आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

BEFORE: SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI R.L. NEGI, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.22/Chd/2021**
निर्धारण वर्ष / Assessment Year : 2011-12

Parveen Kumar Mittal, C/o Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt.	बनाम	The Pr. C.I.T., Panchkula.
स्थायी लेखा सं./PAN NO: ABCPM0582C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Goel, CA
राजस्व की ओर से/ Revenue by : Shri Sandeep Dahiya, CIT

सुनवाई की तारीख/Date of Hearing : 30.09.2021
उदघोषणा की तारीख/Date of Pronouncement: 02.11.2021

(Hearing through Webex)

आदेश/Order

Per Annapurna Gupta, Accountant Member:

The above appeal has been preferred by the assessee against the order of the Principal Commissioner of Income Tax, Panchkula (in short the 'Ld.Pr.CIT) dated 19.03.2021 relating to assessment year 2011-12, passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'Act' in exercise of revisionary jurisdiction.

2. As transpires from the order of the Ld. Pr.CIT the revisionary jurisdiction u/s 263 of the Act was exercised by him on an order passed by the Assessing Officer (AO) in re-assessment proceedings u/s 147 of the Act, for the reason that he found that the order had been passed in undue haste without conducting necessary inquiries. The Ld.Pr.CIT found that the AO had failed to make independent inquiries to verify the source of cash deposited in bank by the assessee and also the claim of interest expenditure as per section 36(1)(iii) of the Act. Accordingly he cancelled the order passed by the AO u/s 143(3) r.w.s 147 of the Act and directed him to pass an order afresh in accordance with law. Aggrieved by the same the assessee has come up in appeal before us raising the following grounds:

> *"1. That the learned PCIT has erred on facts and in law in exercising revisionary powers u/s 263 of the Act while passing the order dated 19-3-2021.*
>
> *2. That the learned PCIT has grossly violated the principles of natural justice while passing the order u/s 263 dated 19-3-2021.*
>
> *3. that the Appellant craves leave to add, alter, amend or to substitute the above grounds of appeal either before or at the time of hearing of case."*

3. We have heard both the parties. The Ld.Counsel for the assessee has before us challenged the assumption of jurisdiction u/s 263 of the Act by the Ld. Pr.CIT, on the ground that the assessment order sought to be revised itself was null and void and no action could be taken in law against such null and void order. Ld.Counsel for the assessee commenced his arguments by contending that the jurisdiction or legality of the original proceedings could be challenged in subsequent collateral proceedings also. In this regard he relied upon the following decisions laying down the aforesaid proposition:

"i) M/s Westlife Development Ltd., ITA No.688/Mum/2016

ii) Vision Promoters & Builders (P) Ltd. Vs. CIT, ITA 401/Chd/2012 dated 28.9.2017

iii) Supersonic Technologies Private Limited, ITA 2269/Del/2017 dated 10.12.2018."

4. With regard to the assessment order passed u/s 147 of the Act being null and void, the contention of the Ld.Counsel for the assessee was that the reasons recorded for escapement of income were based on incorrect facts and demonstrated that even the AO was unaware of the basic facts and showed non-application of mind by the AO while recording the reasons. That the satisfaction of formation of belief of escapement of income recorded by the AO was not based on any tangible material. The reasons recorded for reopening the

case of the assessee, copy of which was placed before us at Paper Book page Nos.15 to 17, was referred to while making the aforesaid contentions. The contents of the reason are as under:

> ‘1. *From perusal of details available in ITS, it is seen that return of income for the Assessment Year 2011-12 has not been filed by the assessee.*
>
> 2. *As per information available in NMS, Cycle-2, the assessee has deposited cash of Rs.10,00,000/- or in more in the Saving Bank Accounts With Punjab National Bank And HDFC Bank during the financial year 2010-11 relevant to the Assessment Year 2011-12.*
>
> 3. *On verification from ITS, it is seen that the assessee has made huge cash deposits in his. bank accounts during the financial year 2010-11 as per details hereunder: -*
>
> | | | | |
> |---|---|---|---|
> | - | *Punjab National Bank* | : | *Rs. 2,29,85,000/-* |
> | - | *HDFC Bank* | : | *Rs. 1,87,64.000/-* |
> | | *TOTAL* | : | *Rs.4,17,49,000/-* |
>
> 4. *In response to the preliminary query letter/Notice issued in context with the pending NMS proceedings the assessee has not submitted any reply. However, the sheet uploaded by the ITO Ward-4 reveals that the assessee has filed return for A.Y/ 2011-12 vide acknowledgmentno.6444002482 dated 30.09.2011 for the Assessment Year 2011-12 in the office of the Income Tax Officer, Ward-3, Yamuna Nagar.*
>
> 5. *No return of income is appearing on system hence trading result can not be verified.*
>
> 6. *Since no return of income is appearing on system hence, sources of cash deposit of Rs. 4,17,49,000/- cannot be verified.*
>
> 7. *As the return of income is not appearing on system nor has explained the source thereof, in reply to NMS letter, therefore, source of Cash deposits of Rs.4,17,49,000/-*

remains unexplained. In view of the facts as reported above, I have reasons to believe that cash deposits in the banks accounts amounting to Rs.4,17,49,000/- is the assessee's undisclosed income which has been escaped from assessment in the hands of the assessee for the Assessment Year 2011-12.

8. *As per this office record the return of income for the Assessment Year 2011-12 has not been filed, However, considering the acknowledgment of return of income filed by the assessee to be correct and if it is accepted that return of income was filed, even then it make no difference as the same has not been assessed under regular scrutiny assessment u/s 143(3) or 147 of the Income Tax Act, 1961 and as such the provisions of Section 151(2) of the Income Tax Act, 1961 are attracted in this case.*

9. *As in this case, no assessment was made and to assess the income escaped from assessment which exceeds Rs. One Lac, accordingly the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above (refer paragraph 8) and to which the provisions of clause (b) of Explanation 2 to Section 147 are applicable to facts of this case.*

In this case more than four years haw lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 of the Income Tax Act, 1961 has been obtained separately from the Principal Commissioner of Income Tax as.(per the provisions of Section 151 of the Income Tax Act, 1961."

5. The contention of the Ld.Counsel for the assessee vis-à-vis the reason being based on incorrect facts or non-application of mind was with regard to his finding at para-1 of the reasons that no return had been filed by the assessee, while at para-4 he recorded the return having been filed and subsequently at para-8 noted that though the return of income had not been filed by the assessee as per the office record, however, even considering the acknowledgement of

return filed being true, the same having not been assessed, the provisions of section 151(2) of the Act come into picture. The Ld.Counsel for the assessee pointed out that the fact of the matter is that the assessee had filed return of income while the AO had based his premise of escapement of income on the incorrect fact that no return had been filed by the assessee and, therefore, the huge cash deposits amounting to Rs.4.17 crores in the bank account of the assessee tantamounted to undisclosed income. Ld.Counsel for the assessee further contended that after having so noted , the AO stated at para 4 that the return had been filed, demonstrating that the AO himself was unsure of the fact and thereafter at para 8 recording the reasons for escapement of income, both in the light of non filing of return and filing of return of income. He therefore contended that the reopening being based on incorrect facts was bad in law and the assessment order passed therefore was void. In this regard he relied upon the following case laws that the reopening based on incorrect facts rendered the assessment order null and void:

1) Monika Rani, ITA No.582/Chd/2019, dated 18.02.2020.
2) Tej Pal Bhardwaj, ITANo.464/Chd/2019, dated 13.05.2021.
3) Atlas Cycle Industries, 180 ITR 319.

6. Ld. Counsel for the assessee also challenged the jurisdiction assumed u/s 147 of the Act by the AO contending

that except for the AIR/NMS information of cash deposit in the bank account of the assessee, which by itself did not constitute tangible material for formation of belief of escapement of income, there was no other material with the AO. In this regard he relied upon the decision of the coordinate bench in the case of Smt.Prabha Goyal in ITA No.1139/Chd/2017.

7. Ld.DR on the other hand vehemently argued against the challenge by the assessee to the validity of the original proceedings in the impugned collateral proceedings. His contention being that since the assessee is granted a right to challenge the reopening in the proceedings itself, as per the guidelines laid down by the Apex Court in the case of GKN Driveshafts (India) Limited Vs. ITO, 259 ITR 19 and the assessee having not done so, it could not be allowed to challenge it in collateral proceedings.

8. With regard to the deficiencies pointed out by the Ld.Cousel for the assessee in the reasons recorded the Ld.DR controverted the same contending that the fact noted in the reasons recorded, that the assessee had huge cash deposits which he had failed to explain before the AO, NMS, was sufficient to form belief of escapement of income.

9. To this the Ld.Counsel for the assessee responded by stating that the assessee was not required to file any explanation to the AO, NMS. Ld.Counsel for the assessee explained that NMS stood for Non filer Management System, which was a system devised for tracking and assessing cases where no returns were filed but there was adverse information from AIR etc regarding such persons. That a separate ward was created for such cases, where based on information in possession of the department, the persons were required to explain sources of investments/income/cash deposits. It was stated that the jurisdiction lay only with regard to non filer assesses. Ld.Counsel for the assessee stated that in the present case the assessee had filed return of income, which was duly intimated to the AO, NMS, who had uploaded the information and which finds mention in the reasons recorded also at para Ld.Counsel contended that since the assessee was not a non filer therefore he was not required to offer any explanation to the AO, NMS. Therefore, he contended that the AO of the assessee, while recording reasons, could not have derived any strength or benefit from the non furnishing of any explanation by the assessee to the AO, NMS. That in any case the satisfaction of escapement of income has to be of the AO of the assessee and not a borrowed satisfaction.

10. Ld.DR agreed with the factual explanation of the assessee regarding the NMS system.

11. We have heard both the parties at length and carefully perused the documents as also the case laws referred to before us.

12. The assessee has challenged the validity of the impugned order before us passed u/s 263 of the Act, contending that the order sought to be revised by the PCIT, passed u/s 147 of the Act, was itself not a valid order and hence since the original order was invalid the order passed in collateral proceedings was also not sustainable in law. The revenue has contested this argument both with regards to the proposition regarding challenging original proceedings in collateral proceedings and also on the merits of the original proceedings being bad in law.

13. Taking up first the dispute vis a vis that the validity of an assessment order which has attained finality being challenged in collateral proceedings, we find that this issue has been dealt with by the ITAT in various decisions, as pointed out by the Ld.Counsel for the assessee before us, categorically holding that the validity of original proceedings can be raised in collateral proceedings. It has been so held

based on the principle that neither the rule of estoppel nor principle of resjudicata, that neither consent nor waiver, can confer jurisdiction when none exists and that finality or conclusiveness could arise only in respect of orders which are competent orders with jurisdiction and if proceedings are not validly initiated the order would be void order which could never have any finality or conclusiveness.

14. In the case of M/s Westlife Development Ltd.(supra) the ITAT has, after referring to various case laws held that the legality of the proceedings can be agitated in a subsequent proceeding or even in a collateral proceeding or execution proceeding also. The relevant findings of the ITAT are as under:

> *"7. We have heard both the parties on this issue and also gone through the orders passed by the lower authorities as well as the judgments relied upon before us. In our view, we need to decide following issues, before we go into any other issues or merits of the impugned order:*
>
> *1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?*
>
> *2. Whether the impugned assessment order passed u/s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?*
>
> *3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non est assessment order?*

In our considered view, since these issues are jurisdictional issues and go to the root of the matter, therefore before dealing with any other issue, we shall first deal with all above three issues one by one, as under:

8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed u/s 263:

The first issue that arises for our consideration is - whether the assessee can challenge the jurisdictional validity of order passed u/s 143(3) in the appellate proceedings taken up for challenging the order passed u/s 263? If we analyse the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic / foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can rest upon. The proceedings initiated u/s 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature?

8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e. original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order cannot be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But, the issue that arises here is that if the original assessment order is illegal in terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in Income Tax Act? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only

from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would also be illegal, but in absence of a remedy to contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not res integra. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs.

8.2. In a matter that came up before Hon'ble Supreme Court in the case of Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] 1 5CR 117 the facts were that the appellant in that case had undervalued the suit at Rs.2,950 and laid it in the court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under Section 11. The value of the appeal was fixed at Rs.9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at page 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that:

"it is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the

subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

8.3. This judgment was subsequently followed by Hon'ble Supreme Court in the landmark case of Sushil Kumar Mehta vs Gobind Ram Bohra, (1990) 1 SCC 193, wherein an issue arose whether a decree can be challenged at the stage of execution and whether a decree which remained uncontested operates as res-judicata qua the parties affected by it. Hon'ble apex court, taking support from aforesaid judgment, observed as under:

"In the light of this position in law the question for determination is whether the impugned decree of the Civil Court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the Civil Court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the Court was gone into in issue Nos. 4 and 5 at the ex-parte trial, the decree there-under is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The Courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."

8.4. Similar view has been taken by Hon'ble Supreme Court by following aforesaid judgments recently in the case of Indian Bank vs Manual Govindji Khona reported in 2015 (3) SCC 712. Further, similar view was emphasized by Hon'ble Bombay High Court (GOA Bench) in the case of Mavany Brothers vs CIT (Tax Appeal No 8 of 2007) in its order dt 17th April, 2015 wherein it was held that an issue of jurisdiction can be raised at any time even in appeal or execution.

8.5. The aforesaid principles, enunciated by the Apex Court in the case of Kiran Singh & Ors. v. Chaman Paswan & Ors, supra were reiterated by the Apex Court in the cases of Superintendent of Taxes vs Onkarmal Nathmal Trust (AIR 1975 SC 2065) and Dasa Muni Reddy v. Appa Rao (AIR 1974 SC 2089). In the first of these decisions it was pointed out that revenue statutes protect the public on the one hand and confer power upon the State on the other, and the fetter on the jurisdiction is one meant to protect the public on the broader ground of public policy and, therefore, jurisdiction to assess or

reassess a person can never be waived or created by consent. This decision shows that the basic principle recognized in Kiran Singh (supra) is applicable even to revenue statutes such as the Income Tax Act. Dasa Muni Reddy (supra) is a judgment where the principle of 'coram non judice' was applied to rent control law. It was held that neither the rule of estoppel nor the principle of res ludicata can confer the Court jurisdiction where none exists. Here also the principle that was put into operation was that jurisdiction cannot be conferred by consent or agreement where it did not exist, nor can the lack of jurisdiction be waived.

8.6. These judgments were subsequently noticed by Hon'ble Gujarat High Court in the case of P. V. Doshi 113 ITR 22(Gujrat). This case arose under the Income Tax Act with reference to the provisions of Section 147 dealing with re-assessment. The facts were that the assessment was sought to be reopened under Section 147 and notice under section 148 was issued. Validity of reopening was not challenged upto Tribunal and additions were challenged on merits only. The Tribunal restored the matter to the Assessing Officer with some directions to reexamine the issue on merits. When the matter came back to the assessing officer the assessee specifically raised the point of jurisdiction to reopen the assessment, contending that the notice of reopening was prompted by a mere change of opinion. The AO rejected plea of the assessee but the AAC accepted this ground and also held the reassessment to be bad in law on jurisdictional ground. Against the order of the AAC the Revenue went in appeal before the Tribunal and specifically raised the plea that the question of jurisdiction to reopen the assessment having been expressly given up by the assessee in the appeal against the reassessment order in the first round, the assessee was debarred from raising that point again before the AAC and the AAC was equally wrong in permitting the assessee to raise that point which had become final in the first round and in adjudicating upon the same. The plea of the Revenue impressed the Tribunal which took the view that after its earlier order in the first round of proceedings the matter attained finality with regard to the point of jurisdiction which was given up before the AAC and not agitated further and that in the remand proceedings what was open before the Assessing Officer was only the question whether the addition was justified on merits and the point regarding the jurisdictional aspect was not open before the Assessing Officer. According to the Tribunal, the assessee having raised the point in the first round and having given it up could not revive it in the second round of proceedings where the issue was limited to the merits of the additions. In

this view, the Tribunal accepted the Revenues plea. The assessee thereafter carried order of the Tribunal in reference before the Gujarat High Court. The High Court after considering various judgments of the Supreme Court on the point of jurisdiction to reopen the assessment and also after specifically discussing the judgment of the Supreme Court in Onkarmal Nathmal Trust (supra) and Dasa Muni Reddy (supra) held that the Tribunal was in error in holding that the question of jurisdiction became final when it passed the earlier remand order. It was held that neither the question of res judicata nor the rule of estoppel could be invoked where the jurisdiction of an authority was under challenge. According to Hon'ble Gujarat High Court, the rule of res judicata cannot be invoked where the question involved is the competence of the Court to assume jurisdiction, either pecuniary or territorial or over the subject matter of the dispute. Hon'ble High Court further held that since neither consent nor waiver can confer jurisdiction upon the Assessing Officer where it did not exist, no importance could be attached to the fact that the assessee, in the first round of proceedings, expressly gave up the plea against the erroneous assumption of jurisdiction by the assessing authority. According to the Hon'ble Court, the "finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction, it would be only a nullity confirmed in further appeals'. In this view of the matter, Hon'ble High Court finally answered the reference in favour of the assessee.

8.7. It is further noted that many of these judgments were discussed and followed by the co-ordinate bench of the Tribunal in the case of Indian Farmers Fertilizers Co-operative Ltd vs KIT 105 lTD 33 (Del), wherein a similar issue had arisen. In this case, the issue raised before the bench was whether it is open to the assessee, not having appealed against the reassessment order, to set up or canvass its correctness in collateral proceedings taken for rectification thereof u/s 154. The bench minutely analysed law in this regard and applying the principle of 'coram non judice' and following aforesaid judgments of the supreme court, it was held that if an assessee seeks to challenge the reassessment proceedings as being without jurisdiction, when action for rectification is sought to be taken on the assumption of the validity of the reassessment order, then the assessee has to step in and protect its interests and the liberty to question even the validity of the reassessment

proceedings ought to be given to it......." (emphasis supplied) 8.8. Similar view was taken in another decision of the Tribunal in the case of Dhiraj Suri vs ACIT 98 lTD 87 (Del). In the said case, appeal was filed by the assessee before the Tribunal against the levy of penalty. In the appeal challenging the penalty order, the assessee challenged the validity of block assessment order which had determined the tax liability of the assessee on the basis of which penalty was levied subsequently. The revenue objected with respect to the ground of the assessee raising jurisdictional issues of assessment proceedings in the appeal against the penalty order. After analysing the legal position, as clarified by Hon'ble Gujrat High Court in the case of P.V. Doshi, supra and Hon'ble Bombay High Court in the case of Jainaravan Babulal vs CIT. 170 ITR 399, the bench held as that if the block assessment itself is without jurisdiction then there is no question of levy of any penalty u/s. 158BFA(2) and therefore it is open to the assessee to set up the question of validity of the assessment in the appeal against the levy of penalty.

8.9. We also derive support from another judgement of Hon'ble Bombay High Court in the case of Inventors Industrial Corporation Ltd vs CIT 194 ITR 548 (Bombay) wherein it was held that assessee was entitled to challenge the jurisdiction of the AO to initiate re- assessment proceedings before the CIT(A) in the second round of proceedings, even though he had not raised it in earlier proceedings before the Assessing Officer or in the earlier appeal.

8.10. Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed u/s 263 on the ground that the impugned assessment order was non est and we hold accordingly."

15. Ld.DR was unable to point out any decision holding to the contrary. Therefore the objection of the Ld.DR to the argument of the Ld.Counsel for the assessee challenging the legality of the present proceedings u/s 263 of the Act, by contesting the validity of the original proceedings u/s 147 of the Act, we hold merits no consideration and is dismissed.

16. Having said so, coming to the facts of the present case before us, the assessee's argument in support of his contention that the original proceedings in the present case, u/s 147 of the Act, was invalid, is the insufficiency of information leading to the formation of belief of escapement of income, which it is settled law, is an essential prerequisite for reopening the case u/s 147 of the Act.

17. We have patiently heard at length the arguments of both the parties in this regard and have also carefully perused the contents of the reasons recorded for reopening the case of the assessee placed before us at Paper Book page No.15. We find merit in the contention of Ld.Counsel for the assessee that the reasons recorded do not demonstrate sufficient information in the possession of the AO to lead to the formation of belief of escapement of income. In fact the information available with the AO could not have lead to the formation of belief of escapement of any income at all.

18. As per the reasons recorded by the AO, the belief of escapement of income is based on the information of cash deposits in the bank account of the assessee remaining unexplained on account of no return of income of the assessee available in the system of the department and no explanation

regarding the source of the same furnished by the assessee to ITO, Ward-4 (para 7 of the reasons reproduced above).

19. As it turns out the only valid information in the possession of the AO, while recording reasons for escapement of income, was the fact of cash deposits in the bank account of the assessee amounting to Rs.4.17 crores and no other information. The non availability of return of the assessee in the income tax systems(ITS) has no implications and carries no weight for the formation of opinion that the source of cash deposits has remained unexplained since it does not mean and is not equivalent to the fact of no return having been filed by the assessee. On the contrary, we find, that the fact in the present case is that return was filed by the assessee which fact is noted by the AO also in his reason mentioning the recording of this fact by the ITO, Ward-4. The AO, in truth, was clueless and uncertain of the fact whether return of income was filed by the assessee or not.

20. Further, even the assessee not responding to inquiries conducted by the AO, NMS, i.e. ITO Ward-4 regarding the cash deposits, we find, is of no relevance for forming opinion of the cash deposits being unexplained, since as rightly pointed out by the Ld.Counsel for the assessee, it is the AO of the assessee whose satisfaction is crucial for reopening and it

cannot be a borrowed satisfaction. Also, as pointed out to us by the Ld.Counsel for the assessee and not controverted by the DR, the jurisdiction of the AO, NMS, lay with regard to non-filer assessees only, while the assessee had duly communicated the fact of his having filed his return of income for the impugned year. This fact, we find, stands corroborated by the contents of the reasons itself which note that the ITO, Ward-4, who had jurisdiction in the NMS system, had noted in his sheet that the assessee had filed return for assessment year 2011-12 i.e. the impugned year. Therefore the AO, NMS, had no jurisdiction over the assessee and the assessee was therefore not required to give any explanation regarding the source of cash deposited to him. Therefore the fact of no explanation of the cash deposits being given by the assessee to ITO, Ward 4, was irrelevant for the formation of belief of escapement of income.

21. What transpires from the above facts therefore is that the AO only had information of cash deposits in the bank account of the assessee, which fact on its own, cannot lead to the belief of escapement of income. What is crucial and important for assuming the jurisdiction to reopen the case of an assessee u/s 147 of the Act is the "*belief of the AO of the escapement of income*". The mere fact that the cash is found

deposited in the bank account may lead to a suspicion at best but it definitely cannot lead to belief of escapement of income. The cash deposit may be justified by the facts and figures revealed in the income tax return filed by the assessee. In any case there has to be more information in the possession of the AO to form belief that the cash deposits represent assesses own escaped income. In the present case we find that the AO has no categorical information in his possession either regarding the fact of return having been filed by the assessee nor any other information to the effect that the source of the cash deposits was unexplained. No inquiries were independently conducted by the AO regarding the source of cash deposits, which would have surely assisted in the formation of belief of escapement of income with regard to the same.

22. The reasons recorded therefore do not justify the assumption of jurisdiction by the AO to reopen the case of the assessee u/s 147 of the Act. The order passed u/s 147 of the Act therefore is clearly not a valid order in the eyes of law.

23. The collateral proceedings on the said order, u/s 263 of the Act, are therefore, we agree, not sustainable in law.

The order passed by the Ld.PCIT u/s 263 of the Act is accordingly set aside.

24. Before us arguments were made on the merits of the case also but since we have set aside the order passed by the Ld.PCIT allowing the legal ground raised by the assessee, the adjudication on merits is merely academic and is therefore not being dealt with by us.

25. The appeal of the assessee is allowed in above terms.

Order pronounced on 02.11.2021.

Sd/-	Sd/-
(R.L. NEGI)	**(ANNAPURNA GUPTA)**
न्यायकि सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

Dated: 2nd November, 2021
रती

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
- गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar

Draft dictated	30.09.2021	Sr.PS
Draft placed before author	2021	Sr.PS
Approved Draft comes to the Sr.PS/PS	2021	Sr.PS
Order signed and pronounced on		
File sent to the Bench Clerk		Sr.PS
Date on which file goes to the AR		
Date on which file goes to the Head Clerk.		
Date of dispatch of Order.		