

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 976/Ahd/2015
Assessment Year: 2006-07

Tristar Securities Pvt. Ltd.Appellant
*C-102, Samastha Appt.,
Opp. ATIRA, Ambawadi,
Ahmedabad - 380015
[PAN : AA ACT 5664 L]*

Vs.

Income Tax OfficerRespondent
Ward-8(1), Ahmedabad

Appearances by:

*SN Divatia, for the Appellant
GC Daxini, for the Respondent*

Date of concluding the hearing : 31.12.2018
Date of pronouncing the order : 15.01.2019

O R D E R

Per Pramod Kumar, Vice President:

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 27th February 2015 passed by the CIT(A)-8, Ahmedabad, in the matter of assessment under section 143(3) r.w.s. 147 of the Income-tax Act, 1961, for the assessment year 2006-07.

2. One of the grievances that the assessee has raised is with respect to the validity of the reassessment proceedings. This grievance is articulated by ground nos. 2.1 and 2.2, which are as follows:-

“2.1 The Ld. CIT(A) has grievously erred in law and on facts in upholding the validity of reopening of assessment u/s 147. The Ld. CIT(A) has failed to appreciate that the reasons recorded by AO stated that there was no creditworthiness of the depositor – Shri S M Shah so that there cannot be any reason to believe that the income of the appellant company had escaped assessment.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld the validity of reopening u/s 147.”

3. To adjudicate on this grievance, only a few material facts are required to be taken note of. The assessee before us is a company engaged in the business of trading in Govt. Securities and Bonds. The return of income was originally filed on 28.12.2006 and it was processed under section 143(1) on 07.06.2007. Thereafter the case was reopened by issuance of notice under section 148 on 14.05.2010. The background in which the case was reopened is evident from the following observations made by the Assessing Officer in the assessment order:-

“The return of income was originally e-filed on 28.12.2006 declaring total income loss of Rs.12,100/-. The return of income was processed u/s. 143(1) of the IT Act'61 on 7.6.2007. Thereafter, it was come to the notice that during the year under consideration, the assessee company had accepted funds more than Rs.1,00,000/- from Shri Switoo M. Shah. The said fund has been transferred from the Bank Account No.00481050011374 of HDFC Bank maintained in the name of Shri Switoo M. Shah in the FY 2005-06. The said bank account had not been disclosed by Shri Switoo M. Shah in his return of income. From perusal of the bank statement of the said bank account of Shri Switoo M. Shah, it is noticed that substantial cash had been deposited in the bank before or on the day of transfer of funds to the assessee company. Shri Switoo M. Shah's declared income was not at par with the substantial amounts deposited in the bank account meaning thereby that there is no credit worthiness of the depositor. Therefore, there was reason to believe that the amount received by the assessee from Shri Switoo M. Shah through HDFC Bank Account No. 00481050011374 is unexplained cash credits of the assessee company and the income chargeable to tax had escaped assessment.”

4. The assessee's objections against reopening of the assessment were rejected when the matter was carried in appeal before the CIT(A). The CIT(A) has also confirmed the reopening of the assessment by observing as follows:-

“2. With reference to ground A, it is seen that assessing officer had reopened the case by recording reasons as per due process of law. It was noted by the assessing officer that bank account from which money was transferred by Shri Switoo M Shah was not disclosed to the income tax department and further the declared income of Mr Shah was not at par with the substantial amount deposited in the bank account meaning thereby that there was no creditworthiness of the depositor. Based on this is specific information and the conclusion drawn the case was reopened by issuing notice under section 147. The appellant has challenged the reopening and reasons are stated in the grounds of appeal. It is seen that return of income was filed on 28/12/2006 declaring total loss of Rs.12,100. The return of income was processed under section 143 (1). Thereafter the case was reopened by issuing notice under section 148 on 14/05/2010. It is seen that case has been reopened after recording reasons. The case was earlier processed under section 143(1) which shows that no opinion was found in respect of the transactions of loan received from Mr. Switoo M Shah. Reliance is placed on ACIT vs Rajesh Jhaveri Stock Brokers P Ltd 291 ITR 500 (SC). It is seen that in the present case the assessing officer had sufficient reasons to issue notice under section 148 and so the ground number (A) taken by the appellant is dismissed.”

5. The assessee is not satisfied and is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. We find that, beyond any dispute or controversy, the trigger for reopening the assessment was the fact that there were certain cash deposits in the account of Shri Switoo M. Shah and it was from this bank account that the assessee-company also received the money. It is difficult to understand that when there are cash deposits in the bank account of an individual and these cash deposits are *prima facie* beyond his source of income or are not reasonably explained and even that bank account is not disclosed by the said individual in his return of income, what makes the Assessing Officer to believe that these deposits are income of the company to which the individual is made payments. When there are unexplained cash deposits in an individual's account and the said account is not even disclosed to the income-tax authorities, the income could at best have escaped assessment in his hands and not in the hands of the individual to whom he has made the payments. The reasons for forming belief that income has escaped assessment as noted by Hon'ble Supreme Court in ITO vs. Lakhmani Mewal Das (103 ITR 437) must have rational connection or relevant bearing in formation of belief. In our considered view, therefore, the mere facts of cash deposits in the hands of the director cannot lead to reasonable inference that the income has escaped assessment in the hands of the company to which the director has made the payments. To assume that the cash deposits of Rs.1,00,000 in someone's bank account belong to the person to whom the payment is a bit too divorced from the ground reality. That proceeds on the fallacious assumption that mere fact of cash deposits in lender's bank account can be reason enough to assume that lender lacks creditworthiness. As for the observation that the "income is not at par with substantial amount deposited in the bank", there is no mention about the income figure of the tender in the reasons recorded. What it notes is the income of the assessee but that is not really relevant. It is only elementary that nothing can be added to, or reduced from, the reasons actually recorded by the Assessing Officer and that these reasons, on standalone basis, must *prima facie* demonstrate the escapement of income. If needed, authority for this proposition can be found in Hindustan Lever Ltd Vs. R.B. Wadkar, Asst. CIT [(2004) 268 ITR 332 (Bom)]. While on this issue, we may usefully refer to a co-ordinate bench decision in the case of Bir Bahadur Singh Sijwali Vs. ITO [(2015) 68 SOT 197 (Delhi -Trib)] as follows:-

"7. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor anything can be deleted from the reasons so recorded. Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. v. R.B. Wadkar [2004] 268 ITR 332/137 Taxmann 479 , has, inter alia, observed that ".....It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordships added that "The reasons recorded should be self-

explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....". Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly, at the stage of recording the reasons for reopening the assessment, all that is necessary is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection to an income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which indicate a legitimate suspicion about income escaping the assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. While dealing with this aspect of the matter, it is useful to bear in mind the following observations made by Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Das [1976] 103 ITR 437,

"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. 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 on 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."

8. We may also add that, as noted in the reasons, as regards deposit exceeding Rs.1,00,000 in the bank account of tender, there is no mention about the quantification of income and nature of business activity of Switoo Shah. There is nothing to demonstrate that deposit exceeding Rs.1,00,000 are not only income escaping assessment but income escaping assessment in the hands of this assessee rather than of the person in whose account money is deposited. The

linkage sought to be established by the Revenue authorities is too far fetched and devoid of any legally sustainable basis. In these circumstances, and in the light of the discussions above, in our considered view the Assessing Officer was not justified in reopening the assessment on the basis of the reasons so recorded by him. We, therefore, set aside the reassessment proceedings.

9. As the reassessment itself is quashed, we see no reasons to deal with the merits of the case. That aspect of the matter, in the given circumstances, is wholly academic.

10. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 15th January, 2019

Sd/-
Ms. Madhumita Roy
(Judicial Member)

Ahmedabad, the 15th day of January, 2019

****/t*

Sd/-
Pramod Kumar
(Vice President)

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad