

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**ITA No. 243/Agra/2017
(ASSESSMENT YEAR: 2006-07)**

Shri Satyadev Singh, Village Jaiswa, Post Bakla, Mathura. PANNo.AHBPS7182D (Assessee)	Vs.	ITO,3,(4), Mathura. (Revenue)
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Assessee by	Shri Anurag Sinha, AR.
Revenue by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	12.04.2018
Date of Pronouncement	04.06.2018

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

This is assessee's appeal for A.Y. 2006-07, raising the following grounds:

- “1. *BECAUSE, upon due consideration of facts and in the overall circumstances of the case 'appellant' denies its liability to be assessed in terms of Notice dated 22.03.2013 said to be issued under section 148 of the 'Act'.*

2. *BECAUSE, the Ld CIT(A) failed to appreciate that 'No Notice' under section 148 of the 'Act' was served upon the 'appellant' and ex-parte assessment was completed without serving any Notice under section 148 of the 'Act' render the Assessment Order void-ab-initio.*

3. *BECAUSE, the authorities below failed to appreciate that the purported 'Reasons' as reproduced in the Assessment Order are No 'Reasons' in the eyes of Law. The so called 'Reasons' do not show any application of mind on part of the 'AO' to show that any Income liable for Tax has escaped assessment warranting recourse to Notice under section 148 of the Act.*
4. *BECAUSE, the Assessment framed under section 144 of the 'Act' is also bad on facts and in law too having been completed without service of any Notice upon the 'Appellant'.*
5. *BECAUSE, the impugned Assessment Order is barred by limitation.*

WITHOUT PREJUDICE TO THE ABOVE

6. *BECAUSE, the authorities below was highly unjustified in making addition of amount as was deposited in the Bank Account of the 'appellant' represented Sale Proceeds of Agriculture Land which is not a Capital Asset as defined under section 2(15) of the 'Act' therefore, even on merits no addition can be made in peculiar facts of the case where assessee has no other source of Income expect Agriculture Income.*
7. *BECAUSE, 'appellant' has sufficiently and satisfactorily explained the deposits in his bank account and the addition has been made on presumptions and surmises in*

utter ignorance of the settled legal position that in re-assessment proceedings the onus is on the 'AO' to prove that cash deposits represents 'Income' which has escaped assessment.

8. *BECAUSE, in any case and in any view of the matter impugned additions/disallowances and impugned assessment order is bad in law, illegal, unjustified barred by limitation, contrary to facts and law based upon incorrect assumption of facts and further without allowing adequate opportunity of hearing in violation of principals of natural justice and therefore, the additions made deserves to be quashed.*

The 'appellant' craves leave to add, alter or vary the grounds of appeal before or at the time of hearing."

2. Ground Nos. 2 and 4 are not pressed. Rejected as not pressed.
3. The AO recorded the following reasons to believe escapement of income:

"Information of Non PAN AIR through CIB has been received that assessee has deposited Rs. 25,20,000/-. Assessee is not filing return of Income. It is reasons to believe that assessee has concealed income chargeable to tax which has escaped assessment. Thus it is a fit case for action u/s 147 of the Act. Proposal is put up for kind approval of Jt. CIT Range-3, Mathura."

4. Apropos Ground No.3, this issue was raised by the assessee before the Id. CIT(A) too, by way of Ground No.3, that 'Because, the purported 'Reasons' as reproduced in the Assessment Order are No 'Reasons' in the Eyes of Law. The so called 'Reasons' do not show any application of mind on the part of the 'AO' to show that any income liable to Tax has escaped Assessment warranting recourse to Notice u/s 148 of the IT Act'. The assessee relied on:

- (i) 'Bir Bahadur Singh Sijwali vs. ITO', 68 SOT 197 Delhi and
- (ii) 'Saraf Gramodyog Sansthan vs. ITO', 108 ITD 115 (Agra).

5. Though the assessee's reliance on these decisions has been taken note of at page 4 of the impugned order, they have not been dealt with by the Id. CIT(A). The issue raised by the assessee has, thus, not been decided.

6. The Id. Counsel for the assessee has contended that the Authorities below have failed to appreciate that the reasons recorded by the AO are, in fact, no reasons in law, inasmuch as they do not show any application of mind on the part of the AO, before recording of such reasons, to the information received; that as such, no notice u/s 148 of the Act was warranted, since the reasons do not show as to how the AO came to the belief that any income liable for tax had escaped assessment. It has been contended that the Id. CIT(A) has erred in not considering 'Sijwali' (supra) and 'Saraf' (supra). Further, reliance has been placed on 'Sunil

Kumar Saraswat vs. ITO', order (APB 46-57) dated 26.09.2017, passed by the SMC Bench of the Agra Tribunal in ITA No.109/Agra/2017, for A.Y. 2008-09, wherein, 'Sijwali' (supra) has been followed.

7. Per contra, supporting the impugned order, the ld. DR has contended that 'Sijwali' (supra) has not taken into consideration that receipt of money is prima facie evidence against the assessee. It has been contended that in para 15 of the said order, it has been held that adequacy of material before the AO at the time of recording of the reasons cannot be gone into by the Court. Reliance has been placed on 'M/s Ginni Filaments Ltd. Vs. CIT', order (copy filed) dated 31.03.2011, passed by the Hon'ble Jurisdictional Allahabad High Court in Writ Tax No. 1402/2004.

8. We have heard the parties and have perused the material on record.

9. In 'Sunil Kumar Saraswat' (supra), following 'Sijwali' (supra), it has been observed, inter alia, as follows:

“12. Now, in keeping with “Bir Bahadur Singh Sijwali” (supra), this information cannot form a valid basis for initiation of assessment proceedings under section 147 of the I.T. Act. As observed in “Bir Bahadur Singh Sijwali” (supra), the mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income which has escaped assessment.”

10. The Department's contention that receipt of money is prima facie evidence against the assessee, was not up for consideration in 'Sijwali' (supra). Too, even if this argument be taken, it does not at all absolve the AO of his duty under the Act to make inquiry in this regard. No such inquiry is evincible from the reasons recorded, as reproduced hereinabove. The AO, squarely, has not applied his mind to the information received, before recording the reasons.

11. Apropos 'Saraf' (supra), therein, again, no question was asked of the assessee by the AO before reopening the assessment. It was on this basis, that it was held that the AO could not have formed the belief of escapement of income and that hence, the reopening was without jurisdiction and invalid. It was, inter alia, observed as under:

"17. The crucial expression for assumption of jurisdiction Under Section 147 is "any income chargeable to tax has escaped assessment for any assessment year". Thus, the Assessing Officer has to record in the reasons that a particular item was chargeable to tax has escaped assessment. In the present case, the Assessing Officer has written that a sum of Rs. 1,02,047/- deposited in the bank account has escaped assessment. This belief he has arrived on the basis of the fact that return of income has not been filed, but where the income is not above the minimum amount assessable, i.e. where income is below exemption limit, the return is not required to be filed

and therefore, any deposit in a bank account will not automatically lead to the inference that it was chargeable to tax. The Assessing Officer ought to have verified from the books of accounts whether this deposit was recorded in regular books or not. If it was recorded in the regular books, then it could not be said that this deposit was automatically liable to taxed. Deposit in the bank account can be covered by various receipts recorded in the cashbook. Without verifying the deposits in the bank statement with the regular books maintained by the assessee one cannot come to the inference that such bank deposits were chargeable to tax. No doubt, the deposits in the bank account are investment covered by [Section 69](#) and where they are not explained they are liable to be added as deemed income of the assessee. But mere deposit of an amount alone in the bank account cannot give an inference that this was liable to be taxed as income and assessee has not disclosed the same and therefore, it has escaped assessment. No question has been asked from the assessee before reopening the assessment as to the source of the deposits in the bank account.

18. Once survey Under [Section 133A](#) is being done and the Assessing Officer has, as stated, found books of accounts and documents, it was incumbent upon the Assessing Officer to ask the assessee as to the source of these deposits and as to whether they are recorded in the regular books of accounts. In a case where deposits in the bank account are recorded in the regular books of accounts then there is an explanation, which is

satisfactory and one could not come to the conclusion that they were chargeable to tax. If any deposit in the bank account was not recorded in the regular books then certainly, there is prima facie material to form a belief that such deposits were liable to be taxed Under [Section 69](#) and hence, income chargeable to tax has escaped assessment. Therefore, we are of the considered view that unless the Assessing Officer asked for an explanation from the assessee before initiating action Under [Section 148\(1\)](#) and recorded the reasons there for or verifies the deposits with the books of accounts, if maintained, the Assessing Officer could not have come to the belief that income chargeable to tax has escaped assessment. Filing of return or not filing of return would depend whether final income as per Profit & Loss account drawn by the assessee on the basis of books of accounts reflect taxable income or not. Merely not filing of return of income will not result; into an inference that any deposit in the bank account was chargeable to tax and therefore, had escaped assessment, even if that amount exceeded minimum amount chargeable to tax, i.e., exceeded the exemption limit. We derive support for this conclusion from the decision of M.P. High court in [Biaora Constructions \(P\) Ltd. v. Director of Income Tax \(Inv.\)](#) for the proposition that if an amount as recorded in the regular books then it cannot be said to be concealed. Thus, where an amount is recorded in the regular books, it will not be automatically inferred that it was chargeable to tax and it has escaped assessment. Thus, we hold that formation of belief by the Assessing Officer for reopening

the assessment was not legally proper as on the basis of facts recorded in the reasons he could not have come to the inference that sum of Rs. 1,02,047/- has escaped assessment. We, thus, hold that Assessing Officer has not formed a proper belief on the basis of material brought in the reasons so recorded and therefore reopening of the assessment was without jurisdiction and invalid. The assessment on that basis is required to be annulled.

12. The observation regarding absence of necessary inquiry by the AO in the light of the information received cannot be said to be an act of going into the adequacy of the material before the AO at the time of recording the reasons. Also, a judgment, it is trite, needs to be read as a whole.

13. So far as regards 'M/s Ginni Filaments', (supra), this decision, besides reiterating the settled proposition that sufficiency of material cannot be examined by the Court, holds that there must be a nexus between the material and the belief of escapement of income. There is no quarrel, as none can be, regarding immunity of the sufficiency or otherwise of material from examination by the Court. This matter stands adverted to in the preceding para. Next, concerning the nexus between the material and the formation of the belief, the reasons recorded do not show such a nexus. Inquiry by the AO is this nexus and perusal of the reasons shows this nexus or link to be missing in the present case. So, 'M/s Ginni Filaments' (supra) works in favour of the assessee, rather than against him.

14. In view of the above, the grievance of the assessee by way of ground No.3 is found to be justified. It is accepted as such. The reasons recorded by the AO are, thus, held to be null and void. Nothing further survives for adjudication.

15. In the result, the appeal is partly allowed.

Order pronounced in the open court on 04/06/2018.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated: 04/06/2018

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR