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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1297 OF 2015

The Pr. Commissioner of Income Tax-5 .. Appellant.  
v/s.  
M/s. Shodiman Investments Pvt. Ltd., .. Respondent.

Mr. N. C. Mohanty, for the Appellant.  
Mr. Nitesh Joshi i/b. Mr. Sameer Dalal, for the Respondent.

**CORAM: M.S.SANKLECHA &  
SANDEEP K. SHINDE,JJ.**  
**DATE : 16<sup>th</sup> APRIL, 2018.**

**P.C:-**

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 12<sup>th</sup> December, 2014, passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 12<sup>th</sup> December, 2014 is in respect of Assessment Year 2003-04.

2 Revenue urges the following question of law, for our consideration:

*“ Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that the re-opening of Assessment is not sustainable in law?”*

3 The Respondent is a company, engaged in Investment and Trading in shares and debentures. For the subject Assessment Year 2003-04, the Respondent filed its return of income, declaring a loss of Rs.11,736/-. The above return of income was processed under Section 143(1) of the Act.

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4 Thereafter, on 30<sup>th</sup> March, 2010, the Assessing Officer issued a notice under Section 148 of the Act, seeking to re-open the Assessment for A.Y. 2003-04. The reasons in support of the impugned notice, as supplied to the Appellant, reads as under:-

*“ It was intimated that search action was conducted u/s. 132 of the I.T. Act, 1962 on 25/11/2009. In the case of Mahasagar Securities Pvt. Ltd., where it is found suspicious transaction taken place in the bank account of the company and its related company....”*

5 The Respondent filed its objections to the same. However, the Assessing Officer rejected the objection and proceeded to assess the Appellant under Section 143(3) r/w. Section 147 of the Act. By an Assessment Order dated 31<sup>st</sup> December, 2010, for A.Y. 2003-04, the Assessing Officer determined the Respondent's income at Rs.67.10 lakhs.

6 Being aggrieved, Respondent filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. However, the CIT(A) rejected the appeal by order dated 10<sup>th</sup> January, 2012.

7 Being aggrieved, the Respondent filed a further appeal to the Tribunal. The impugned order of the Tribunal records the fact that it found that the reasons as communicated to the Respondent, was not complete. Therefore, it called upon the Revenue to file complete reasons recorded by the Assessing Officer, while issuing the notice dated 30<sup>th</sup> March, 2010 for re-opening the Assessment. The complete reasons as recorded, read as under:-

*“ Intimation regarding re-opening the Assessment u/s. 147 of the I.T. Act 1961 has been received in this office on 29.03.2010 from DDIT (Inv.) unit 1(4) Mumbai.*

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*It was intimated that search action was conducted u/s. 132 of I.T. act 1961 on 25.11.2009. In the case of Mahasagar Securities Pvt. Ltd., where it is found suspicious transaction taken place in the Bank account of the company and its related company. The copy of said letter which is self explanatory which is forwarded to your honour.*

*From verification of Blue Book it is found that there is no such assessee is assessed in his charge. Similarly, no PAN No. is furnished. However, the assessee have jurisdiction in this charge & the action is going by bar by its of limitation of time.*

*I have reason to believe that there is escapement of the income within meaning of u/s. 147 of the I.T. Act, 1961.*

*As per proviso of section 151(2) of the I.T. Act, no notice u/s. 148 issued by the assessing officer below the rank of the J.C. after the expiry of 4 years from the end of relevant A.Y. unless the Joint CIT is satisfied on the assessee recorded by the AO that it is fit case for the issue of such notice.*

*In view of the above, sanction of issue of notice u/s. 148 of the I.T. Act, 1961 for A.Y. 2003-04 may be accorded if deemed fit.”*

On the basis of the above reasons as recorded, the impugned order of the Tribunal found that the reasons proceed on the basis that there was no assessee such as Respondent in its charge. Nevertheless, the re-opening notice was issued to the Respondent-Assessee. It further holds that the reasons as recorded did not indicate any application of mind on the part of the Assessing Office to the information received from the DDIT (Investigation). It observes that the reason as recorded only records that intimation received from the DDIT (Inv.) only mentions that the Mahasagar Securities Pvt. Ltd., was engaged in suspicious transactions. However, there is no further indication as to how the Respondent-Assessee could be linked to the activity of Mahasagar Securities Pvt. Ltd., (supra) which has led to escapement of income. Thus, relying upon the decision of this Court in **Raja Bahadur Motilal (P) Ltd., v/s. K. R. Vishwanathan, 183 ITR 80** and the decision of the Delhi High Court in

the case of *CIT v/s. Sfil Stock Broking Ltd., 325 ITR 285*, the impugned order dated 12<sup>th</sup> December, 2014 allowed the Respondent-Assessee's appeal.

8 Mr. Mohanty, learned Counsel for the Revenue submits that in view of the Apex Court's decision in *Assistant Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 291 ITR 500*, the Assessing Officer is entitled to re-open an Assessment for whatever reason. In particular, he places reliance upon the following sentence in para 17 of the above decision i.e. *"In other words, if the Assessing Officer for whatever reason, has reason to believe that income has escaped assessment it confers jurisdiction to re-open the assessment."* Therefore, this re-opening notice cannot be challenged. This for the reason that it will be open to the Assessee during re-opened proceeding to establish that seeking to tax the additional income, was not warranted. It is his submission that information received from the DDIT (Investigation) was sufficient reasons for the Assessing Officer to issue the re-opening notice. Thus, the Tribunal could not have held that the re-opening notice dated 30<sup>th</sup> March, 2010 is bad in law.

9 We find that at the time of re-opening of the Assessment, the Assessing Officer did not provide the reasons recorded in support of the re-opening notice in its entirety, to the Respondent-Assessee. This was contrary to and in defiance of the decision of the Apex Court in *GKN Driveshaft v/s. ITO 259 ITR 219*. The entire objects of reasons for re-opening notice as recorded being made available to an Assessee, is to enable the Assessing Officer to have a second look at his reasons recorded before he proceeds to assess the income, which according to him, has

escaped Assessment. In fact, non furnishing of reasons would make an Assessment Order bad as held by this Court in *CIT v/s. Videsh Sanchar Nigam Ltd.*, 340 ITR 66. In fact, partial furnishing of reasons will also necessarily meet the same fate i.e. render the Assessment Order on re-opening notice bad. Therefore, on the above ground itself, the question as proposed does not give rise to any substantial question of law as it is covered by the decision of this Court in *Videsh Sanchar Nigam Ltd.*, (supra) against the Revenue in the present facts.

10 Besides, the submissions made on behalf of the Revenue that in view of the decision of the Apex Court in *Rajesh Jhaveri Stock Brokers Pvt. Ltd.*, (supra), the Assessing Officer is entitled to re-open the Assessment for whatever reasons and the same cannot be subjected to jurisdictional review, is preposterous. First of all, taking out a word or sentence from the entire judgment, divorced from the context and relying upon it, is not permissible (see *CIT v/s. Sun Engineering Works (P) Ltd.*, 198 ITR 297). It may be useful to reproduce the context in which the sentence in *Rajesh Jhaveri Stock Brokers Pvt. Ltd.*, (supra) being relied upon by the Revenue to support its case, was made. The context, is as under:-

*“ The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitutions. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed to confer jurisdiction under section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such*

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*escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under Section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices.”*

Therefore, the sentence being relied upon was made in the context of the change in law that under the amended provision 'reason to believe' that in case of escaped assessment, is sufficient to re-open the assessment. This unlike the earlier provision of Section 147(a) of the Act which required two conditions i.e. failure to disclose fully and truly all facts necessary for assessment and reason to believe that income has escaped assessment. Thus, the observations being relied upon must be read in the context in which it was rendered. On so reading the submission, will not survive.

11 Further, a reading of the entire decision, it is clear that the reasonable belief on the basis of tangible material could be, prima facie, formed to conclude that income chargeable to tax has escaped assessment. Mr. Mohanty, learned Counsel is ignoring the fact that the words '*whatever reasons*' is qualified by the words '*having reasons to believe that income has escaped assessment*'. The words whatever reasons only means any tangible material which would on application to the facts on record lead to reasonable belief that income chargeable to tax has escaped assessment. This material which forms the basis, is not restricted, but the material must lead to the formation of reason to believe that income chargeable to tax has escaped Assessment. Mere obtaining of material by itself does not result in reason to believe that income has escaped

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assessment. In fact, this would be evident from the fact that in para 16 of the decision in *Rajesh Jhaveri Stock Brokers Pvt., Ltd.*, (supra), it is observed that the word 'reason' in the .... 'reason to believe' would mean cause or justification. Therefore, it can only be the basis of forming the belief. However, the belief must be independently formed in the context of the material obtained that there is an escapement of income. Otherwise, no meaning is being given to the words 'to believe' as found in Section 147 of the Act. Therefore, the words 'whatever reasons' in *Rajesh Jhaveri Stock Brokers Pvt. Ltd.*, (supra), only means whatever the material, the reasons recorded must indicate the reasons to believe that income has escaped assessment. This is so as reasons as recorded alone give the Assessing Officer power to re-open an assessment, if it reveals/ indicate, reasons to believe that income chargeable to tax has escaped assessment.

12 The re-opening of an Assessment is an exercise of extraordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/ nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in *S. Narayanappa v/s. CIT 63 ITR 219*, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in *ITO v/s. Lakhmani Merwal Das 103 ITR 437* had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link

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between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13 In this case, the reasons as made available to the Respondent-Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14 Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

15 Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found fault with. This view of the Tribunal is in accordance with the settled position in law.





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16 Therefore, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

17 Accordingly, **Appeal dismissed.** No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)