

**Chief Justice's Court****AFR****Case :-** INCOME TAX APPEAL No. - 127 of 2014**Appellant :-** The Commissioner Of Income Tax-I, Kanpur**Respondent :-** Shri Samraj Krishan Chaudhary, Kanpur**Counsel for Appellant :-** Shambhu Chopra**Counsel for the respondent:-** Shubham Agrawal**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice**  
**Hon'ble Dilip Gupta,J.**

The revenue is in an appeal against an order of the Income Tax Appellate Tribunal dated 30 January 2014 under Section 260A of the Income Tax Act, 1961. The assessment year to which the appeal relates is AY – 2009-10.

The Tribunal has allowed the appeal filed by the assessee on the ground that the basis for issuing a notice under Section 148 for reopening the assessment has not been fulfilled since the Assessing Officer must have reason to believe that income has escaped assessment.

The following questions of law have been formulated by the revenue:

“1. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in quashing the re-opening of assessment by ignoring the fact that the Assessing Officer had sufficient reasons for re-opening the case and accordingly assessing the long term capital gains at Rs.72,99,290/-, against the returned long term capital gains of Rs.1,72,075/-, which has also been confirmed by the CIT (Appeals)-II, Kanpur vide his order dated 13.03.2013.

2. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in not appreciating the fact

that the AO had valid reasons to believe that there is escapement of income by the assessee who vide his return of income had shown highly inflated cost of construction and improvement.

3. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in not appreciating the fact that the value of property, decided by Civil Judge, Kanpur at Rs.1 lac as per the Court decree dated 15.12.1994, was rightly adopted by the A.O.

4. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in not appreciating the fact that the assessee during the course of assessment proceedings failed to produce evidence regarding cost of construction and improvement as claimed by him in his return income.”

The notice of reopening under Section 148 was issued on the ground that the assessee had sold certain immovable property for Rs.31 lacs, whereas the value of property for the purpose of stamp duty was Rs.82.54 lacs, resulting in an apparent difference of Rs.51.54 lacs. It was on this basis that the Assessing Officer sought to reopen the assessment by issuing a notice under Section 148. The Tribunal has observed that before the Assessing Officer can reopen an assessment under Section 148, there must be a reason to believe that income has escaped assessment. As a matter of fact, in the present case, the finding of the Tribunal is that though the sale consideration was Rs.31 lacs, the value for stamp duty purposes as per the circle rate applicable was Rs.82.54 lacs. In the computation of income, while computing the capital gains, the assessee had taken into account the higher value of Rs.82.54 lacs. This factual finding of the Tribunal has not been disputed by the revenue. Under Section 147, the Assessing Officer before proceeding to reopen an assessment must

have reason to believe that there is an escapement of income from assessment.

Now, it is well settled in view of the decision of the Supreme Court in the case of **CIT v. Kelvinator of India Ltd.**<sup>1</sup> that under Section 147, an assessment cannot be reopened merely on the basis of mere change of opinion, but there must be tangible material before the Assessing Officer to come to a conclusion that there is an escapement of income from assessment. Reasons, as the Supreme Court observed, must have a link with the formation of the belief.

As a matter of fact, in an earlier decision in **M/s. S. Ganga Saran and Sons (Pvt) Ltd., Calcutta v. Income Tax Officer and others**<sup>2</sup>, the Supreme Court had held as follows:

“...First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under Section 147 (a) are "has reason to believe" and these words are stronger than the words "is satisfied.". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer, in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there

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1 [2010] 320 ITR 561 (SC)

2 (1981) 3 SCC 143

is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.”

This decision was, of course, rendered in the context of the provisions of Section 147 as they then stood but the fundamental principle is that there must exist reasons to believe that income of the assessee had escaped assessment and there must be a rational and intelligible nexus between the reasons and the belief.

In the present case, the submission of the assessee before the Tribunal, as recorded in paragraph 3 of the impugned order, is that the only reason which was given by the Assessing Officer for initiating reassessment proceedings was that the property was sold by the assessee for Rs.31 lacs but its value for the purpose of stamp duty as per the circle rate was Rs.82.54 lacs, resulting in an escapement of income of Rs.51.54 lacs. The notice under Section 148 was available on the record of the Tribunal. The Tribunal also had the benefit of perusing the income tax return filed by the assessee. It is on that basis that the Tribunal, after duly perusing the computation of income submitted by the assessee, found that as a matter of fact, the assessee had shown a sale consideration of Rs.82.54 lacs in the computation of income. Once this is the position, the only basis on which the Assessing Officer issued notice under

Section 148 would not possibly give rise to a reason to believe.

It has been urged on behalf of the revenue that the Tribunal has not given due regard to the submission of the revenue that the assessee had reduced the capital gain by increasing the cost of acquisition and the cost of improvement of the property. The difficulty in accepting the submission is that, in fact, this was not the basis on which the assessment was reopened under Section 148. The validity of the reopening of the assessment has to be determined on the basis of reasons which are disclosed by the Assessing Officer. The legality of the notice reopening the assessment has to be determined, when it is questioned, on the basis of the reasons which are recorded by the Assessing Officer. Those reasons cannot be allowed to be supplemented subsequently. This was also so observed in a judgement of a Division Bench of the Bombay High Court in **Balkrishna Hiralal Wani vs. Income-Tax Officer and others**<sup>3</sup> where it was held as follows:

“...For the purpose of determining the validity of the challenge to the notice under section 148, the court would have to refer to the reasons recorded by the Assessing Officer and to those reasons alone.”

Hence, in our view, the Tribunal was justified in assessing the correctness of the notice for reopening the assessment under Section 148 on the basis of the reasons which were disclosed by the Assessing Officer. Those reasons, as the Tribunal noted, could not give rise to a reason to believe that income had escaped assessment for the simple reason that in the computation

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<sup>3</sup> [2010] 321 ITR 519 (Bom)

of income, the assessee had adopted the circle rate which is higher than the sale consideration. Hence, the appeal will not give rise to any substantial question of law.

The appeal is, accordingly, dismissed. There shall be no order as to costs.

**Order Date :-** 4.8.2014

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(Dilip Gupta,J.) (Dr.D.Y.Chandrachud,C.J.)