

आयकर अपीलीय अधिकरण, D/‘SMC’ न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
D/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.2233/Mds./2017

(Assessment Year : 2011-12)

Smt.Premlata Chhajed,
48/2,Jain Colony,
Hunters Road,Vepery,
Chennai 600 007.

PAN AADPC 7080 R

(अपीलार्थी /Appellant)

The Income Tax officer,
Vs. NCW-5(4),Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.P.C.Jain, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 04.12.2017

घोषणा की तारीख /Date of Pronouncement : 05.12.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-5, Chennai dated 21.06.2017 pertaining to assessment year 2011-12.

2. The main grievance of the assessee in her appeal is with regard to confirming the reopening of assessment passed u/s.143(3) r.w.s147 of the Act by Ld.CIT(A) .

3. the facts of the case are that assessee while filing the return of income for assessment year 2011-12 on 22.07.2011 admitted total income of ₹2,11,880/-. The case was reopened u/s.147 of the Act and issuing of notice u/s.148 of the Act on 09.03.2015 by recording the reasons in assessment order as follows:-

“Based on the information received from DDIT (Inv.) Unit IV(2), Chennai-34 vide letter in No.DDIT/Unit-IV(2)/STR/2013-14 dt.10.03.2014. It is seen that the assessee has made huge value of cash deposits in bank and made huge debits and credits during the F.Y 2010-11 amounting to ₹12,81,000/-. This needs to be verified.

Hence, I (A.O.) have reason to believe that the case has to be reopened to assess the huge deposits and to bring the income escaped from assessment to tax as per Explanation 2(a) to sec.147 of the Income Tax Act, 1961.”

Consequently, the assessment was completed by considering ₹41,000/- deposited in bank account as unexplained cash deposit and also opening balance available as on 01.04.2011 at ₹83,000/- totaling of ₹1,24,000/- added to the income of assessee. Aggrieved the order of Id. Assessing Officer, the assessee challenged before Ld.CIT(A) that there is no sufficient reasons to reopen the assessment, the AO reopened the assessment based on the borrowed satisfaction. The assessee also challenged the additions made by the Id. Assessing Officer. On appeal, the Ld.CIT(A) confirmed the reopening of assessment as well as addition made by the AO. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. I have heard both the parties and perused the material on record. Regarding the reopening of assessment, which was re-opened on the basis of report received from DDIT (Inv.) Unit IV(2), Chennai-34 stating that the assessee has made huge value of cash deposits in bank and made huge debits and credits during the F.Y 2010-11 amounting to ₹12,81,000/- and the Id. Assessing Officer

wanted to verify it. As seen from the records, it cannot be said that the AO has independently applied his mind so as to arrive the satisfaction regarding escapement of income. On the other hand, the reasons recorded suggest that the satisfaction was not that of Id. Assessing Officer but of some other authority i.e. based on the information received from DDIT (Inv.) Unit IV(2), Chennai-34 vide letter No.*DDIT/Unit-IV(2)/STR/2013-14 dt.10.03.2014*. On that basis, the Id. Assessing Officer just mentioned that he has reason to believe that the case has to be reopened to assess the huge cash deposit and bring the escaped income to tax. In my opinion, the expression “reason to believe” in section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is “reason to believe” but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have

formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer.

5. In the present case, it is nowhere the case of the AO that he is having cause or justification to know or suppose that income had escaped from assessment. Once this is so, it has to be said that the Id. Assessing Officer had no reason to believe that income had escaped assessment, he should independently form an opinion that income escaped from the assessment by not disclosing the deposits to bank account in the return of income. The AO without forming opinion that deposits into bank account has not been shown to Department, he formed the opinion that income has escaped from assessment, which is not proper. Accordingly, I quash the re-assessment order itself.

6. Since, I have quashed the re-assessment order itself, I refrain from going into other grounds of appeal raised by the assessee.
7. In the result, the appeal of assessee is allowed.

Order pronounced on 05th December, 2017.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,
Dated the 05th December, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |