

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7134/Del./2018
Assessment Year 2009-2010

Shri Mohd. Yameen Munna, Mohalla Moh-Kot, PO Muradnagar, Ghaziabad. PIN201206 PAN DGDPM6101E C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi – 110 049.	vs.	The Income Tax Officer, Ward-2(1), Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta And Shri Somil Agarwal, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	29.04.2019
Date of Pronouncement :	02.05.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Aligarh, Dated 10.07.2018, for the A.Y. 2009-2010.

2. Briefly the facts of the case are that as per AIR information, during the F.Y. 2008-2009, assessee had sold immovable property for Rs.43,04,000/-. Proceedings under

section 148 were initiated. The A.O. issued statutory notices also. Since, there was no compliance, therefore, A.O. proceeded to pass the assessment order under section 144 of the I.T. Act, 1961. The A.O. noted that during the assessment year under appeal, assessee had sold ancestral agricultural land for Rs.43,04,000/- on 27.08.2008, but, no capital gain has been offered for taxation. As per Purchase Deed of the agricultural land, it was purchased on 09.01.2009 for Rs.40,20,000/- + Other Expenses, in which, assessee share was worked to Rs.20,24,070/-. Since, assessee has purchased agricultural land within the prescribed period, he was entitled for deduction under section 54B of Rs.20,24,070/- and on the balance of Rs.22,79,930/-, assessee is liable to pay tax of long term capital gains, which have not been disclosed. The A.O. considering the above, computed the long term capital gains of Rs.18,01,265/-.

2.1. The assessee challenged the reopening of the assessment as well as addition on merit. However, the Ld. CIT(A) confirmed the reopening of the assessment. However,

the addition on merit was modified and appeal of assessee was partly allowed.

3. The assessee, in the present appeal, challenged the reopening of the assessment as well as addition on merits on several grounds of appeal. Learned Counsel for the Assessee referred to PB-17 which are reasons for reopening of the assessment. The same is reproduced as under :

*“Shri Yameen, S/o Shri Ajmoo,
Rawli Road, Murad Naqar. Ghaziabad
(A Y 2009-10)*

Reason for the belief that income has escaped assessment

On the basis of AIR information, verification letter was issued to the assessee to verify the sale of immovable property during F.Y. 2008-09 relevant to A.Y. 2009-10 for Rs.86,08,000/- in which assessee's share was Rs.43,04,000/-. Though the verification letter was duly received by the assessee, no compliance" was made. Again a letter dated 13-10-15 was issued to furnish the computation of capital gain and explain the source of income but this too remained un-complied with. The

assessee has not filed return of income for the A.Y.2009-10. Hence, I have reason to believe that capital gain on sale consideration of Rs.43,04,000/- chargeable to tax has escaped assessment within the meaning of section 147 of the I T. Act, 1961 for the A.Y 2009-10. Therefore, notice u/s 148 may be issued.

Dated 01.02.2016

*Sd/-Anil Kumar Sharma,
Income Tax Officer,
Ward-2(1), Ghaziabad”.*

3.1. He has referred to sale deed which is executed by the assessee and the co-owner Mr. Iqbal. He has submitted that in case of co-owner Mr. Iqbal, the A.O. passed the assessment order under section 147/143(3) Dated 06.12.2016 and returned income have been accepted at Rs.1,99,980/-. Copy of the computation of income is also filed in which long term capital gains on the same property have been computed at Rs.1,47,975/- and after adding the interest income, total income was declared in a sum of Rs.1,99,980/- which is accepted by the A.O. Learned Counsel for the Assessee, therefore, submitted that A.O. has

not verified any information and did not apply the mind to the facts of the case. The entire amount of sale consideration could not be disclosing capital gains, therefore, there were no reason to believe to the A.O. to have reopened the assessment. He has submitted that the issue is covered by the Order of ITAT, Agra Bench in the case of Rameshwar vs. ITO 6(2), Jhansi in ITA.No.20/Agra/2014, Dated 28.02.2014. Copy of the Order is placed on record and provided to the Ld. D.R. The Ld. D.R. merely relied upon the Orders of the authorities below.

4. After considering the rival submissions, I am of the view that the issue is covered by the Order of ITAT, Agra Bench in the case of Rameshwar vs. ITO 6(2), Jhansi (supra) Dated 28.02.2014 in which under similar circumstances, reopening of the assessment have been quashed. The Order is reproduced as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCHE, AGRA*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER*

*ITA.No.20/Agra/2014
Assessment Year 2006-07*

*Rameshwar Satisfaction
note. Dayaram alias Kallu
Nagaria Ka Kua outside
Unnov Gate Jhansi.
PIN-284 001.PAN AOXPR4258Q*

(Appellant)

*The Income Tax Officer,
6(2), Jhansi, Awas Vikas
vs. Tiraha, Jhansi. 284003.*

(Respondent)

*Appellant by : Shri Manoj Badal, C.A.
Respondent by : Shri Anirudh Kumar, Jr. D.R*

*Date of Hearing : 27.02.2014
Date of Pronouncement : 28.02.2014*

ORDER

PER BHAVNESH SAINI, JUDICIAL MEMBER :

1. *This appeal by the assessee is directed against the order of ld. CIT(A)-II, Agra dated 05.09.2013 for A.Y. 2006-07, challenging the reopening of the assessment under section 148 of the I.T. Act.*

2. *In this case, assessment proceeding has been reopened u/s 147 of the Act after receiving information from another Income Tax Officer i.e. ITO-6(3), Jhansi that the assessee had sold agricultural land bearing*

Arazi No 374 & 373 situated at Mauja Jhansi Khas ad measuring 4.256 hectare for Rs.88,50,000/- on 30.05.2005 jointly with another person named Sri Kaushal and also finding from the office record that the assessee has not filed any return of income for the assessment year under consideration and further finding that the land which was sold by the assessee, was situated within 8 kilometers of municipal limits of Jhansi and hence, being a capital asset within the meaning of section 2(14) of the Act and the gain arising on sale of such land will be chargeable to capital gain tax and therefore, after recording the reason to believe that capital gain chargeable to tax arising out of sale of land has escaped assessment within the meaning of section 147 of the Act, a notice u/s 148 dated 02.08.2011 has been issued and served to the assessee. In response to notice u/s 147, a return of income was filed showing agricultural income of Rs.42,000/- and long term capital loss on sale of above land at Rs.8,79,701/-. While computing the long term

capital loss on sale of land, sale consideration was shown at Rs.36,75,000/- and cost of land was computed @ Rs.40/- per sq. meter as on 01.04.1981 (2.128 hectare =21280 sq. meter) and also showing the indexed cost of improvement at Rs.3,24,237/-. On finding that there is difference in sale consideration as per the information received by the AO than what was declared by the assessee [as per the information, the sale consideration should be $\text{Rs.}85,50,000/2 = \text{Rs.}42,75,000/-$ but sale consideration declared was Rs.36,75,000/- and hence, the difference was of Rs.6,00,000/-], the AO required the assessee to explain the reasons for difference in the sale consideration and the basis on which, the cost of acquisition was taken along with cost of improvement. The assessee vide his reply dated 28.11.2011 stated that the difference of Rs.6,00,000/- in the amount of sale consideration was paid to intermediaries and the cost of acquisition was taken on the basis of the valuation report of the Government Approved Valuer. After examining the

details furnished by the assessee with respect to sale of land in the return of income and further filed during the course of assessment proceeding as called for by the AO and taking into account the information available with him and also collected during the course of assessment proceeding, the AO computed the long term capital gain earned by the assessee on sale of land by taking the sale consideration at Rs.42,75,000/- and cost of acquisition as the value of land as on 01.04.1981 computed @ Rs.800/- per acre on the basis of information collected from Tehsildar u/s 133(6) of the Act as mentioned in the assessment order. The AO did not accept valuation report submitted by the assessee for the purpose of determining the cost of acquisition because as per the AO, in the report, location of land is not correctly mentioned. Computation of capital gain as made by him in the assessment order is as under:-

Total area sold 4.256 Hectare

Assessee's share in sales 2,128 Hectare

Assessee's Share in sales (1 Hect. = 2.47 Acre 5,256 Acres

*Total cost of land (5.256*Rs.800/-) Rs. 4205/-*

Index cost of acquisition (Rs.4205/ 497/100) Rs.20899/-*

Income from long term capital gain

<i>Sales</i>	<i>Rs.42,75,000/-</i>
<i>Less : Indexed Cost of acquisition</i>	<i>Rs. 20,899/-</i>
<i>Index cost of improvement</i>	<i>Rs.3,24,237/-</i>
	<i>Rs.39,29,237/-</i>

In view of the above computation, the assessment is completed at net income of Rs.39,29,860/-.

3. The assessee challenged the reopening of the assessment as well as addition on merit before Ld. CIT(A). The written submission filed by the assessee before Ld. CIT(A) is incorporated in the appellate order. The Ld. CIT(A) noted the reasons for reopening of the assessment in the appellate order in Para 5.3, the same are reproduced as under :-

“The ITO-6(3), Jhansi vide letter dated 25.05.2009 has informed that during the assessment proceeding in the case of M/s Sahara City Homes (P) Ltd., Jhansi it was noticed that above assessee has sold land worth Rs.85,50,000/- on 30.05.2005. In order to make confirmation with regard to value of land, a letter was

issued on 15.02.2010 and served through registered post to the assessee. It was required in the notice to confirm land transaction and also to intimate as to how the capital gain arising out of land transaction has been reflected in his return of income. The assessee has not replied. The land situates at Aaraji Mauja, Jhansi Khas, Tehsil & District, Jhansi, its Khata No. 374 & 373, the land is within the 8 km. from the Jhansi Municipality Limit, assessee was liable for payment of capital gain tax on the above transaction of land as per Income Tax Act, 1961.

Sale Value of land at Jhansi Khas, Tehsil Jhansi =Rs.85,50,000/-

The assessee share is half i.e. Assessee received =Rs.42,75,000/-

Sold area of total land =4,256 hectare

Assessee's share sold area =2,128 hectare

=21,280 sq. Meter

Value of land as on 01.04.81 @ Rs.10 per sq. meter = Rs.2,12,800/-

Index cost of acquisition = $\frac{2,12,800 \times 497}{100}$

=Rs.10,57,616/-

Long Term Capital Gain =42,75,000/- - 10,57,616/- =Rs.32,17,384/-

However, assessee has failed to submit reply in this regard. As per this office record, no return of income for A.Y. 2006-07 was filed. As per these facts go to show that assessee has failed to disclose his taxable income and I have therefore, reason to believe that income chargeable to tax arising out of capital gain Rs.32,17,384/- has escaped assessment within the meaning of [section 147 of the Income Tax Act,1961](#).

4. *Ld. CIT(A) considering the submission of the assessee and material on record, confirmed the reopening of the assessment and dismissed the appeal of the assessee on that ground. On quantum, the assessee filed revised computation to show that long term capital gain was earned in a sum of Rs.11,02,152/-. Thus, the appeal of the assessee was partly allowed.*

5. *The assessee in the present appeal, challenged the reopening of the assessment and learned counsel for the assessee at the outset submitted that on identical issue,*

ITAT, Agra Bench in the case of Badam Singh Rajpali Vs. ITO in ITA.No.358/Agra/2011 for A.Y. 2004-05 quashed the reopening of the assessment vide order dated 22.06.2012. Copy of the order is placed on record. Learned D.R. accepted that issue is covered in favour of the assessee on identical facts.

6. On consideration of the facts of the case, in the light of the reason for reopening of the assessment recorded, we find that issue is covered in favour of the assessee by order of ITAT, Agra Bench in the case of Shri Badam Singh Rajpali Vs. ITO (Supra) in which the facts and finding are reproduced as under :-

2. Briefly, the facts of the case are that the assessee had sold certain agriculture land on 05.08.2003 for a sum of Rs.19,50,000/-. As per the AO, the assessee had not filed any income tax return showing capital gain arising out of sale of agriculture land. Information was received by the AO from ITO 6(3), Jhansi that during the year assessee had sold the land to M/s. Sahara City

Homes (P) Ltd. for a consideration of Rs.19,50,000/- whereas the land value as per govt. rate was Rs.11,40,000/-. On receipt of this information, the AO had issue notice u/s. 133(6) was not replied. The reasons as recorded by the AO for issuance of notice u/s. 148 are reproduced as under :

Reasons recorded u/s. 148(2) of the IT Act, 1961 in the case of Shri Badam Singh Rajpoot S/o Shri Ram Prasad R/o 195, O/S Unnao Gate, Distt. Jhansi, AY 2004-05.

The ITO 6(3), Jhansi has informed that during the assessment proceedings in the case of M/s. Sahara City Homes (P) Ltd., Jhansi, it was noticed that above assessee has sold land worth Rs.19,50,000/- on 05.08.2003 & as per govt. value Rs.11,40,000/-. In order to make confirmation with regard to value of land, a notice u/s. 133(6) was issued and served upon the assessee. It was required in the notice to confirm land transaction and also to intimate as to how the capital gain arise out of land transaction has been reflected in

his/her return of income. Since land situates within the 8 km. from the Jhansi Municipality Limit, assessee was liable for payment of capital gain tax on the above transaction of land as per [Income Tax Act, 1961](#). However, assessee has failed to submit reply in this regard. It goes to show that income chargeable to tax arising out of capital gain has escaped assessment within the meaning of sec. 147 of the IT Act, 1961. Accordingly, proceedings u/s. 147 is initiated and issued notice u/s. 148 of the IT Act, 1961.

2.1. The assessee challenged the reassessment proceedings and addition on merits before the Id. CIT(A) and submissions of the assessee have been incorporated in the impugned order. It was explained that the value of land as on 01.04.1981 was higher than the consideration amount. Therefore, no return of income was filed being the income not liable for income-tax. It was explained that the reasons recorded for reopening of assessment are without date. The

reasons were recorded on the basis of information received from another officer and the AO has not applied his mind to satisfy himself through his own enquiry. There is no mention that the AO was having reason to believe that the assessee has concealed the particulars of income. The sale consideration cannot be treated as income. The AO issued notice to verify the transaction and was not aware whether capital gains arise or not. Expression reason to believe, does not mean a purely subjective satisfaction on the part of the AO. The reasons must be held in good faith and cannot be mere pretence. The detailed submissions of the assessee on merits are also noted in the impugned order. The Id. CIT(A) considering the issue of reopening of assessment, noted in para 2.2 of the appellate order that at the stage of initiation of reassessment proceedings u/. 148 of the IT Act, it is a trite law that the AO should have reason to believe that income assessable to tax has escaped assessment. It

need not to prove conclusively and accordingly, upheld the reassessment proceedings u/s. 148 of the IT Act and dismissed the appeal of the assessee on this reason.

3. The ld. counsel for the assessee reiterated the submissions made before the ld. CIT(A) and submitted that ingredients of section 147 of the Act have not been satisfied in this case. Therefore, reopening of assessment is bad in law. On the other hand, the ld. DR relied upon the orders of the authorities below.

4. We have considered the rival submissions and the material on record. The reasons for reopening of assessment have been incorporated in the impugned order, which is also reproduced above. Copy of same is also filed at page 11 of the paper book. According to section 147 of the it act, the essential ingredient of this section has been that if the Assessing Officer has reason to belief that any income chargeable to tax has escaped assessment in any assessment year.. Therefore,

before invoking jurisdiction u/s. 147 of the IT Act, the Assessing Officer shall have reason to believe that any income chargeable to tax has escaped assessment. The AO for the reasons recorded for reopening of assessment as mentioned above has not mentioned anything in the reasons if he was having reasons to believe that income chargeable to tax has escaped assessment. He has merely received information from ITO 6(3), Jhansi that the assessee has sold the land on 05.08.2003 at the higher rate as against Government value. The AO has not verified the information issued notice u/s. 133(6) to the assessee and required to confirm the transaction as to how the capital gains arise out of the transaction. It would mean that there was no definite information received from ITO 6(3), Jhansi that the assessee earned any capital gains out of the sale transaction of land in question. There was no material with the AO to prima facie prove that the assessee earned capital gain because he wanted the

assessee to intimate as to how capital gain arises out of the transaction. Since no reply was submitted in this regard before the AO, therefore, the AO presumed that the income chargeable to tax has escaped assessment and he initiated proceedings u/s. 147 of the IT Act. The reasons recorded by the AO, therefore, do not satisfy the requirement of section 147 of the it act. The AO had not examined the information received from the ITO 6(3), Jhansi before recording the reasons for reopening of assessment. The AO had acted only on the basis of suspicion and it could not be said that it was based on belief that income chargeable to tax had escaped assessment. The Assessing Officer had to act on the basis of reason to believe and not on reason to suspect. The information received from ITO 6(3) did not indicate as to how capital gains arise in the case of assessee and the AO merely accepted truth in vague information in a mechanical manner and put the assessee under obligation to file reply to the same.

Merely because no reply was filed, the AO acted in haste and initiated proceedings u/s. 147 of the IT Act without recording satisfaction for initiation of proceedings in the matter. Honble Supreme Court in the case of Sheo Nath Singh vs. Appellate Asst. Commissioner of Income-tax, 82 ITR 147 held

“The words reason to believe suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or

sufficiency of the reasons for the belief cannot be investigated by the court.

4.1 Honble Delhi High Curt in the case of CIT vs. Atul Jain & Smt. Vinita Jain, 299 ITR 383 held

“There must be reason to believe warranting the issuance of a notice of reassessment by the Assessing Officer. If there are no reasons, then the entire foundation for initiating the proceedings is bad and the notice initiating proceedings must be quashed. Mere satisfaction of the Assessing Officer for the issuance of a notice is not enough, there must be reasons on record which led him to believe that a notice should be issued. After a foundation based on information is set up, there must still be some reasons which warrant the holding of a belief so as to necessitate the issuance of a notice under [section 148 of the Income-tax Act, 1961.](#)”

The assessee purchased shares and subsequently sold these shares at a much higher value. For the assessment year 1997-98, the assessee disclosed long-term capital gains arising from the transaction. On the basis of the information received by the Deputy Director (Investigation), the Assessing Officer issued notice under section 148. The files were then put up before the Commissioner and in response to the question whether the Commissioner was satisfied that income had escaped assessment, he wrote yes. Thereafter, the Assessing Officer reassessed the income and charged interest and levied penalty. The Commissioner (appeals) allowed relief partly but the Tribunal concluded the issue in favour of the assessee. On appeal:

Held, dismissing the appeals, that the only information was that the assessee had taken a bogus entry of capital gains by paying cash along

with some premium for taking a cheque for that amount. The information did not indicate the source of the capital gains which in this case were shares. There was no information which shares had been transferred and with whom the transaction had taken place. The Assessing Officer did not verify the correctness of the information received by him but merely accepted the truth of the vague information in a mechanical manner. The Assessing Officer had not even recorded his satisfaction about the correctness or otherwise of the information for issuing a notice under section 148. What had been recorded by the Assessing Officer as his reasons to believe was nothing more than a report given by him to the Commissioner. The submission of the report was not the same as recording of reasons to believe for issuing a notice. The Assessing Officer had clearly

substituted form for substance and therefore the action of the Assessing Officer was not sustainable.”

4.2. *Honble Punjab & Haryana High Court in the case of CIT vs. Smt. Paramjit Kaur, 311 ITR 38 held :*

“The assessee filed her original return declaring nil income. The Assessing Officer initiated reassessment proceedings on the basis of information received from the survey circle that the assessee had got prepared a demand draft for a sum of Rs.83,040 which was not accounted in the books of account of the assessee. On appeal by the assessee the first appellate authority upheld the validity of the notice under [section 148 of the Income-tax Act, 1961](#), but set aside the assessment on the addition made by the Assessing Officer and remitted the matter to him

to frame a fresh assessment. On second appeal, the Tribunal held that since the Assessing Officer failed to incorporate the material and its satisfaction for reopening the assessment, the same was invalid. On a reference :

Held, that the Assessing Officer had not examined the information received from the survey circle before recording his own satisfaction of escaped income and initiating reassessment proceedings. The Assessing Officer had thus acted only on the basis of suspicion and it could not be said that it was based on belief that the income chargeable to tax had escaped income. The Assessing Officer had to act on the basis of reasons to believe and not on reasons to suspect. The Tribunal rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and therefore the issuance of notice

under section 148 of the Act for reassessment proceedings was not valid.

4.3 Considering the reasons for reopening of assessment in the light of above discussion and the case laws referred to above, we are of the view that the AO has not satisfied the ingredients of section 147 of the Act in the reasons recorded for reopening of assessment. Therefore, the AO has not correctly assumed jurisdiction u/s. 147 / 148 of the IT Act. Accordingly, we set aside the orders of the authorities below and quash the reassessment proceedings. It would result in deletion of all the additions. Ground No. 1 of appeal of assessee is, accordingly, allowed. In view of this, the other grounds have only academic interest and as such, we do not find it necessary to decide the issue on merits.

5. In the result, the appeal of the assessee is allowed."

7. In view of the above, the orders of the authorities below are quashed and the addition made stands deleted.

Appeal allowed.

Order pronounced in the open Court.

*Sd/-PRAMOD KUMAR Sd/-BHAVNESH SAINI
ACCOUNTANT MEMBER JUDICIAL MEMBER"*

4.1. It is well settled Law that validity of reopening of the assessment shall have to be judged with reference to the reasons recorded for reopening of the assessment. In the present case, the A.O. has mentioned in the reasons that assessee sold the property and his share comes to Rs.43,04,000/-. Since, no compliance was made by the assessee, the A.O, therefore, presumed that there is an escapement of income on account of long term capital gains. The A.O, therefore, recorded reasons to believe that capital gains on sale consideration of Rs.43,04,000/- chargeable to

tax has escaped assessment. The A.O. did not verify the information and even did not compute as to how much capital gain have been escaped assessment in the facts of the case. The reasons are thus, vague and did not show any application of mind on the part of the A.O. The A.O. in the case of the co-owner of the same property Shri Iqbal has accepted the long term capital gains in a sum of Rs.1,47,975/- on the same set of facts. It would show that A.O. did not verify the information as to how much capital gains has escaped assessment. The A.O, therefore, acted only on the basis of suspicion and it could not be said that it was based on belief that income chargeable to tax had escaped assessment. The A.O. had to act on the basis of the reasons to believe and not on reasons to suspect. The issue is, therefore, covered in favour of the assessee by the Order of ITAT, Agra Bench in the case of Rameshwar, Jhansi vs. ITO 6(2), Jhansi (supra). Following the same decision, I set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. Appeal of Assessee is allowed.

5. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02nd May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.