

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'SMD', CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 1139/CHD/2017

Assessment year: 2007-08

Smt. Prabha Goyal,
SCF-71, Grain Market,
Sector 26, Chandigarh.
PAN No. :AJMPG2545B

Vs

The ITO,
Ward 5(1),
Chandigarh.

&

ITA No. 1140/CHD/2017

Assessment year: 2007-08

Poonam Goyal,
SCF-44, Grain Market,
Sector 26, Chandigarh.
PAN No. :AAYPG0402C

Vs

The ITO,
Ward 5(1),
Chandigarh.

(Appellant)

(Respondent)

Appellant by: Shri Sudhir Sehgal
Respondent by: Smt. Sukhwinder Sharma, Addl. CIT

Date of hearing : 08.05.2018

Date of Pronouncement : 23.07.2018

ORDER

PER DIVA SINGH

The present appeals have been filed by different assessee assailing the correctness of the separate orders dated 26.05.2017 of Id. CIT(Appeals)-2 Chandigarh pertaining to 2007-08 assessment years.

2. Both these appeals are being decided together as the issues raised in the present appeals are identical. It was common stand of the parties before the Bench that the arguments advanced in ITA 1139/CHD/2017 on the jurisdictional issue would address the arguments in the other appeal also. Accordingly, we first take up for consideration the issue raised by the assessee in ITA 1139/CHD/2017 :

1. *Based on the facts and circumstances of the case and in law, the Learned CIT(A) erred in upholding the order of Learned AO under section 147/148 read with section 143 of the Income-tax Act, 1961 in the absence of escapement of income during AY 2007-08.*
2. *Based on facts and circumstances of the case and in law the re-assessment proceedings initiated by the Learned AO were bad in law and liable to be quashed.*
3. *That the facts and circumstances of the case, the Learned AO erred in making the addition of Rs 10,00,000/- in the income of the Appellant. Without*

appreciating the fact that the amount has already been fully disclosed in the return of income.

4. *The Appellant craves leave to add, alter, omit or substitute any or all the above grounds of appeal.*
5. *Based on the facts and circumstances of the case and in law, the Learned AO has erred in initiating penalty proceedings under section 271(1) (c) of the Act.*

All the above-mentioned grounds of appeal are without prejudice and notwithstanding to each other.

Further, reserves a right to submit such statements, documents and papers, as may be considered necessary, at any time before or at the time of appeal, to enable your office to decide the appeal based on merits.

2.1. The ld. AR inviting attention to the ground raised and Paper Book page No. 4 which is a copy of the reasons recorded submitted that in the facts of the present case, nothing has been referred to in the reasons recorded to justify the re-opening. For ready reference, the relevant extract is reproduced hereunder :

Reasons for initiating proceeding u/s 147 of the ITAct.1961

<i>Name & Address</i>	<i>Smt. Prabha Goyal W/o Shri Subhash Chand Goyal, SCF No.44, Grain Market, Sector 26, Chandigarh.</i>
<i>A.Y.</i>	<i>A.Y. 2007-08</i>
<i>PAN</i>	<i>AJMPG2545B</i>
<i>Status</i>	<i>Incl.</i>

As per AIR information related to purchase of properties available in this office, the assessee during the financial year 2006-07 had made investment of Rs.86,00,000/- and Rs.1,05,00,000/- with other five persons having equal share which comes to Rs.31,83,333/-. As per this office records assessee has not declared this transactions in his income tax return Therefore, income chargeable to tax amounting to Rs.31,83,333/- (1/6th part of Rs.1,40,60,096/-) has escaped assessment for A.Y.2007-08 by reasons of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for A.Y.2007-08.

In view of the above, I have reasons to believe that the above amount of Rs. Rs.31,83,333/- for the F.Y.2006-07 relating to A.Y.2007-08 has escaped assessment.

Issue notice u/s 148.

Sd/-

*(MAHENDER SINGH)
Income Tax Officer, Ward 5(1),
Chandigarh.*

2.2 Inviting attention to the impugned order, it was his submission that though before the CIT(A), the assessee had also assailed the lack of service by a proper notice, however, the assessee in the present proceedings would only address the limited issue of jurisdiction i.e. with the information in his possession the AO could not have formed a view that income had escaped assessment. Referring to the reasons recorded it was submitted that it did not reflect any reason on the basis of which he could be said to have formed a view that income had escaped assessment.

The mere fact that the assessee had made an investment, it was his submission cannot trigger a re-opening. The AO should have considered atleast some independent fact so as to justify the formation of his belief. It was his submission that there is no column in the Income Tax form wherein the assessee can reflect investments. In the facts of the present case, assessee had returned an income on 06.06.2007 and the re-opening in the peculiar facts in the hands of the assessee in the present proceedings i.e. Smt. Prabha Goyal and also in the other case of Poonam Goyal whose appeal is also listed in the present proceedings is without any application of mind of the AO. Relying upon the decisions available in the Paper Book it was his submission that re-opening is bad in law. Following decisions were specifically brought to our notice in support of the prayer:

1. *Sarika Jain V/s Income Tax Officer* | 46 ITR (Trib) 246 CHD-TRIB
2. *Krown Agro Foods Pvt. Ltd V/s Assistant Commissioner of income Tax I 120 DTR" 241 DEL-High Court*
3. *Amrik Singh V/s Income Tax Officer i 181TTJ95ASR-Tribunal*
4. *Surinder Mohini Bawa V/s Income Tax Officer* | ITA No. 649/ASR/2015, ITAT, Amritsar Bench, Amritsar
5. *Signature Hotels (P) Ltd V/s Income Tax Officer* | 338 ITR 51 DEL-HC
6. *United Electrical Company (P) Ltd V/s Commissioner of Income Tax J 258 ITR 317 DEL-High Court*
7. *JCIT V/s George Williamson (Assam) Ltd* \ 258 ITR 126 GAU-HC
8. *Commissioner of income tax V/s Orient Craft Ltd I 354 ITR 536 DEL-HC*

2.3 Referring to the facts in **ITA 1140/CHD/2017**, attention was invited to the copy of the reasons recorded available in the Paper Book at page 3 which it was shown is also identical to the reasons recorded in the case of Prabha Goyal. It was submitted that on earlier occasion, assessee had been directed to show that what is the position in the case of the remaining owners as the respective assesses in the present proceedings owned 1/6th share each as per the following extract, reproduced in the assessment order;

<i>Loan from Bank SBOP, Sector 26, Chandigarh</i>	<i>Rs. 65,00,000.00</i>
<i>Investment made by Shri Jai Parkash (co-owner)</i>	<i>Rs.55,02,250.00</i>
<i>Investment made by Smt. Kamlesh Goyal (co-owner)</i>	<i>Rs. 16,46,000.00</i>
<i>Investment made by Shri Subhash Chand Goyal (co-owner)</i>	<i>Rs.26,51,800.00</i>
<i>Investment made by Smt.Prabha Goyal (co-owner)</i>	<i>Rs. 10,00,000.00</i>
<i>Investment made by Shri Naresh Kumar Goyal (co-owner)</i>	<i>Rs. 12,50,000.00</i>
<i>Investment made by.Poonam Goyal (co-owner)</i>	<i>Rs. 27,00,000.00</i>
<i>Total :</i>	<i>Rs 2,12,50,050.00</i>

2.4 It was submitted that in the case of Shri Jai Parkash; Kamlesh Goyal, Subhash Chand Goyal and Naresh Kumar Goyal who were all co-

owners in the said property, the AO after recording reasons and issuing questionnaires has passed the orders u/s 147(3)/147 dated 11.11.2014 in the case of **Shri Jai Parkash**, copy of the same was filed, referring to the same it was submitted that no addition on this ground was made. Similarly, in the case of **Shri Naresh Kumar Goyal** with a similar order dated 12.01.2015, it was submitted that no addition on this ground had been made, copy of which was also filed. Same was the position in the case of **Kamlesh Goyal** wherein similar order dated 05.08.2014 was passed.

2.5 Accordingly, it was his submission that the re-opening is bad in law.

2.6 The Id. AR was directed to argue the appeal also on merits. Even on merits, it was his submission that addition is not maintainable. The argument advanced before the AO and the CIT(A) wherein for Prabha Goel, it was argued that she was income tax assessee for the last 10 years and has explained that advance of Rs. 10 Lacs was given from the past savings and handed over to Sh. Subhas Goyal who further handed over the same. For Poonam Goyal wife of Sh Naresh Kumar, it was submitted the assessee had explained before the AO that the amounts were from her past savings from rental income and income from other sources etc. The AO has not cared to examine and straight away made an addition of Rs. 14 lacs in her hands. The explanation before the CIT(A) both on the jurisdictional issue as well as on merit is being relied upon as he has confirmed the order of the AO in a perfunctory manner.

3. Ld. Addl. CIT Ms. Sukhwinder Sharma relying upon the impugned order submitted that re-opening has been done on the basis of AIR information and thus, the AO was fully justified to reopen the cases. The decisions cited by the Id. ARs, it was submitted were not applicable. It was her submission that she would heavily rely upon the impugned order. The two ladies were assessed to tax from the same sources over the years was not upset by her. On merits also, reliance was upon on impugned order.

4. We have heard the rival submissions and perused the material on record. On going through the reasons recorded, we find that in the facts of the present case, there is no reference to any fact, information or tangible material referred to by the AO to hold that some material was considered by him after which he formed the belief that income has escaped assessment. The AO notes the bare fact as available in AIR information.

Apart from that there is no other material referred. The mere fact that on investment is made in a specific year by itself cannot be a triggering factor or for reopening. It may be a triggering factor to consider the record and then record reasons referring to material which led to the formation of the belief. The AO is well aware that in the returns there was no column for referring to investments made. Thus the so called justification that as per the office records the assessee had not declared this transactions in her income tax return by itself is of no relevance and supports the assessee's arguments that no other material was seen by the AO and he has blindly accepted this information as an act of income escaping assessment. There is no material referred to by him which can be said to have been considered by the AO so as to demonstrate that he had formed his view taking into consideration the facts. The reasons recorded shows that the AO in the facts of the present case the AO has proceeded to act on the basis of suspicions. The Sr.DR was unable to show any material which could be said to have been considered before the formation of belief. The mere fact that the assessee has made investment, cannot be said to be information warranting reopening by itself. The ld. AR has argued the appeal on merits also wherein it has been stated that assessee has been tax-payer for almost 10 years. This position of being a tax prayer for the last ten years or so is the same in the case of Ms. Poonam Goyal also i.e. in ITA 1140/CHD/2017. We find on reading of the reasons recorded that the AO has not even cared to consider the possibility of availability of the amount of Rs. 10 lacs by the assessee from past savings and rental income as stated and in the case of Poonam Goyal Rs. 14 lacs. The mere fact that there was AIR information available, as argued by the ld. Sr.DR before AO, we find by itself does not empower AO to reopen. We find support from the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Smt. Paramjit Kaur 311 ITR 38, decision of the Delhi High Court in the case of Signature Hotels P.Ltd. Vs ITO 338 ITR 51 and CIT Vs Atul Kumar Swamy 362 ITR 693 and CIT Vs Orient Craft Ltd. 354 ITR 536, CIT Vs Atlas Cycle Industries 180 ITR 319. The issue is well settled as enunciated by the Hon'ble Delhi High Court in the case of Krown Agro Foods P.Ltd. Vs ACIT (2015) 232 Taxman 0113 (Del) that the requirements of law for re-opening an assessment is reason to belief and not reason to suspect. In the facts of the present case, we find that the reason to believe recorded by the AO was not based on any material that had come to the knowledge of the AO.

The AIR information that the assessee had made an investment could be a triggering fact for creating a suspicion which the AO was under law required to cross check from the information by way of returned income for the last few years and then he could be said to have formed a belief that such an investment could have been made or not. We find no such effort had been done we further find support from the decision of the Co-ordinate Bench in the case of Amrik Singh Vs ITO (2016) 181 TTJ 0095 (ASR). The decision of the Supreme Court in the case of ITO Vs Lakhmani Mewal Dass 103 ITR 437 (S.C) has also well settled the issue. The Court has categorically held:

"the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. Their lordships considering of the sanctity of this exercise have observed that it is no doubt true that the 'Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO en the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

5. Accordingly considering the peculiar facts and circumstances of the case we are of the view that in the facts as they stand the reopening based on suspicions cannot be upheld the AO having failed to record the reasons for formation of his belief which only suggest that he has proceeded on surprising. The assessee succeed on Ground No. 1 and 2 we note that although the Ld. AR has argued the appeals on merits also however since we have quashed the assessment in the case of respective assessee's no purpose would be served to address the issue on the merits of the additions made.

6. In the result the appeals of the assessee are allowed.

Order pronounced in the Open Court on 23.07. 2017.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

'Poonam'/AG/Poonam

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Asstt. Registrar
ITAT, Chandigarh.