

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA**

**[Coram : Pramod Kumar AM and Joginder Singh]**

I.T.A. No.:116/Agra/2012  
Assessment year:2001-02

**Rajeev Kumar Goyal**

*Prop : Lord Shiva Investments  
20A, Jai Ram Bagh, Dayalbah, Agra  
[PAN: ADIPG0770E]*

.....**Appellant**

**Vs.**

**Income Tax Officer  
Ward 4(3), Agra**

.....**Respondent**

**Appearances by:**

Alok Farsaiya, *for the appellant*  
Waseem Arshad and S D Sharma, *for the respondent*

Date of concluding the hearing :June 5, 2014  
Date of pronouncing the order :June 6, 2014

**ORDER**

**Per Pramod Kumar:**

1. It is a recalled matter. The appeal was originally disposed off *ex parte* the assessee, vide order dated 7<sup>th</sup> September 2012. However, subsequently, this order is recalled, at the request of the assessee, and the matter is fixed again for hearing on merits. That is how we have come to be *in seisin* of the matter.

2. This appeal is directed against the order dated 2<sup>nd</sup> November 2011 passed by the learned CIT(A), in the matter of assessment under section 144 r.w.s. 147 of the Income Tax Act, 1961, for the assessment year 2001-02.

3. We have to be take up a preliminary and foundational aspect first, which goes to the root of the validity of the impugned reassessment order and on which both the parties have been heard. The issue is this. According to the learned counsel for the assessee, no additions have been made in respect of the grounds set out in the reasons recorded for reopening he assessment, and, therefore, no other additions could also have been made in

the course of this reassessment. The contention of the assessee is that in a situation in which additions are not made in respect of the reasons recorded for reopening the assessment, the very basis of initiation of reassessment proceedings is accepted to be incorrect, and the reassessment itself is to be quashed.

4. The relevant material facts are like this. In this case, the assessment was reopened and the related notice under section 148 was served on the assessee. As for the reasons for initiation of proceedings under section 147, the Assessing Officer has made the following noting :

**REASONS FOR INITIATION OF PROCEEDINGS UNDER SECTION 147 OF THE INCOME TAX ACT, 1961**

1. Name of the assessee : Lord Shiva Investments  
20A, Jai Ram Bagh, Dayal Bagh  
Agra
2. PAN :
3. Assessment year : 2001-02

Information is in possession of this office (which has been received from investigation wing, Agra) revealing that the following transactions made by Aayushi Stock Brokers Pvt Ltd, Sanjay Place, Agra, which have been found to have been recorded in the books of accounts of the assessee is prima facie unexplained.

Date	Bank name	DD No.	A/c No.	Amount
01.05.00				10,00,000
01.05.00				11,00,000
21.06.00	SB Patiala	Clg cheque Returned/50		3,80,000
17.07.00	SB Patiala	Clg cheque Returned/74		5,00,000
22.09.00	Federal Bank	-do-/190		2,00,000
09.10.00	-do-	-do-/224		1,50,000
09.10.00	-do-	-do-/226		1,50,000
29.12.00	SB, Patiala	-do-/333		3,00,000
29.02.01	Cl. Balance			37,80,000
			<b>Total</b>	<b>75,60,000</b>

I have examined and have reasons to believe that income chargeable to tax amounting to Rs 75,60,000 has escaped assessment for AY 2001-02

To assessee/ reassess such income, I propose to\* issue notice under section 148 of the Income Tax Act, 1961.

Sd/xx

\*Subject to approval

5. Aggrieved, inter alia, by the reopening of assessment proceedings, the assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) upheld the validity of the reassessment proceedings. The assessee is not satisfied and is in further appeal before us

6. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case in the light of the applicable legal position.

7. The legal position is fairly well settled on the issue that in a reassessment proceeding, when no additions are made in respect of the income, purportedly escaping the assessment, set out in the reasons for re-opening the assessment, no other additions can be made either. As a matter of fact, the very reassessment fails in such a situation. The underlying principle is not difficult to fathom. The re-assessment proceedings are for the purpose of income escaping the assessment, as set out in the reasons recorded, and when no additions are made in respect of the reasons recorded, the very foundation of reassessment proceedings ceases to be legally sustainable. Of course, once additions are made in respect of any of the items set out in the reasons recorded for re-opening the assessment, it is open to the Assessing Officer to make other items, as he may deem fit, as well. In a rather recent case of CIT Vs Jet Airways (331 ITR 236), elaborating on this settled legal position, Hon'ble Bombay High Court has observed that if after issuing a notice under s. 148, the Assessing Officer does not hold that the income which he has initially formed a reason to believe had escaped assessment, is not required to be added to the assessee's taxable income, it is not open to him to independently assess some other income. Their Lordships have added that, "If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee" In the present case, seemingly no additions have been made in respect of the items set out in the reasons for reopening the assessment, as reproduced earlier in this order, and yet the Assessing Officer has made several other additions to income. However, as a measure of abundant caution, we remit this limited aspect of verification of facts to the file of the Commissioner (Appeals). He has to examine validity of reopening of assessment afresh, in the light of *inter alia*, these observations. A plain look at the reasons recorded for reopening the assessment also *prima facie* shows the casual manner in which the exercise has been carried out simply on the basis of inputs received from the investigation inasmuch as the aggregate of eight entries, which is shown as closing balance, is again added to the entries and, as against total entries of Rs 37,80,000, the income escaping the assessment is taken

at double that amount i.e. Rs 75,60,000. However, we refrain from making any further observations on this issue and, suffice to say, that learned Commissioner (Appeals) will deal with all issues relating to validity of reopening the assessment, including the issues touched upon above, as the assessee may raise, give a fair and reasonable opportunity of hearing to the assessee and decide the matter in accordance with the law and by way of a speaking order. We order so. In view of the fact that this is an old matter, and with a view that the sword of uncertainty should not be allowed to hang over the appellants for long, we further direct the learned Commissioner (Appeals) to dispose of the matter within six months from the date of receipt of this order

8. As the matter regarding the validity of assessment proceedings itself stands restored to the file of the learned Commissioner (Appeals), it is not really necessary to deal with all other issues in this appeal.

9. In the result, the appeal is allowed for the statistical purposes in the terms indicated above. Pronounced in the open court today on 6<sup>th</sup> day of June, 2014.

Sd/-  
**Joginder Singh**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Accountant Member)

**Agra, the 6<sup>th</sup> day of June, 2014.**

Copies to : (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) The Departmental Representative  
(6) Guard File

*By order etc*

*Senior Private Secretary  
Income Tax Appellate Tribunal  
Agra bench, Agra*