

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI**

**BEFORE SHRI. AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.2634/DEL/2007
Assessment Year: 2002-03

Shri Ashok Mahindru 4-D, Local Shopping Centre A Block, ring Road Naraina, New Delhi	v.	Income Tax Officer Ward 2(2), New Delhi
TAN/PAN:ABHPM8364M		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Taneja, Advocate		
Respondent by:	Shri Arun Kumar Yadav, D.R.		
Date of hearing:	08	08	2017
Date of pronouncement:	25	10	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 3/4/2007 passed by the Id. CIT (Appeals)-V, New Delhi for the quantum of assessment passed under section 143(3)/148 of the Income Tax Act, 1961 for the assessment year 2002-03. In the grounds of appeal, the assessee has raised the following grounds:-

- 1. That on facts and circumstances of the case the Ld. Assessing Officer has erred in taking action under section 147 and issuing notice under section 148.*
- 2. That the Id. Assessing Officer has erred in taking the report of the Income Tax Officer as the basis for re-opening of the assessment.*

3. *That the Ld. CIT (A) has erred in upholding the AO's action under section 147 as against the facts of the case.*
 4. *That on facts & circumstances of the case, the Ld. CIT (A) has erred in upholding an addition of Rs.25,00,000/- made by the assessing officer on account of gift received from Mr. Rajeev Gupta.*
 5. *That on facts & circumstances of the case, the Ld. CIT (A) has erred in ignoring the evidences furnished before him in regard to the gift of Rs.25,00,000/- received from Mr. Rajeev Gupta.*
 6. *That on facts & circumstances of the case, the Ld. CIT (A) has erred in upholding an addition of Rs.3,70,126/- made by the assessing officer on account of gift received from a close relative Mrs. Sonia Wadhawan.*
 7. *That on facts & circumstances of the case, the Ld. CIT (A) has erred in ignoring the evidences furnished before him in regard to the gift of Rs.3,10,126/- received from Mrs. Sonia Wadhawan.*
 8. *That the Ld. CIT (A) has erred in disallowing an interest of Rs.35,64,692/- (original disallowance by the AO being Rs.62,12,924/-) on account of interest paid against exempt income whereas no fresh investment has been made in the companies from which exempt income has been received during the relevant period & the opening value of investments in the said companies consist of bonus shares and investments made out of the capital of the assessee.*
 9. *That the Ld. CIT(A) has erred in ignoring the contentions of the assessee in respect of the interest income to the tune of Rs. 35,64,692/-.*
2. So far as the legal issue as raised in ground Nos.1, 2 and 3, challenging the validity of reopening under section 147, the facts in brief are that the assessee is an individual who had filed

his return of income on 30/7/2002, at an income of Rs.6,79,180/-, which was duly processed under section 143(1). Later on, vide notice dated 29/3/2006 issued under section 148, assessee's case was reopened under section 147 after recording the following "reasons":-

*"Name of the assessee : Shri Ashok Mahindru,
351/15, Jaccubpura, Gurgaon*

Assessment year :2002-03

Reasons for Issue of notice U/s 148:

The assessee Shri Ashok Mahindru R/o 351/15, Jaccubpura, Gurgaon has filed his return of income for the A.Y. 2002-03 with this ward on 30.07.2002.

During the course of assessment proceedings for the A.Y. 2001-02 in the case of Shri Ashok Mahindru and Sons, Gurgaon it was noticed that the assessee including all other family members are receiving bogus gift in different assessment years. During the assessment year 2002-03, the assessee Shri Ashok Mahindru has shown receipt of gift of Rs.28,70,126.23 from Mr. Rajeev Gupta S/o Shri Ramesh Chand Gupta R/o 3-C Court Lane, Civil Lines, Delhi through P.O. No 048107 dt. 28.6.2001, Ch. No 118992 dt. 29.6.2001 & Ch. No 119884 dt. 30.6.2001 for Rs.10,00,000/-, Rs.10,00,000/- and Rs.5,00,000/- respectively.

The gift received by the other family members of the assessee were held as Non-genuine and were treated as undisclosed income. The assessee and her family members have used colourable device to garb their income from undisclosed sources. The donor is neither related to assessee and other family members of the assessee. Therefore, I have reason to believe that the gift stated to be received from 1 the above person has escaped assessment within the meaning of section 147 of the Income tax Act, 1961. In view of the above income amounting to Rs.28,70,126/- has escaped

assessment. Issue notice under section 148 for the assessment year 2002-03.

Sd/-

(Jagdish Singh)

Income Tax Officer Ward-3, Gurgaon”

3. Before us, the Ld. counsel for the assessee, Shri Ashwani Taneja challenging the validity of reopening under section 147, submitted that the ‘reasons’ as recorded by the Assessing Officer do not clothe the Assessing Officer with the jurisdiction to reopen the assessment under section 147, as the inference drawn by the Assessing Officer is completely divorced from the material facts on record. AO has mainly relied upon the observations made in the assessment order of Shri Ashok Mahindru and Sons for the assessment year 2001-02, from where he has inferred that the assessee who has received gift from Shri Rajiv Gupta, s/o of Shri Ramesh Chand Gupta in this year, is not genuine. Since in that case the gift received was held to be non-genuine and was treated as undisclosed income, therefore, on same premise, AO has formed his reason to believe that in the case of the assessee also such gifts should also be treated as non-genuine. After filing the copy of assessment order in the case of M/s Ashok Mahindru & Sons, he pointed out that first of all, from a bare perusal of the said assessment order for the assessment year 2001-02 as has been referred by the Assessing Officer in his ‘reasons recorded’, it can be seen that there is no whisper about either about the assessee having received any gift or there is any reference about the present donor, Shri Rajiv Gupta in that case. In the case of M/s Ashok Mahindru and Sons, the donor was a Swiss National, Mrs. Therese Morosini and there is absolutely no co-relation or any link with the said donor appearing in the assessment order

of M/s Ashok Mahindru and Sons with the donor, Shri Rajiv Gupta in the case of the assessee. Thus, the very premise on which the 'reasons' have been recorded, is based on incorrect assumption of facts and 'reason to believe' entertained by the AO falls in the realm of surmise and conjectures. He further drew our attention to paragraphs 4.1 to 4.11 of the said assessment order and pointed out that nowhere the name of the assessee can be found in the assessment order or the name of the donor, Shri Rajiv Gupta. There is absolutely no other material on record to show that the gift received by the assessee from Shri Rajiv Gupta is either bogus or donor is not genuine. Without any such tangent material, the "reasons recorded" is without any basis and is based on suspicion, which cannot be held to be valid in the eyes of law. In support of his contention, he strongly referred and relied upon catena of judgements, including certain latest judgments of Hon'ble Delhi High Court in the case of **Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. in ITA No.692/2016; judgment dated 26/5/2017;** and **Pr. CIT vs. RMG Polyvinyl (I) Ltd. in ITA No.29/2017 & CM No.1009/2017, judgment dated 7/7/2017.** Beside this, certain other judgments have also been referred and relied upon by him, the list of which have been filed separately by him along with separate compilation of the case laws. In sum and substance his main contention has been that, such a "reasons recorded" without any tangible material linking with the escapement of income, cannot be held to be valid in the eyes of law so as to reopen the assessment under section 147.

4. On the other hand, the ld. Sr. D.R., submitted that, what is required to be seen here is that the assessee and his family members were receiving gifts from various persons and in one

such case it was found that gifts are not genuine and addition has been made as “income from undisclosed sources”. This very factum of non-genuineness of gift found in one of the cases of the family members/group has been found to be bogus, then there is prima-facie “reason to believe” that the gifts received by the assessee during the year from the donor, Shri Rajiv Gupta is also not genuine as the assessee and his family members were found to have received several gifts from various persons, therefore, the Assessing Officer has strong belief about the non-genuineness about the gift received by the assessee and hence he has rightly reopened the assessment under section 147, so as to verify the genuineness of the gift. This belief is flowing from the material in the form of one of the assessment order in the case of M/s Ashok Mahindru & Sons which is a HUF belonging to the assessee and, therefore, this is sufficient for examining the nature of gift received by the assessee. Thus, the Assessing Officer was fully justified in reopening the case and the Id. CIT (A) has rightly confirmed the action of the Assessing Officer as per his finding given in paragraph 2.3 of the impugned order.

5. We have heard the rival submissions *qua* the issue of validity of reopening under section 147 and also perused the relevant material referred to before us at the time of hearing. From a bare perusal of the “reasons recorded”, it is seen that formation of ‘reason to believe’ by the Assessing Officer is based on:-

- *Firstly*, during the course of assessment proceedings for the assessment year 2001-02 in the case of M/s Ashok

Mahindru and Sons, it was noticed that assessee, including all the family members, are receiving bogus gifts.

- *Secondly*, based on this premise, the Assessing Officer observes that during assessment year 2002-03, assessee has shown gift of Rs. 28,70,126/- from Shri Rajiv Gupta through various cheque amounts and since the gift received by other family members of the assessee were held to be non-genuine and were treated as undisclosed income, therefore, he has 'reason to believe' that the gift received from the above person is also non-genuine and to the extent of gift amount income chargeable to tax has escaped assessment within the meaning of section 147.
- *Lastly*, he further observes that assessee and his family members have used colourable device to garb their income from undisclosed sources as the donor is neither related to the assessee or to any other family members of the assessee.

On this premise, the assessee's case has been sought to be reopened vide notice dated 29/3/2006 issued under section 148.

6. In the 'reasons recorded' the only material, which has been referred and relied upon for reopening the assessment, is based on the observations and findings given in the course of assessment proceedings for the assessment year 2001-02 in the case of M/s Ashok Mahindru & Sons. From the perusal of the assessment order in the case of M/s Ashok Mahindru & Sons, copy of which has been filed before us, we find that nowhere there is any reference of the donor, Shri Rajiv Gupta that he was also one of the donors in that case. The presumption would have

been quite strong had the gifts from the same donor would have been found to be non-genuine. But there is no whisper about any donor named as Shri Rajiv Gupta in the said assessment order. In that case, assessee, M/s Ashok Mahindru & Sons had received a gift for amount of Rs.10,63,600/- from a Swiss National, Mrs. Therese Morosini. In paragraph 4.5 of the said assessment order, the Assessing Officer had observed that other family members have also received gifts from the same lady, but there is no reference that assessee has received any gift in this year from the said donor or there is any reference of Shri Rajiv Gupta. Thus, formation of 'reason to believe' based on the observations and findings given in the assessment order in the case of M/s Ashok Mahindru & Sons, cannot hold a good ground so as to acquire jurisdiction for reopening the case under section 147, because the 'reason to believe' is not based on relevant material and does not have any rational connection with the facts of the assessee's case so as to hold that the gifts received by the assessee in this year from Shri Rajiv Gupta is not genuine or bogus. The 'reason to believe' thus, falls in the realm of suspicion and howsoever strong suspicion may be but it cannot be reckoned as tangible material having live link nexus with income escaping assessment.

7. It is a trite law that the reasons for formation of belief not only should have a rational connection or relevant bearing with the material, but it must also have direct nexus or live-link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of income of the assessee from assessment. It is not any and every material howsoever weak or remote or farfetched

which could warrant formation of belief relating to escapement of income of the assessee, *albeit* the material coming in possession of the AO must have direct and proximate nexus with income escaping assessment. Here there is no such material or information having coming to the possession of the Assessing Officer that the gift received by the assessee from Shri Rajiv Gupta is either bogus or non-genuine. Making a reference to another assessment order completely divorced from the material and information on record from the case of the assessee, cannot constitute a tangible material for the formation of belief as stipulated under section 147. Here the Assessing Officer after stating the facts from another assessment order has gone into realm of presumption and surmises that if in the case of one of the family members it has been found that gifts were non-genuine, then the gifts received by the assessee in this year from a different person altogether is also not genuine. Had it been a case here that the same donor have given gift to other family members, in whose case it was found that such gifts are bogus and non-genuine, then perhaps one could say that there is some material having rational connection to entertain the reason to believe that similar kind of gifts from same donor could be non-genuine. But here in this case as discussed above, in the assessment proceedings of M/s Ashok Mahindru & Sons, which is the material relied upon by the Assessing Officer in his 'reasons recorded', there is no reference or whisper about the donor in the case of the assessee, i.e., Shri Rajiv Gupta or there is any mention about the assessee. Hence we are of the considered opinion that in the present case there is no rational and intelligible nexus between the said material as referred by the Assessing Officer in the 'reasons recorded' for the formation

of 'reason to believe' for income escaping assessment. It appears that reopening has been done simply as a pretence to make further enquiry about the genuineness of the gift and such pretence for making roving and fishing enquiry cannot clothe the Assessing Officer with the jurisdiction to reopen assessment in terms of section 147. Thus, we hold that there is no live-link nexus between the material referred to by the Assessing Officer and the formation of his belief that simply because gift has been received from an un-related person, it automatically becomes bogus or non-genuine. Hence, we are of the opinion that the 'reasons' as recorded by the Assessing Officer cannot be reckoned as 'reason to believe' that the gift received by the assessee is an income chargeable to tax which has escaped assessment. Accordingly, the entire reassessment proceedings initiated vide notice dated 29/3/2006 and consequently passing of the impugned assessment order under section 143(3)/148 is hereby quashed as bad in law and consequently, grounds Nos.1, 2 and 3 of the assessee are treated as allowed.

8. Since we have quashed the assessment, the issues raised on merits have become purely academic in nature and the same are dismissed as infructuous.

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

Order pronounced in the open Court on 25th October, 2017.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED:25th October, 2017

JJ:2310

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