

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No.121/Chd/2020

निर्धारण वर्ष / Assessment Year : 2011-12

Gurdish Kaur Khullar 192A, Urban Estate, Phase-II Jalandhar	बनाम	The Asstt. CIT (International Taxation), Circle, Chandigarh
स्थायी लेखा सं./PAN NO: IDPPK8909A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashray Sarna, CA

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 14/07/2021

उद्घोषणा की तारीख/Date of Pronouncement : 22/07/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 26/12/2019 of Ld. CIT(A)-43, New Delhi.

2. Following grounds have been raised in this appeal:

1. That the order passed by the Hon'ble CIT(A) dated 26.12.2019 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in framing the impugned assessment order u/s 144 r.w.s 147 and without complying with the mandatory conditions u/s 147/148/151 as envisaged under the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in making an addition to the extent of Rs. 14,00,000/- u/s 69 of the Act on account of cash

deposits in bank account, without considering the submissions of the assessee and facts of the case and without observing the principles of natural justice.

4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

3. Vide Ground No. 2 the grievance of the assessee relates to the validity of reopening the assessment under section 147 r.w.s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4. Facts of the case in brief are that the A.O. issued notice dt. 28/03/2018 to the assessee under section 148 of the Act by recording the following reasons:

" As per information and documents available with the department an amount totaling to Rs. 35,01,000/- and was deposited in cash in the bank account No. 03523000047712 maintained with Punjab & Sind Bank, Mota Singh Nagar, Jalandhar, Punjab of Sh. Gurdish Kaur Khullar during the F.Y. 2010-11.

As per office records, the assessee has not filed his return of income for the relevant assessment year i.e. 2011-12.

In view of the above facts, I have reasons to believe that income of Rs. 35,01,000/- chargeable to tax has escaped assessment for the financial year 2010-11 relevant to the Assessment Year 2011-12 and the case needs to be reopened u/s 147.

In order to assess this income and to assess any other income chargeable to tax which has escaped assessment and which comes to notice during the course of proceedings subsequently, proceedings u/s 147 are required to be initiated by way of issue of notice u/s 148 for the assessment year 2011-12."

4.1 The A.O. observed that the information in his office was received as per which the assessee had deposited a sum of Rs. 35,01,000/- as cash and Term deposit in bank account of Punjab & Sind Bank, Mota Singh Nagar, Jalandhar, Punjab. He further observed that no return of income was filed by the assessee for the assessment year under consideration and the earlier years, no reply was received in response to the notice issued under section 148 of the Act sent at the last known address of the assessee. The A.O. framed the assessment under section 144 r.w.s 147 of the Act and made the addition of Rs. 35,01,000/-.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submission which reads as under:

This is the case of assessee, individual, NRI residing in Surrey, Canada. Case was reopened u/s 147 of the Act, notice 148 of the Act was issued for the reason that there was cash deposit amounting to Rs.35,01,000/- in the bank account of the assessee. The assessment] in the case of assessee was completed u/s 144 r.w.s. 147 of the Act for the reason that assessee being NRI and notices being issued by the Ld. AC were not served on the assessee. Thereafter Ld. Assessing Officer framed assessment at the total income of Rs.35,01,000/- as undisclosed income on account of unexplained cash deposit in the bank account of assessee and also initiated penalty u/s 271(l)(c) of the Act. Aggrieved by the order assessee preferred appeal before the worthy CIT(A)-42, New Delhi.

GROUND: 2

That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in framing the impugned assessment order u/s 144 r.w.s.147 and without complying with the mandatory conditions u/s 147 as envisaged under the Income Tax Act, 1961.

Sir, in this regard it is submitted that notice u/s 148 was issued to the assessee on account of cash deposit of Rs.35,01,000/- . The sole reason for reopening the assessment is to enquire about the alleged unaccounted income in the hands of the assessee on account of cash deposit of Rs.35,01,000/-. There was no other information in possession of the Ld. AO which could lead to the belief that this cash deposit was the income of the assessee and which could possibly form the basis for initiating proceedings u/s 147 of the Act. Further, no verification letters u/s 133(6) of the Act, were issued by the Ld. AO to the assessee to enquire about the cash deposits.

*Sir, it is further submitted that on perusal of these reasons would reveal that there is no nexus between the material in the possession and the belief of escapement of income formed about escapement of income. In other words no cause and effect relationship has been established with regard, to material in his possession and belief based upon such material. In fact there was no material on record that could lead your good self to a belief that income has escaped assessment. The reasons recorded must be based on some tangible material as their basis, so as to accord them legal validity, but only information available in the present case is the cash deposit **of Rs.35,01,000/-** in the bank account of assessee. The fact that there is cash deposit, cannot, in any case, lead to a belief that income has escaped assessment. Thus from the operational paragraph of the reasons recorded we can derive only two things:*

1. *There is cash deposit of Rs.35,01,000/- in bank account of assessee.*
2. *This cash deposit has escaped assessment.*

The operational paragraph does not speak about the reason that led to form opinion that cash deposit of Rs.35,01,000/- has escaped assessment.

Sir, it is settled law that "reason to believe" forms the foundation for assuming jurisdiction u/s 147. It is also settled law that "reason to believe" is not just an idle formality and it has not to be mere pretence. If there is no material or even if there is material which does not have live nexus with the formation of belief, reopening of the assessment on the basis of such material is not sustainable.

The expression "reason to believe" predicated that the assessing officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded and not merely a belief in the existence of reasons inducing the belief. Such a belief has not to be based on mere suspicion but it must be based on information as was held & Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. Vs. ITO 41 ITR 191.

Reliance is placed on the decision of Amritsar Bench in the case of **Amrik Singh v/s ITO, 159 ITD 329 (Amritsar)** in which it was held as under:

"When the assessment proceedings u/s 147 are initiated on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceedings is neither countenanced, nor sustainable in law."

Further reliance is placed on the decision of **ITO v/s Lakhmani Mewal Das, Supreme Court, 103 ITR 0437** in which it was held as under:

"Reassessment under s. 147(a)—Reason to believe—Must have a material bearing on the question of escapement of income of assessee—Whether the grounds are adequate or not is not a matter for the Court to investigate—Only the existence of belief can be challenged by assessee—Expression "reason to believe" does not mean a purely subjective satisfaction on the part of ITO—It must be held in good faith—Powers of ITO to reopen assessment, though wide, are not plenary—Interest allowed as deduction in original assessment subsequently ITO found that creditors -were name-lenders—Confession from creditors—There was nothing to show that the confession related to a loan advanced to assessee—The live link or close nexus between material before ITO and belief he was to form regarding escapement of income was missing—Said material could not have led to formation of the belief that income escaped assessment because of assessee's failure or omission to disclose fully and truly all material facts—Pre-conditions for exercise of jurisdiction under s. 147 were not fulfilled.

Further reliance is placed on the decision of CIT Vs. Smt. Paramjit Kaur, (2009) 311 ITR 38, where it was held as under:

"Sec. 147 empowers the AO to assess or reassess income chargeable to tax if he has reasons to believe that the income for any assessment year has escaped assessment. The power conferred under this section is very wide, but at the same time it cannot be stated to be a plenary power. The AO can assume jurisdiction under the said provision provided there is sufficient material before him. He

cannot act on the basis of his whim and fancy, and the existence of material must be real. Further, there must be nexus between the material and escapement of income. The AO must record reasons showing due application of mind before taking recourse to reassessment proceedings. Still further the AO can assume jurisdiction for reassessment proceedings provided he has reasons believe but the same cannot be taken recourse to on the basis of reasons to suspect.

5.1 The Ld. CIT(A) after considering the submissions of the assessee sustained the action of the A.O. for reopening the assessment, by observing in para 4.8 of the impugned order as under:

4.8 Ground No. 1 and 2 relate to the reopening of the assessment and its validity. It is clear from the reasons recorded, that there was a deposit into the bank account of the appellant which is not disputed. The appellant did not file a return for the said assessment year. This fact is also not disputed. The assessing officer therefore had a prima facie reason to believe that in the absence of any income, said deposit in the bank account would constitute as unexplained deposits.

It is, therefore, now examined whether the A.O. had prima-facie reasons to believe that income had escaped assessment and whether the conditions laid down under main provision of section 147 are fulfilled in the case of the appellant. As already mentioned hereinbefore, the case of the appellant is covered by the main provisions of sec. 147 and not the proviso to sec. 147. Under the main provision as reproduced earlier, if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess 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 proceedings under this section. Thus, under the main section of sec. 147, the essential pre-requisite is that the Assessing Officer should have reasons to believe that income chargeable to tax has escaped assessment. Under sec. 148(2), the Assessing Officer shall, before issuing any notice under sec. 148, record his reasons for issuing notice under the said section. In the case of the appellant, the Assessing Officer received information that the appellant engaged in circulating unaccounted income through entry providers which could have led to a reasonable doubt that the total income of the appellant as declared in the return was incorrect. The Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. quoted supra, has considered and explained the meaning of the phrase 'reasons to believe'. As observed by the Hon'ble Supreme Court, the word 'reason' in the expression 'reason to believe' would mean cause or justification and if the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reasons to believe that income had escaped assessment. It is further observed by the Supreme Court that the expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. At the initiation stage, what is required is "reason to believe", but not the established fact of escapement

of income. 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 that income has escaped assessment. The relevant observations of the Hon'ble Supreme Court are as follows:

"16. Section 147 authorizes 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. As observed by the Supreme Court in *Central Provinces Manganese Ore Co. Ltd. v. ITO* [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite condition in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. 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 material could 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. *ITO v. Selected Dalurband Coal Co. (P.) Ltd.* [1996] 217 ITR 597 (SC); *Raymond Woollen Mills Ltd. v. ITO* [1999] 236 ITR 34 (SC). (para 16)"

As observed by the Apex Court, at the initiation stage, what is required to be seen is whether there are prima-facie 'reasons to believe' but not the established fact of escapement of income. The Assessing Officer also recorded proper reasons for formation of the belief that income has escaped assessment. Not only has the Supreme Court, but also a number of High Courts held that, at the stage of recording of reasons and issuance of notice u/s 148, all that the AO has to do is to have sufficient reasons to entertain the belief to arrive at the conclusion that income has escaped assessment. This was the ratio laid down by the Full Bench of the Delhi High Court in *CIT v. Usha International Ltd.* (2012) 348 ITR 485, and in the later decisions of Delhi High Court namely *AGR Investment Ltd.* (197 Taxman 177), *India Terminal Connector System Ltd.* (21 taxmann.com 69), *Nipun Builders and Developers Pvt. Ltd.* (350 ITR 407), *Nova Promoters & Finlease Pvt. Ltd.*, Allahabad High Court in the case of *Pankaj Hospital Ltd.* (44 taxmann.com 230), High Court of Gujarat in the case of *Peass Industrial Engineers (P) Ltd.* (72 taxmann.com 302) and by the Kerala High Court in *Innovative Foods Ltd. V. UOI* (2013) 356 ITR 389 (Ker).

6. Now the assessee is in appeal.
7. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the A.O. without applying his

mind issued the notice under section 148 of the Act and treated whole of the amount deposited in bank account of the assessee as an income. It was further stated that even no notice was served upon the assessee, therefore the reopening under section 147 r.w.s 148 of the Act was not valid. The reliance was placed on the following case laws:

- Amrik Singh Vs. ITO, 159 ITD 329 (Amritsar)
- ITO Vs. Lakhmani Mewal Das 103 ITR 0437 (SC)
- CIT Vs. Smt. Paramjit Kaur (2009) 311 ITR 38
- Smt. Charanjit Kaur Vs. ITO (2021) 211 TTJ (Chd) 614

7.1 Ld. Counsel for the assessee stated that cash deposited in the bank account did not mean that income escaped the assessment. It was also stated that it was not clear as to how, the A.O. was of the opinion that the deposits in the bank account was escaped income of the assessee particularly when the property was sold by the husband of the assessee and he deposited the amount in the bank account and that both husband and wife are Non Resident Indian (NRI). It was contended that there was no nexus between the concealed income and the deposit in the bank account of the assessee, therefore the reopening of the assessment without applying the mind by the A.O. was bad in law.

8. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that the assessee never filed the return of income for the year under consideration as well as the earlier assessment years. It was further submitted that even in response to the notice issued under section 148 of the Act, no return was filed by the assessee and since there was a deposit in the bank account of the assessee for which no explanation was given, the A.O. rightly reopened the assessment as there was escapement of

income by the assessee. Ld. Sr. DR reiterated the observations of the Ld. CIT(A) and submitted that since there was a deposit of cash amounting to Rs. 35,01,000/- in the account of the assessee and no return of income was filed, therefore the A.O. rightly formed the opinion and had reason to believe that income chargeable to tax had escaped assessment and that the Ld. CIT(A) was fully justified in confirming the action of the A.O.

9. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not in dispute that the assessee an NRI is residing in Surrey, Canada. In the present case, the A.O. reopened the assessment by recording the reason that as per the information available with the department cash amounting to Rs. 35,01,000/- was deposited in the bank account of the assessee and the assessee had not filed the return of income, he, therefore had reason to believe that income of Rs. 35,01,000/- chargeable to tax had escaped assessment for the year under consideration which clearly shows that only on the basis of the information the A.O presumed that the total amount deposited in the bank account as escaped income of the assessee.

9.1 On a similar issue the ITAT, Chandigarh Bench 'B' in the case of Smt. Charanjit Kaur Vs. ITO (supra) held as under:

16. So far as, the application of mind by A.O. is concerned, the reasons recorded by A.O. for reopening of the case prima facie indicate that he has not applied his mind and proceeded on assumption that the bank deposit constitutes unexplained income of the assessee. As pointed out by the learned counsel, the Delhi Bench of the Tribunal in the case of Bir Bahadur Singh Sijwali Vs. ITO (supra) has set aside the action of A.O. in reopening the case of the assessee initiated on fallacious assumption that bank deposits constitute undisclosed income of the assessee, overlooking the fact that source of deposit need not necessarily be income of the assessee. We further notice that in the present case, the learned Principal CIT has accorded sanction for issuing notice under s. 148 of the Act, without ensuring that the A.O. has recorded the reasons after due application of mind.

9.2 In the present case also the A.O. without applying his mind proceeded on assumption that the total bank deposit of the assessee constitutes unexplained income of the assessee and overlooked this fact that source of deposit need not necessarily be the income of the assessee.

9.3 On a similar issue the ITAT, Amritsar Bench in the case of Amrik Singh Vs. ITO (supra) held as under:

"When the assessment proceedings u/s 147 are initiated on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceedings is neither countenanced, nor sustainable in law."

9.4 Similarly the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Smt. Paramjit Kaur (supra) while relying the judgment of the Hon'ble Apex Court in the case of ITO & Ors Vs. Lakhmani Mewal Das (1976) reported in 103 ITR 437 (SC) held as under:

" that the Assessing Officer had not examined the information received from the survey circle before recording his own satisfaction of escaped income and initiated reassessment proceedings. The Assessing Officer had thus acted only on the basis of suspicion and it could not be said that it was based on belief that the income chargeable to tax had escaped income. The Assessing Officer had to act on the basis of "reasons to believe" and not on "reasons to suspect". The Tribunal rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and therefore the issuance of notice under section 148 of the Act for reassessment proceedings was not valid."

9.5 In the present case also the A.O. in the reasons recorded clearly stated that on the basis of information that the assessee deposited cash of Rs. 35,01,000/- in the bank account formed the opinion that the said deposit was the income of the assessee which escaped the assessment, while doing so he did not apply his own mind and initiated the reassessment proceedings. Thus the A.O. acted only on the basis of suspicion, so it cannot be said that it was based on belief that the income chargeable to tax had escaped assessment.

Therefore, by considering the totality of the facts and by respectfully following the ratio laid down in the aforesaid referred to judicial pronouncements, I am of the view that the reassessment proceedings, initiated by the A.O. on the basis of suspicion were not valid and the Ld. CIT(A) was not justified in sustaining the same. Accordingly the same is quashed.

9.6 Since I have quashed the reassessment proceedings, therefore, no findings are given on the other issues raised by the assessee on merit.

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

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 22/07/2021

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File