

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR  
श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 841/JP/2018  
निर्धारण वर्ष / Assessment Year :2011-12

Shri Kulwant Singh, G-114, Apna Ghar Shalimar, Tizara Road, Alwar.	बनाम Vs.	I.T.O., Ward 1(4), Alwar.
PAN No.: AEVPS 7104 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri Jai Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 12/12/2018  
उदघोषणा की तारीख / Date of Pronouncement : 20/12/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 09/01/2018 of Id. CIT (A), Alwar for the A.Y. 2011-12.

2. There is a delay of 99 days in filing the present appeal. The assessee has filed an application for condonation of delay, which is supported by the affidavit of the assessee.

3. We have heard the Id AR as well as the Id DR on the condonation of delay and carefully perused the contents of the affidavit wherein the cause

of delay has been explained. It has been stated in the affidavit that the impugned order of the Id. CIT(A) was received by the assessee on 18/1/2018, however, in the mean time, the brother of the assessee expired on 11/3/2018 and also the assessee suffered from serious ailments of spondylitis for which the assessee was undergoing treatment at Jaipur and Delhi from 27/3/2018 onwards. The assessee has produced death certificate of his brother as well as medical record of the assessee showing that the assessee was undergoing treatment during the relevant period from the month of March to April 2018. Considering all these facts and circumstances of the case, we satisfy that the assessee has explained the reasonable cause for not filing the appeal within the period of limitation. Accordingly, we condone the delay of 99 days in filing the present appeal.

4. In this appeal, the assessee has raised following grounds of appeal:

- “1. Under the facts and circumstances of the case, the reasons recorded for issue of notice U/s 148 and consequent order passed U/s 147 are illegal and bad in law.*
- 2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 4,74,000/- U/s 68 of the IT Act, 1961 by holding that the assessee has failed to prove the genuineness of the amount credited in his bank account.*
- 3. The assessee craves to amend, alter and modify any of the grounds of appeal.*
- 4. The appropriate cost be awarded to the assessee.”*

5. Ground No. 1 of the appeal is regarding validity of reopening. The Id AR of the assessee has submitted that the assessee filed his return of income U/s 139 of the Income Tax Act, 1961 (in short the Act) on 05/9/2011 declaring total income of Rs. 2,26,290/-. Subsequently the Assessing Officer proposed to initiate the proceedings U/s 147/148 of the Act by issuing the notice U/s 148 of the Act on 03/3/2015 by recording the reasons that he has received the information regarding the cash deposit of Rs. 15,20,500/- in the savings bank account with State Bank of Patiala. The Assessing Officer has also recorded in the reasons that the assessee has not filed any return of income, therefore, the cash deposit made in the bank account is the income escaped assessment. The Id AR has pointed out that this recording of reason by the Assessing Officer is factually incorrect when the assessee has filed return of income and also declared the turnover of more than 31.00 lacs, therefore, the reopening is not based on the reasons and application of mind which has direct connection to the undisclosed income and formation of belief by the Assessing Officer. The reopening is without application of mind and has no connection with the facts of the case, therefore, the same is not sustainable. The Assessing Officer has reopened the assessment on the basis of the information without independent application of mind and without considering the return of income filed by the assessee, therefore, prima facie the reasons

recorded by the Assessing Officer has no direct connection to form a belief that the income assessable to tax has escaped assessment. In support of his contention, he has relied upon the decision of this Tribunal dated 07/02/2018 in the case of Narain Dutt Sharma Vs ITO in ITA No. 203/JP/2017.

6. On the other hand, the Id DR has submitted that though the Assessing Officer has recorded in the reasons that the assessee has not filed any return of income, however, it is because of the reason that the information received by the assessee might have not contained PAN of the assessee and therefore, the Assessing Officer could not verify the fact of filing of return of income. He has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has reopened the assessment by recording the reasons as under:

**"Reason for issuance of Notice U/s 148 Read with section 147**

*In this case the assessee has not filed the return of Income for A.Y.2011-12. As per information available on record the assessee has deposited a sum of Rs. 15,20,500/- in the Saving Bank account held with State Bank of Patiala during the F.Y.2010-11.*

*Since the assessee has not filed the return of Income for A.Y.2031-12. Therefore, I have the reason to believe that income of Rs. 15,20,500/-*

*chargeable to tax has escaped assessment for the A.Y.2011-12 and thus it is a fit case to initiate proceeding within the meaning of section 147 of Income Tax Act,1951. Notice u/s 148 of Income Tax Act,1961 is issued accordingly.”*

Thus, it is manifest from the reasons recorded by the Assessing Officer that the Assessing Officer begins with the statement that the assessee has not filed return of income for the A.Y. 2011-12. Further while forming the belief, again the Assessing Officer has stated that the assessee has not filed return of income and therefore, he has reason to believe that the income of Rs. 15,20,500/- to be deposited in the bank account chargeable to tax, has escaped assessment. This statement of the Assessing Officer in the reasons recorded is the basis for formation of belief is factually incorrect as the Assessing Officer himself has recorded this fact in the assessment order and stated that the return of income was filed by the assessee through e-filing on 05/9/2011 declaring total income of Rs. 2,26,290/-. Further when the assessee has declared the turnover of more than Rs. 31.00 lacs then the deposits in the bank account would not ipso facto a reason to belief that the entire amount is the income assessable to tax. We find that the Assessing Officer has reopened the assessment in a mechanical manner without application of mind and solely on the basis of information. The Assessing Officer has not taken the pain to verify the return of income filed by the assessee. An identical issue has been

considered by this Tribunal in the case of Narain Dutt Sharma Vs ITO (supra) in para 13 to 19 as under:

- “13. We have heard the rival contentions and perused the material available on record. Firstly, it is noted that in the instant case, the notice under section 148 in exercise of powers under section 147 has been issued on 23.03.2014 after the expiry of period of four years from the end of the impugned assessment year i.e., AY 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year. The contention of the Revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impugned assessment year and the same was not reflected in the IT system. Per contra, the Id AR has submitted that return of income for the AY 2007-08 was filed by the assessee manually with ITO Ward 6(1) Jaipur vide acknowledgment no. 2611000925 on 21.05.2008. It is relevant to note that the return of income so filed manually is with ITO Ward 6(1) who is the same officer who has subsequently issued the notice u/s 148 of the Act and therefore, Revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the Revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of reassessment proceedings and where there is fault on the part of the assessee in filing his return of income.
14. Interestingly, during the course of reassessment proceedings, the ITO in his reassessment order stated clearly in Para 5 that "in the return of

*income filed under the head Business, you have declared income of Rs 175,510 on gross receipts of Rs 21,93,870 u/s 44AD." It is relevant to note the said return of income was not filed in pursuance to issuance of notice u/s 148 but the same was the return of income which was originally filed by the assessee u/s 139 of the Act. It is therefore clear that the whole foundation of the Revenue's reasoning is contradictory and self-defeating where at the time of issuance of notice u/s 148, it says that the assessee has failed to file his return of income and subsequently, during the proceedings u/s 147, it admits that the assessee has filed his return of income originally under section 139. On this ground itself, the assumption of jurisdiction u/s 147 cannot be sustained and the subject proceedings are liable to be quashed.*

15. *Now, coming to the reasons which have been recorded by the ITO Ward 6(1), Jaipur for initiating proceedings u/s 147 of the Act which are reproduced as under:*

*"As per AIR information generated from the system, the assessee has made investment of Rs. 1057000/- for purchase of units and SB Account during FY 2006-07 relevant for A Y 2007-08.*

*Since as per system no return of income has been filed for A Y 2007-08 the above transaction is not verifiable. I have, therefore, reasons to believe that on account of not filing of return by the assessee, income chargeable to tax has escaped assessment Therefore, it is requested to accord approval for issuance of notice u/s 148 of the Act."*

16. *The reasons so recorded by the ITO refers to information gathered from AIR database of the Revenue department whereby certain data/information regarding purchase of units and its linkage with the assessee's saving bank account during the financial year 2006-07 has been reported by the concerned Bank. As per ITO, said information is not*

*verifiable for the reason that assessee has failed to file its return of income for the subject assessment year as per the Revenue's department IT system. The basis of formation of belief by the ITO that the assessee's income for the impugned assessment year has escaped assessment is therefore the receipt of certain AIR information from an external source i.e., banking institution with which the assessee maintains his saving bank account and the fact that assessee has failed to file his return of income for the impugned assessment year. In this regard, we refer to the decision of the Hon'ble Gujarat High Court in case of Harikishan Sunderlal Virmani vs. Dy. CIT (supra) where it was held as under:*

*" 5.03.....It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information and material received from other source, AO is required to consider the material on record in the case of the assessee and thereafter is required to form an independent opinion that the income has escaped assessment. Without forming such an opinion, solely and mechanically, relying upon the information received from other source, there could not be any reassessment for verification."*

17. *Similar proposition has been laid down by the Hon'ble Delhi High Court in case of CIT-Central-1 vs. Indo Arab Air Services (supra) wherein it was held as under:*

*"20. Keeping the above legal position in view when the cases on hand are examined, it is seen that as far as Indo Arab is concerned while the AO set out the information received from the ED, he failed to examine if that information provided the vital link to form the 'reason to believe' that income of the Assessee had escaped assessment for the A Y in question. While the AO has referred to the fact that the ED gave information regarding cash deposits being found in the books of the Assessee, the AO did not state that he examined the*

*returns filed by the Assessee for the said AY and detected that the said cash deposits were not reflected in the returns.*

*In fact, the AO contradicted himself in the reasons recorded by him by noticing the information of the ED to the above effect and then stating that on perusal of the records for the AY in question it was noticed that the Assessee "had not disclosed these transactions in its books of account" Further the AO refers to the ED's information that Mr. Chetan Gupta, partner of the Assessee, failed to explain the sources of the cash deposits as shown in the books of account However, that by itself could not have led the AO to even prima facie conclude that income of the Assessee had escaped assessment. The explanation or the lack of it of the entries in the books of account may have certain relevance as far as ED is concerned but that by itself does not provide the vita! link for concluding that for the purposes of the Act any part of cash deposits constituted income that had escaped assessment There is a long distance to travel between a suspicion that income had escaped assessment and forming reasons to believe that income had escaped assessment. While the law does not require the AO to form a definite opinion by conducting any detailed investigation regarding the escapement of income from assessment, it certainly does require him to form a prima facie opinion based on tangible material which provides the nexus or the link to having reason to believe that income has escaped assessment."*

- 18. In the instant case, pursuant to receipt of AIR information from an external agency that cash has been found deposited in assessee's savings bank account, there has been no further examination by the AO as to whether the cash so found deposited in the assessee's bank account has been reflected or has any connection with the reported turnover in the return of income so filed by the assessee. The reason for the said action on part of the AO is not hard to found out as the AO has concluded that the assessee has not filed any return of income after looking at the Department's IT system and without verifying the physical records*

*maintained by the department which shows that the assessee has filed the return of income. When such a conclusion has already been reached, where is the question of examination of such information and its linkage with the return of income. As we have noted above, there is a clear contradiction on part of the AO to hold that assessee has not filed his return when the records so filed before us shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the AO has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a prima facie opinion that income of the assessee had escaped assessment for the impugned assessment year. In absence of necessary nexus between the tangible material and formation of belief, the reassessment proceedings cannot be sustained in the instant case.*

19. *In light of above discussions, we are of the view that the jurisdictional required as provided in section 147 read with the proviso has not been fulfilled in the instant case. In the result, the reassessment proceedings are hereby quashed and set-aside. In the result, ground no. 1 of the assessee's appeal is allowed."*

Accordingly, in the facts and circumstances of the case, where the Assessing Officer has reopened the assessment mechanically without application of mind and as well as following the decision of this Tribunal in the case of Narain Dutt Sharma Vs ITO (supra) we hold that the reopening of the assessment is not valid and the same is quashed.

8. Since we have quashed the reopening of the assessment and consequential reassessment, therefore, we do not propose to go into the other grounds regarding the additions sustained by the Id. CIT(A).

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

Order pronounced in the open court on 20<sup>th</sup> December, 2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20<sup>th</sup> December, 2018

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Shri Kulwant Singh, Alwar.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 1(4), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 841/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar