

आयकर अपीलीय अधिकरण, "एस.एम.सी" न्यायपीठ, राँची
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, RANCHI

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.235/RAN/2018

(निर्धारण वर्ष / Assessment Year :2012-2013)

Smt. Warsha Bagaria, 204, Gharana Apartment, Purulia Road, Dangra Toli, Ranchi-834001	Vs.	ITO Ward-3(3), Ranchi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADGPB 9265 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Devesh Poddar, Advocate

राजस्व की ओर से /Revenue by : Shri P.K.Mondal, ACIT(DR)

सुनवाई की तारीख / Date of Hearing : **21/05/2019**

घोषणा की तारीख/Date of Pronouncement **26/07/2019**

आदेश / O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Ranchi, Jharkhand, dated 21.05.2018 passed in First Appeal No.CIT(A), Ranchi/10345/2016-17 for the assessment year 2012-2013.

2. The assessee has raised the following grounds of appeal :-

1. *For that Ld. CIT(A) was not justified in making an enhancement to the assessment made by Ld. AO. Ld. AO mad: of Rs. 12,07,879/- which was enhanced by Ld. CIT(A) to Rs. 14,32,000 - without any basis.*
2. *For that during the year under consideration the case was of the assessee was reopened U/s 147 stating that assessee received Rs. 4,08,205/- from M/s Escort Finance Ltd. on which TDS was deducted and same escaped assessment. Ld. AO while completing the assessment U/s 147/143(3) made a addition of Rs. 12,07,879/- stating that this entire amount was received by assessee during the year from M/s Escort Finance which included Rs. 4,08,205/- Ld. CIT(A) was*

of the view that the assessee in total was entitled to receive Rs. 14,32,000/-, and such, enhancement was made.

3. *For that the assessee invested certain amount with M/s Escort Finance Ltd which got matured during the year under consideration and payment was made to the assessee. TDS was deducted only on Rs. 4,08,205/- being the interest amount. Balance was the principal amount and some bonus that the assessee was entitled for. Ld. AO was not justified in making the addition of the principal amount as income of the assessee for the year under consideration. Investment made in past has been accepted in the respective year and there is no doubt on the same. As such, addition of principal amount in the current year is illegal and incorrect. Complete facts with respect to the details of payment was brought to the notice of Ld. CIT(A), who failed to acknowledge the same and made enhancement.*
4. *For that the assessee received Rs. 4,08,205/- as interest on the investment made for last 8-9 years. Interest received should be taxed as income of the assessee on accrual basis and not completely in the year under consideration. Merely because entire interest amount was paid during the current year does not make it taxable as income for the current year.*
5. *For that interest U/s 234A/B should be charged on the returned income and not on the assessed income following the decision of Hon'ble Jharkhand High Court.*
6. *For that other grounds in detail shall be argued at the time of hearing.*

3. Ld.AR further filed additional grounds of appeal and submitted that the additional grounds filed by the assessee may be treated as legal grounds, which reads as under :-

- “1. *For that Ld. AO was not justified in reopening the assessment based on the information available from CIB/AIR record. The information becomes available with the assessing officer right at the time of original assessment. As such, proceeding being initiated on that basis, can only be a change of opinion and cannot be the reason for reopening of assessment.*

We pray that the above additional ground of appeal may kindly be admitted in course of hearing and adjudicated upon the merits since the same involves a technical/legal issue which goes to the core of assessment.”

4. Brief facts of the case are that the assessee derives income from business and other sources and filed his return of income on 23.11.2012 declaring total income of Rs.4,08,205/- for A.Y.2012-2013. As per information available under CIB/AIR the Assessing Officer found that the assessee had received Rs.4,08,205/- from Escorts Finance Ltd., but the assessee had failed to disclose the same in the return of income for the F.Y.2011-2012 relevant to A.Y.2012-13. In the above circumstances, the case was reopened u/s.147 of the Act, 1961 as the income of the assessee chargeable to tax has escaped income for the F.Y.2011-2012 relevant to A.Y.2012-2013. Accordingly, the AO after recording reasons to believe that income of Rs.4,08,205/- had escaped assessment issued notice u/s.148 of the Act on 15.07.2015. The assessee, in response, stated that the ITR filed u/s.139 of the Act may be treated as that filed in response to notice u/s.148 of the Act. Thereafter, notice u/s. 143(2) of the Act was issued. During the course of the assessment proceedings the Assessing Officer gathered information from M/s. Escorts Finance Ltd and the bank account of the assessee. He found that the total deposits in the bank account of the assessee was Rs,12,07,879/-. Since the assessee failed to furnish any explanation for the same, the Assessing Officer taxed the amount u/s.69A of the Act to the income of the assessee assessing total income of the assessee assessed at Rs.13,49,510/-..

5. Aggrieved by the addition made in the assessment order, the assessee carried the matter to the CIT(A). In the appellate proceedings the Id.AR of the assessee appeared and filed his submissions. In the

appellate proceedings, the CIT(A) after considering the submissions of the assessee and findings of the Assessing Officer, dismissed the appeal of the assessee making an enhancement of Rs.2,24,121/-.

6. The assessee, now, is in the further appeal against the order of CIT(A) before the Tribunal.

Prayer of assessee for admission of additional ground dated 13.05.2019 :

7. I have heard the arguments of both the sides on admission of additional ground raised by the assessee.

8. Ld. AR submitted that in the additional ground the assessee has only raised the legal issue which goes to the route of the matter and the same may kindly be admitted in view of the proposition rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd Vs. CIT, [1998] 229 ITR 383 (SC).

9. Replying to the above, Id. DR submitted that this ground has not been raised by the assessee before the CIT(A) in form No.35, therefore, this issue cannot be raised before the Tribunal at very first time.

10. On careful consideration of above, I am in agreement with the contention of Id. DR that the assessee did not raise this legal ground/issue before the CIT(A) challenging the initiation of reassessment proceedings u/s.147 of the Act and issuance of notice u/s.148 of the Act on the basis that the AO was not justified in reopening the assessment based on the information available from CIB/AIR report. However, as per the proposition laid down by the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd (supra), the ground being legal, it can be

decided on the basis of material already available on record without any extra material or document to be called from the parties then such legal issue can be agitated and raised by the assessee at the very first time before the Tribunal without being raised from the CIT(A). Therefore, respectfully following the said proposition, I admit the additional ground of assessee being legal challenging the initiation of reassessment proceedings for adjudication and consideration. Accordingly, prayer of assessee for admission of additional ground is allowed.

Additional ground of assessee:

11. Ld. AR submitted that the AO was not validly empowered and justified in initiation of reassessment proceedings based on the information available from CIB/AIR information as the same was available with the AO at the time of original assessment proceedings. Ld. AR vehemently pointed out that initiation of reassessment proceedings on such information can only be tagged as change of opinion and cannot be taken as valid reason for reopening of assessment u/s.147 of the Act. Ld. AR submitted that as per decision of Hon'ble Delhi High Court in the case of Meenakshi Overseas (P) Ltd., 395 ITR 677 (Delhi), wherein it was held that the reason recorded without independent application of mind, without tangible material and the reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, therefore, the reassessment was not justified. Ld. AR also contended that as per decision of Hon'ble Supreme Court in the case of ITO Vs. Lakhmani Mewal Das [1976] 103 ITR 437 (SC), ' 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 Income-tax Officer and the formation of his 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. The Id. DR supported the initiation of reassessment proceedings and impugned assessment order.

12. From second para at page 1 of the impugned reassessment order dated 15.12.2016, I clearly observe that the basis taken by the assessee for initiation of reassessment proceedings was of CIB/AIR information that the assessee had received Rs.4,08,205/- from Escorts Finance Ltd. And the assessee had failed to disclose the same in the return of income for A.Y.2012-2013. Accordingly, the AO initiated reassessment proceedings and issued notice on 15.07.2015, in response to which the assessee submitted that the return filed u/s.139 of the Act, may kindly be treated as return filed in response to notice u/s.148 of the Act. On being asked by the bench, Id. DR submitted that except the facts stated by the AO in para 2 at page 1 of the assessment order, he has no other material showing reasons for initiation of reassessment proceedings u/s.147 of the Act.

13. In view of the above reasons, it is vivid that the reasons has been recorded without independent application of mind and without establishing the live link between the tangible material and formation of belief that income has escaped assessment. There is no reference of assessment

records to ascertain that the income has escaped assessment upto the extent as stated in the reasons.

14. Before recording final conclusion, I respectfully draw attention of the revenue authorities to the decision of Hon'ble Delhi High Court in the case of Sabh Infrastructure Ltd. In W.P.(C) No.1357/2016 wherein some guidelines were given to be followed to the revenue authorities at the time of initiation of reassessment proceedings u/s.147 of the Act and issuing notice u/s.148 of the Act. The relevant para 19 of the said judgment reads as follows :-

19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-

judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

15. In view of the above, when I consider the reasons of initiation of reassessment proceedings as noted by the AO in para 2 of the assessment order, I find that there is a glaring mistake and non-compliance of the above guidelines. The reasons stated by the AO are not able to spell out the grounds taken by the AO for initiation of reassessment proceedings. The reason to believe does not reveal any investigation or examination or verification by the AO neither based on any investigation report which may be taken as basis of the reason to believe that income has escaped assessment. The AO has not conducted or undertaken any enquiry or investigation on the CIB/AIR information received by him and he simply took the same as gospel truth and proceeded to initiate the assessment proceedings without forming a reasonable belief by way of application of mind to the information as well as assessment records of A.Y.2012-2013. In view of the above, the exercise undertaken by the assessee for initiation of reassessment proceedings is clearly done in a mechanical manner without application of mind. Therefore, the same cannot be taken as a valid basis for reopening of assessment u/s.147 of the Act.

16. Therefore, in the totality of facts and circumstances of the case, as noted above, the proposition rendered by the Hon'ble Delhi High Court in the case of Meenakshi Overseas (supra), the contention of the assessee

that the AO was not justified in reopening the assessment based on the information received from CIB/AIR without application of his mind to the same and without forming any valid reason to believe that the income has escaped assessment. Therefore, initiation of reassessment proceedings u/s.147 of the Act, issuance of notice u/s.148 of the Act and all consequential proceedings and orders including impugned reassessment order and first appellate order, deserve to be quashed and I hold so. Accordingly, the additional ground of assessee is allowed and impugned reassessment and first appellate order are quashed.

17. Since by the earlier part of this order, I have quashed the impugned reassessment and first appellate order by allowing the legal ground of assessee, thus, the grounds of assessee on merits become infructuous and I am not adjudicating upon them as having become infructuous.

18. In the result, appeal of the assessee is allowed on legal ground.

Order pronounced in pursuance with Rule 34/4 of ITAT Rules, 1963 by putting copy of the same on Notice Board on 26/07/2019, at Ranchi.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

राँची/Ranchi; दिनांक Dated 26/07/2019

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
Smt. Warsha Bagaria,
204, Gharana Apartment,
Purulia Road, Dangra Toli,
Ranchi-834001
2. प्रत्यर्थी / The Respondent-
ITO Ward-3(3), Ranchi
3. आयकर आयुक्त(अपील) / The CIT(A),

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, राँची / ITAT, Ranchi