

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT
MEMBER**

AND

SHRI N. K. CHOUDHRY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No. 7579/Del/2017
(Assessment Year: 2009-10)

Udesh Sharma,
Village & Post
Sadarpur, Ghaziabad
PAN: CZBPS8441K
(Appellant)

Vs. ITO,
Ward-2(1),
Ghaziabad

(Respondent)

Assessee by : Shri Anoop Sharma, Ld. Adv
Shri Sanjay Parashar, Ld. Adv
Revenue by: Shri Vipul Kashyap, Sr. DR

Date of Hearing 07/03/2022
Date of pronouncement 29/03/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The present appeal is preferred by the Assessee/Appellant herein against the order dated 14.11.2017 impugned herein passed by CIT(A)-2, Noida (hereinafter called in short as the "Id. Commissioner"), u/s 250 of the Income-tax Act, 1961 (in short "the Act") for the Assessment Year 2009-10.

2. The Assessee before us submitted that his case can be decided on legal issue qua reopening of the case u/s 147/148 of the Act, as the Assessee does not want to argue on merits of the case and will accept the result of order on legal issue, if adverse to the interest of the Assessee may be.

3. The case of the Assessee was re-opened by the AO by recording the reasons u/s 147 of the Act, on the basis of AIR information to the effect that the Assessee has deposited cash of Rs 44,00,500/- in his Saving Bank Account during the FY 2008-09. Though the AO issued a letter dated 30.10.2015 to the Assessee however, the Assessee did not make any compliance to the same. Therefore, the opinion was formed by the AO that source of deposit in saving bank account of the Assessee remained unexplained. The AO further observed that the Assessee has not filed return of income for the Assessment Year 2009-10, therefore, the amount of Rs. 4400500/- chargeable to tax escaped assessment within the meaning of section 147 of the Act. Consequently, the AO issued notice u/s 148 of the Act to the Assessee and ultimately made the addition of 33,80,000/- in the income of the Assessee.

4. Against re-opening of the case and making the said addition of Rs. 33,80,000/-, the Assessee filed first appeal before the Id. Commissioner and raised the issue related to the merits of the case and reopening of the case u/s 147/148 of the Act as well, mainly on the ground that the AO acted only on the basis of AIR information but did not apply his mind while recording the reasons u/s 147 of the Act and initiation of the proceedings u/s 147/148 of the Act, which goes to the root

of the case and deny the re-opening itself. The Assessee also relied upon various judgments of the jurisdictional High Court and the Tribunal in support of its case.

4.1 Though the Ld. Commissioner considered the contentions of the Assessee, however at the end, upheld the reopening of proceedings u/s 147/148 of the Act on the basis of AIR information and addition made by the AO.

5. The Assessee being aggrieved by the impugned order, preferred the instant appeal which is under consideration before us.

6. Heard the parties and perused the material available on record. The Assessee has challenged the action of the Ld. Commissioner in affirmation of re-opening of proceedings u/s 147/148 of the Act. The provisions of section 147 are very much clear as it authorizes the Assessing Officer to assess or re-assess the income chargeable to tax, if he has reason to believe that the income for any assessment year has escaped assessment and has duly recorded the reasons, however it is well settled that the reasons to believe must be bona fide and based upon some relevant material, on which a reasonable person could have formed the requisite belief.

6.1 Let us peruse the reasons recorded by the AO, which are as under:

“On the basis of AIR information that the Assessee has deposited cash of Rs. 44,00,500/- in his S.B. Account during

the F.Y. 2008-09, verification letter dated 30.10.2015 was issued, but the Assessee did not make any compliance to this letter. Hence, the source of deposit in saving bank account remained unexplained. The Assessee has not filed return of income for the A.Y. 2009-10.

I have, therefore, reasons to believe that the amount of Rs. 44,00,500/- chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Notice under section 148 may be issued.”

Sd/-
(Anil Kumar Sharma)
Income Tax Officer,
Ward-2(1), Ghaziabad.

6.2 Admittedly the first part of the Reasons recorded is only AIR information and the second part of the so-called reasons is mere reason for issuance of notice u/s 148 of the Act.

6.3 On the basis of reasons stated above, issue emerge as to whether reopening of case can be made u/s 147/148 of the Act, on the basis of AIR information alone without being corroborated and verifying independently by the AO.

6.4 The Hon'ble Jurisdictional High Court in the case of PCIT Vs. RMG (396 ITR 5) dealt with the issue qua Investigation Report and held as under:-

"As in the above case, even in the present case, the Court is unable to discern the link

between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO”.

6.5 Further in the case of CIT Vs. SPL's Siddhartha Ltd 345 ITR 223 also dealt with the identical issue and held as under:-

*“In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. **The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.** The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law”.

6.6 The jurisdictional High Court again in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd, 395 ITR 677 dealt identical with the issue has held as under:

*“In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. **The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.** The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.”

6.7 The Hon'ble High Court in the referred cases clearly held that it is established principle of law that if a particular authority has been designated to record his/her satisfaction on a particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or 'dictated' satisfaction.

6.8 From the judgments referred above, inference can also be drawn that demonstration of link between the tangible material and the formation of the reasons to believe that income had escaped assessment is necessary for reopening the case u/s 147/ 148 of the Act and the information received from the Investigations Wing or AIR cannot be said to be a tangible material per se without further inquiry being undertaken by the AO. The conclusion of the AO, based on the Investigation Report or AIR information indeed is a borrowed satisfaction.

6.9 Admittedly in this case, the AO while recording reasons for selection of the case on the basis of AIR information observed that the Assessee has deposited cash of Rs. 44,00,500/- in his S.B. Account during the F.Y. 2008-09 and therefore issued a verification letter dated 30.10.2015 to the Assessee who failed to respond the same, therefore inference was drawn by the AO that the source of deposit in saving bank account remained unexplained as the Assessee has not filed return of income for the A.Y. 2009-10.

6.10 We may observe that it was the bounden duty of the Assessee to comply with verification letter issued by the AO, which the Assessee deliberately disregarded and therefore in the absence of return of income, the AO had rightly drawn the inference that source of deposit in saving bank account remained unexplained and this fact goes against the Assessee, however considering the peculiar facts and circumstances of the case, *as the AO except issuing verification letter to the Assessee, has not made proper efforts to find out the veracity and authenticity of information and any corroborative evidence/material thereto and without connecting tangible material and the formation of the reasons to believe for escapement of income but only acted on the information while forming belief qua escapement of the income and initiation of proceedings u/s 147/148 of the Act,* we are of the considered opinion that the reasons recorded in the instant case are insufficient, vague and based on unsubstantive reasoning, uncorroborated material and lack of evidence and hence tantamount to be based on borrowed satisfaction and accordingly does not sound valid reasons in the eyes of law, for reopening of the case.

6.11 On the aforesaid discussions, the re-opening of the assessment proceedings u/s 147 of the Act by the AO and affirmation by the Ld. Commissioner was totally unjustified and therefore deserve quashing, hence ordered accordingly.

6.12 As we have already quashed the re-opening of the case itself, hence not proceeding to decide the case of merits as the same would be futile exercise only.

7 In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the open court on 29/03/2022.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 29/03/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi