

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH 'SMC', PATNA**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 123/Pat./2017 : Asstt. Year : 2010-11**

Rajeev Ranjan, S/o Sita Ram Singh, Garhpar, Bihar Sharif, Nalanda-803101	Vs	Income Tax Officer, Ward-2(3), Bihar Sharif
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AGCPR5450R</b>		

**Assessee by : Sh. A. K. Rastogi &  
Sh. Rakesh Kumar, Advs.  
Revenue by : Sh. Abhay Kumar, Sr. DR**

<b>Date of Hearing : 14.03.2018</b>	<b>Date of Pronouncement : 16 .03.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 30.06.2017 of ld. CIT(A)-1, Patna.

2. Following grounds have been raised in this appeal:

*"1. For that the ld. CIT(A) has erred in dismissing the appeal.*

*2. For that the ld. CIT(A) has erred in upholding initiation of proceeding u/s 147/148 of the IT Act in absence of the condition precedents for such invocation.*

*3. For that the initiation of proceeding u/s 147/148 is ab-initio void, illegal and without jurisdiction.*

*4. For that the initiation of proceeding u/s 147/148 is on account of mere change of opinion and is not permissible in the eyes of law.*

*5. For that the ld. CIT(A) has failed to appreciate that the AO has proceeded for assessment without complying to the guideline laid down by the Apex Court in the case of GKN Driveshafts (India) Ltd. Vs ITO and Others reported in 259 ITR 19.*

*6. For that the ld. CIT(A) has erred in affirming addition of Rs.5,58,970/- on account of alleged investment in purchase of immovable property (land) which already stood disclosed in the balance sheet filed along with the return.*

*7. For that the sustenance of addition of Rs.5,58,970/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.*

*8. For that charging of interest u/s 234B & 234D amounting to Rs.31,524/- and Rs.19,832/- are wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.*

*9. For that the whole order is bad in fact and law of the case and is fit to be annulled.*

*10. For that other grounds, if any, shall be urged at the time of hearing of the appeal."*

3. Vide Ground Nos. 1 to 5, the grievance of the assessee relates to the confirmation of action of the AO for initiation of proceedings u/s 147/148 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the original assessment in this case was framed u/s 143(3) of the Act on 08.01.2013 at the total income of Rs.4,10,720/-. Subsequently, the AO reopened the assessment u/s 147 of the Act after recording the reasons. Accordingly, notice dated 26.12.2014 u/s 148 of the Act was issued and served upon the assessee. In response, the assessee stated that the return of income originally filed by him may be treated in response to the said notice. Thereafter, the AO framed the reassessment u/s 144 of the Act and made the addition of Rs.5,58,970/- on account of investment in the land.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that the assessee filed the return of income on 09.07.2010 alongwith the

audited set of accounts, thereafter, an order u/s 143(3) of the Act was passed on 18.01.2013. It was further stated that there was no allegation of failure on the part of the assessee to make a return u/s 139(1) of the Act and/or to disclose fully and truly all material facts necessary for assessment which is a sine qua none for invoking first proviso to Section 147 of the Act and that the reasons recorded nowhere alleged any such failure and hence the initiation of proceedings u/s 147 of the Act was wholly illegal and without jurisdiction. It was also stated that there was no nexus between the material in possession of the department and formation of belief to escapement of income. It was further stated that the reasons recorded by the AO would reveal that he acted merely on reasons to suspect, there was no reasons to believe that income has escaped assessment and that no direct or circumstantial evidence was referred to by the AO who acted on mere suspicion, gossip and rumour. The reliance was placed on the judgment of the full Bench of Hon'ble Delhi High Court in the case of CIT Vs Kelvinator of India Ltd. reported at 256 ITR 1 which had been affirmed by the Hon'ble Supreme Court as reported in 320 ITR 561. It was accordingly submitted that the reassessment may be annulled.

6. The Id. CIT(A) after considering the submissions of the assessee observed that the assessment in this case was reopened u/s 147 of the Act after recording the reasons for the same which was communicated to the assessee who filed the objections against the reasons for reopening which were also disposed off by a separate order by the AO and thereafter the reassessment proceedings were undertaken. He further observed that the AO had clearly recorded his reasons in respect of escapement of income for investment in land which had escaped assessment. Therefore, the initiation of proceedings u/s 148 of the Act was legally valid.

7. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee duly disclosed the investment in land. A reference was made to page no. 13 of the assessee's paper book which is the copy of the balance sheet as on 31.03.2010 wherein under the head fixed assets land had been mentioned for a sum of Rs.5,00,000/-. It was further submitted that during the course of regular assessment proceedings, the AO asked the assessee about the investment and the assessee explained to the AO that the land was purchased in the name of his wife Smt. Kamini Kumari and he invested Rs.5,00,000/-, the remaining amount was taken on loan and that the source of income was agricultural and trading for potatoes & onion, a reference was made to page no. 21 of the assessee's paper book. It was further stated that the AO in the reasons recorded stated that on examination of the assessment record, it was found that the assessee had purchased the land in question. Therefore, the reopening was only on the basis of the informations available on the assessment record which relates to the original assessment framed by the AO u/s 143(3) of the Act by proper application of mind. Therefore, the reopening of the assessment was a mere change of opinion. The reliance was placed on the judgment of the Hon'ble Supreme Court in the case of CIT Vs Kelvinator of India Ltd. reported at (2010) 320 ITR 561.

8. In his rival submissions, the Id. Sr. DR strongly supported the orders of the authorities below and reiterated the observation made by the Id. CIT(A) in the impugned order.

9. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the original assessment was framed by the AO u/s 143(3) of the Act on 08.01.2013. Thereafter, the AO reopened the assessment by recording the following reasons,

(copy of which is placed at page no. 20 of the assessee's paper book) which read as under:

*“On examination of assessment records, it is found that the assessee has purchased the land which costed him Rs.5,58,970/- altogether with value of stamp duty & registration charges. The assessee has not furnished/explained the source of fund invested towards this purchase. Further, the income shown by the assessee in its R/I for the A.Ys. 2008-09 & 2009-10 are only Rs.1,05,000/- & Rs.1,58,500/- respectively, whereas, the assessee has offered the income of Rs.3,69,720/- only for the A.Y. 2010-11. As such, the meager income offered by the assessee in its R/Is do not prima facie explain the source of income so that it can invest Rs.5,58,970/- towards purchase of land. As such, I have reason to believe that income to the tune of Rs.5,58,970/- has escaped assessment within the meanings of the provisions of section 14A of the Act.”*

10. From the aforesaid reasons recorded, it is clear that the AO initiated the proceedings u/s 147 of the Act only on the basis of the assessment records wherein it was mentioned that the assessee had purchased land. Now question arises as to whether that issue was examined by the AO during the course of original assessment proceedings or not. In this regard, the Id. Counsel for the assessee drew our attention towards page no. 21 of the assessee's paper book which is a letter written by the assessee to the AO during the course of original assessment proceedings wherein it was mentioned that the assessee purchased land in the name of his wife Smt. Kamini Kumari on 11.09.2009, he invested Rs.5,00,000/- and the remaining amount was invested by taking the loan. It is also noticed that the assessee disclosed this facts in his balance sheet dated 31.03.2010 (copy of which is placed at page no. 13 of the assessee's paper book) wherein under the head fixed assets, the investment in land during the year has been shown at Rs.5,00,000/- which the assessee explained to the AO that it was his investment and the land was in the name of his wife. Therefore, the issue on the basis of which the reopening was done by the AO was examined during the course of original assessment

proceedings u/s 143(3) of the Act. In my opinion, when the AO after proper application of mind has accepted the version of the assessee than the reopening on the same issue was mere change of opinion which is not permissible as has been held by the Hon'ble Apex Court in the case of CIT Vs Kelvinator of India Ltd. (2010) 320 ITR 561 (supra) wherein it has been held as under:

*“The concept of “change of opinion” on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of Section 147 of the Income-tax Act, 1961, by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment, the Assessing Officer has to have reason to believe that income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of “change of opinion” must be treated as an in-built test to check the abuse of power. Hence after April 1, 1989, the Assessing Officer has power to reopen an assessment, provided there is “tangible material” to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief.”*

11. In the present case, as we have already pointed out that the AO in the regular assessment has accepted the explanation of the assessee on the same issue on which the reopening was done by the AO. Therefore, it was a mere change of opinion and the reopening done u/s 147 of the Act by the AO was not valid. Accordingly, the reassessment framed in this case is quashed.

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

(Order Pronounced in the Court on 16 /03/2018)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 16 /03/2018**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**

