, the impugned notice u/s 148 of the Act is quashed and therefore, the consequent action of making addition of Rs.9,80,494/- is null in the eyes of law.

12. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 9th April, 2021.

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Customized Notes