

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 6362/Mum/2016 (Assessment Year 2007-08)

Dr. Meena Dixit 51, Tower-A Kalpataru Habitat Dr. S.S. Rao, Parel Mumbai-400 071. PAN : AFVPK1638Q (Appellant)	Vs.	ITO 34(2)(3) Mumbai (Respondent)
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Assessee by	Shri Prakash Joshi
Department by	Shri Saurabh Deshpande
Date of Hearing	1.5.2018
Date of Pronouncement	1.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 31.8.2016 passed by the learned CIT(A)-46, Mumbai and it relates to A.Y. 2007-08. The assessee, inter alia, is challenging the validity of re-opening of assessment and also challenging the validity of various additions made in the reopened assessment.

2. The assessee is employed with Grant Medical College, Byculla, Mumbai. She filed her return of income on 31.7.2007 declaring total income of ₹ 3,50,256/-. Subsequently, the Assessing Officer reopened the assessment by recording following reasons:-

“Ms. Meena Dixit - (PAN AFVPK1638B)
A.Y. 2007-08

The assessee has filed return of income on 31.07.2007 declaring total income of ₹ 3,50,2567-. Information was received from ITO-17(1)(1), Mumbai, vide his letter dated 10.03.2014, bearing No. ITO-17(1)(1)/CIB Intimation-2006/2013-14 that the assessee had transactions amounting to Rs.12,09,679/- with Standard Chartered Bank. It is seen from Annual Information Return (AIR) data that the assesses has paid a

total of Rs. 15,95,000/- for purchase of bonds issued by RBI. The assessee has also entered into transactions for purchase of immovable property valued at Rs. 47,40,000/- and Rs. 32,60,000/- on 23.05.2006 as per information received through AIR from the Jt. Sub-Registration Office, MSD, Andheri, Mumbai. Thus, prima-facie considering the quantum involved in the various information and the returned income of only Rs. 3.50,256/-, I am therefore satisfied that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act,1961. Notice u/s 148 is therefore being issued.

As more than 4 years have elapsed after the end of assessment year, approval of Addl.CIT, needs to be taken as per the provisions of section 151 of the I.T. Act, 1961. Hence, it is requested that sanction may kindly be given for issuance of notice u/s 148 of the I.T. Act.

*(S.G.Menon)
Assistant Commissioner of Income Tax -26(1)
Mumbai”*

3. The case of the assessee is that the reopening of assessment is bad in law. The Learned AR submitted that the Assessing Officer has reopened the assessment only to verify certain information, which he has received through AIR. He submitted that mere receipt of certain information will not give any reason to believe that the income of the assessee has escaped the assessment. He submitted the Assessing Officer did not mention the basis from which he has entertained the belief that there was escapement of income. Accordingly, learned AR submitted that the Assessing Officer has reopened the assessment only on suspicion that there may be escapement of income. The question as to whether there was escapement of income or not could not have been determined by the AO on receipt of certain information without making fishing enquiries. Accordingly the Learned AR submitted that the assessment cannot be reopened on the basis of any reason which gives suspicion that there was escapement of income. For this proposition, learned AR relied on following case laws :-

- Bakulbhai Ramanlal Patel Vs. ITO (56 DTR 212)
- Krown Agro Foods (P) Ltd. Vs. ACIT (375 ITR 460)

Accordingly he submitted that the reopening of assessment is not valid for the above said reasons.

4. The Learned AR further submitted that the Assessing Officer has reopened the assessment to examine transactions made with Standard Chartered Bank, investments made in RBI Bonds and also to examine purchase of immovable properties on 23.6.2006. The Learned AR submitted that the assessee did not have any bank account with Standard Chartered Bank and also she did not purchase any property on 23.6.2006. The RBI bonds have also been purchased through bank accounts only. Consequently, the Assessing Officer did not make any addition in respect of above cited three transactions. He submitted that Hon'ble Bombay High Court, in the case of CIT Vs. Jet Airways (I) Ltd. 331 ITR 236, has held that if after issuing a notice under section 148, the Assessing Officer accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. Accordingly, he submitted that the additions made in the impugned assessment order are liable to be deleted as per the proposition laid down by Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra), since the assessing officer did not make any addition on the reasons on which the assessment was reopened.

5. The Learned AR further submitted that the learned CIT(A) has observed that the assessee has, in fact, sold two properties on 23.6.2006 and the same has been wrongly reported as "purchase of properties" by the sub-registrar. Hence the AO has also mentioned in the reasons recorded that the assessee has purchased the properties. Accordingly the learned CIT(A) has taken the view that it is an apparent error committed by Joint Sub-Registration Office, MSD, Andheri, Mumbai and hence reasons so recorded by the Assessing Officer cannot be found fault with. The Learned AR submitted that the reasons originally recorded by the Assessing Officer cannot be modified or amended or

cannot be supplemented by filing affidavit or by making oral submission as held by Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. Vs. R B Vadkar (268 ITR 332).

6. Accordingly the learned AR submitted that the reopening of assessment is not valid in law and, in any case, additions made by the Assessing Officer in the impugned order are beyond his jurisdiction as per the decision rendered by the jurisdictional High Court in the case of Jet Airways Ltd (supra).

7. On the contrary, the learned DR strongly supported the order passed by the learned CIT(A) on this issue.

8. We have heard the rival contentions and perused the record. A Careful perusal of the reasons recorded by the Assessing Officer would show that the Assessing Officer has reopened the assessment in respect of following three transactions:

- (i) Transaction amounting to Rs.12,09,679/- with Standard Chartered Bank.
- (ii) Payment of Rs. 15,95,000/- for purchase of bonds issued by RBI.
- (iii) Purchase of immovable property for Rs.47,40,000/- and Rs. 32,60,000/- on 23-06-2006 as received through AIR from Jt. Sub Registration Office, MSD, Andheri, Mumbai.

9. Admittedly, Assessing Officer did not make any additions in respect of above said three issues meaning thereby, the Assessing Officer was satisfied during the course of reassessment proceedings that the above said three transactions does not warrant any additions. Since no addition was made in respect of issues from which the Assessing Officer drew belief that there was escapement of income, it is not open for him to make any other addition as per decision rendered by Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra). Accordingly, following the binding decision of Hon'ble Jurisdictional Bombay High Court, all additions made by the Assessing Officer

in the impugned reassessment order are liable to be deleted. We order accordingly.

10. We have also noticed that the Assessing Officer has reopened the assessment to verify the three transactions mentioned above. As rightly pointed out by learned AR, the Assessing Officer has received information about the transactions and he did not refer to any material from which he drew the belief that there was escapement of income. The question as to whether or not there was escapement of income could have been answered by the AO only after making fishing enquiries. Hence there is merit in the contentions of the Ld A.R that the information received by the AO merely gave reason to suspect that there was escapement of income. The reopening of assessment on the basis of suspicion is not valid as held by Hon'ble Gujarat High Court in the case of Bakulbhai Ramanlal Patel Vs. ITO (56 DTR 212). Accordingly the re-opening of assessment is not valid for this reason.

11. The learned CIT(A) has taken the view that there was error in the report given by Joint Sub-Registrar and same has resulted in mistake in recording the reasons by the Assessing Officer. It has been held by Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (supra) that reasons recorded by the Assessing Officer cannot be supplemented or amended subsequently. Hence, we are unable to agree with the view so expressed by the learned CIT(A) on this issue.

12. In view of the foregoing, we are of the view that reopening of assessment is not valid in the eyes of law. In any case, the additions made by the AO in the reassessment order are liable to be deleted since the Assessing Officer did not make any addition on the issues on which assessment was reopened.

13. Accordingly, we set aside the order passed by the learned CIT(A) and quash the assessment order passed by the Assessing Officer.

14. In the result, appeal filed by the assessee is allowed.
Order has been pronounced in the Court on 1.5.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 1/5/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Senior Private Secretary)
ITAT, Mumbai