

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

**ITA No.635/Asr/2017**

Assessment Year:2010-11

Income Tax Officer,  
Ward-2(5), Katra

Vs.

Sh. Chain Singh  
Ward No.3, Nangal Road  
Katra

[PAN:AILPS 9489E]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Amar Pal Meena (Ld. DR)

Respondent by: Sh. Joginder Singh (Ld. CA)

Date of hearing: 28.08.2019

Date of pronouncement: 09.10.2019

**ORDER**

**PER N.K. CHOUDHRY, JM:**

The instant appeal has been preferred by the Revenue Department against the order dated 28/06/2017 impugned herein passed by the Ld. CIT(A), J&K, Jammu u/s. 250(6) of Income Tax Act, 1961 (hereinafter called as the 'Act').

**2.** The brief facts of the case are that in the instant case the Assessing Officer initiated the proceedings u/s 147 of the Act and issued a notice u/s 148 of the Act and ultimately made certain additions and computed total gross income of the assessee at Rs.1,07,65,672/- The assessee challenged the assessment order on various grounds including the legal one qua reopening of the case and

the Ld. CIT(A) quashed the proceedings u/s 147/148 of the Act by holding as under:

**“Findings:** - *I have considered the facts of the case as mentioned in the assessment order and the submissions made by the appellant stated as above. It is found that there is no dispute on this fact that the assessment in this case was reopened u/s 147 of the Income Tax Act on the basis of the investigation report received from the Investigation Wing of the department. This has already been admitted by the AO in his reply to the objections raised by the assessee in the beginning of the assessment proceedings.*

*I have also examined the reasons recorded by the AO for the reopening of the assessment u/s 147 of the Act the copy of which was supplied to the assessee by the AO on 21.7.2016 and enclosed in the "Paper Book" on page-17 and page -19. It is also found from the assessment order that the AO, after recording the reasons on the basis of the Investigation report, had sought approval of the Pr. Commissioner of Income Tax, Jammu before initiating the reopening proceedings u/s 147 of the Act. It means that the AO has not acted on his own and has reopened the assessment simply on the basis of the Investigation report received from the Investigation wing of the department and the direction obtained from Pr. Commissioner of Income Tax, Jammu. On the basis of these facts, it cannot be said that the "reason to believe" as required under section 147 of the Act was formed by the AO on his own. In the present case it is found that the AO has acted like a post office; receiving the Investigation report prepared by the Investigation wing, forwarding it to the Pr. CIT for direction and then issued notice u/s 148 of the Act. This is against the requirement of law. Section 147 of the Act requires that there has to be "reason to believe" before invoking this provision but it is found that the AO has not applied his mind before recording the "reason to believe". If we go into the jurisprudence of the Income Tax Law, we find that this provision has been enshrined in the Act to ensure that the assessment should not be reopened in a casual, routine and mechanical manner. The report of the Investigation wing can be a beginning point but not the end. When the AO records the reason it is expected from him that he has applied his mind before initiating the reopening proceedings and he has not acted on the basis of a report which has been prepared by a third party may be after thorough inquiries. Thus, in view of the facts sated above it is*

*clear that in the present case the AO has not applied his mind and simply acted in a routine and mechanical manner.*

*This is further corroborated by the fact that the assessment was reopened by the AO u/s 147 of the Act on the basis of the report prepared by the Investigation wing that the assessee has suppressed the room rent income for the year as the income reported by him from M/s Thakur Guest House was for 14 rooms only whereas spot enquiries conducted by them confirmed that M/s Thakur Guest House was having 25 rooms. When the notice u/s 148 of the Act was sent to the assessee, he raised objections and requested the AO to drop the reopening proceedings vide his letter dated 27.7.2016 enclosed with the "Paper Book" on page-18 on the ground that the assessee owned two guest houses, namely M/s Thakur Guest House and M/s New Thakur Guest House. M/s Thakur Guest House has 25 rooms and M/s New Thakur Guest House has 14 rooms and the assessee has shown receipts as per the actual booking in both the guest houses as per regular books of account. This fact was not disputed by the AO anywhere in the assessment order. It is also not found in the assessment order that the AO had conducted independent enquiries to ascertain this fact before issuing of notice u/s 148 of the Act. Though, the AO deputed his Inspector to conduct spot enquiries during the assessment proceedings to ascertain the actual turnover of the assessee, the same could have been conducted before the reopening proceedings to rebut assessee's claim. This shows that the AO did not act on his own and has simply initiated the reopening proceedings on the basis of what was sent to him in the form of Investigation report. This is against the provisions of law as provided under section 147 of the Act where the Power to form belief has been given exclusively to the AO and not to anybody else. The AO is a quasi-judicial authority and it is expected that he will act in a judicious manner.*

*Now coming to the legal position on this issue, the appellant has placed reliance on a number of decisions in support of his claim that any proceedings initiated on the basis of invalid "reasons to believe" are also invalid. I have considered the judicial decisions cited as above and find that this aspect has been dealt with in detail in the case of Prashant S Joshi (2010) 324 ITR 0154, wherein the Hon'ble High Court of Bombay has held that "the first proviso to s. 147 has no application in the facts of this case. The basic postulate which underlines s. 147 is the formation of the belief by the AO that any income chargeable to tax has escaped assessment for any*

assessment year. The AO must have reason to believe that such is the case before he proceeds to issue a notice under s. 147. The reasons which are recorded by the AO for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well-settled that the question as to whether there was reason to believe, within the meaning of s.147 that income has escaped assessment, must be determined with reference to the reasons recorded by the AO. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under s. 148.

In the case of ITO Vs Lakhmani Mewal Das (1976) 103 ITR 0437, Hon'ble Supreme Court has held that "The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the ITO. The reason must be held in good faith. It cannot be merely pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the ITO in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law.

In the case of GKN Driveshaft's (India) Ltd (2003) 259 ITR 0019 the Hon'ble Supreme Court has held that "**when a notice under s. 148 is issued the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessment.**"

*After going through the above decisions, it is evident that all these decisions support the appellant's position that the assessment in this case could have been reopened only on the basis of reasons recorded by the AO on his own and not on the basis of the report received from the Investigation wing as has been done in the present case.*

*Secondly, the purpose of issuing notice u/s 148 of the Act is that in case some objections are raised and found to be correct the proceedings u/s 147 may be dropped by the AO. However, in this case the AO has not disposed of the objections raised by the appellant by passing speaking order and continued with the assessment proceedings. This is against the spirit of law.*

*Thus, in view of the facts stated above, it is found that the assessment was reopened in this case in a routine and mechanical manner and without application of mind on the part of the AO. The AO did not conduct independent inquiries to form his own belief that income had escaped assessment in the present case. Accordingly, it is held that the reopening of assessment made in this case u/s 147 of the Act is not as per the provisions of the Act and void ab initio. The notice issued under section 148 of the Act is, therefore, quashed.*

*Since, the proceedings under section 147 and 148 of the Act were held to be invalid in the present case, there is no need to go into the merit of the case.*

*In effect, the appeal is allowed."*

**3.** Being aggrieved against the impugned order, the Revenue Department preferred the instant appeal.

**4.** We have heard both the parties and perused the material available on record. The issue involved in the instant case relates to the reasons recorded for the reopening of the assessment which for the sake of brevity and ready reference are reproduced herein below.

*"It is intimated that Investigation Wing of the Department conducted enquiries in your case and on the basis of investigation/detail provided by you to them during the course of*

*enquiry proceedings and also from filed enquiries conducted by them, concluded that you have suppressed the room rent income for the year. The income reported by you from M/s Thakur Guest House was for 14 rooms only whereas spot enquiries conducted by them confirmed that M/s Thakur Guest House was having 25 rooms. In view of this provision of section 147 were invoked in your case after seeking approval from the competent authority."*

**4.1** The Ld. CIT(A) categorically held that *there is no dispute that the assessment in this case was reopened u/s 147 of the Act on the basis of the investigation report received from the Investigation Wing of the Department and after recording the reasons on the basis of the investigation report the Assessing Officer had sought approval of the Pr. Commissioner of Income Tax, Jammu before initiating the reopening proceedings u/s 147 of the Act. It means that the AO has not acted on his own and has reopened the assessment simply on the basis of the Investigation report received from the Investigation Wing of the Department and the direction obtained from the Pr. CIT, Jammu. The Ld. CIT(A) further observed that on the basis of these facts, it cannot be said that the "reasons to believe" as required u/s 147 of the Act was formed by the AO on his own. In the present case, the Assessing Officer has acted like a post office receiving the Investigation report prepared by the investigation Wing, forwarding it to the Pr. CIT for direction and then issued the notice u/s 148 of the Act. This is against the requirements of law. Sec. 147 of the Act requires that there has to be "reasons to believe" before invoking this provision but it is found that the AO has not applied his mind before recording the "reasons to believe". Finally the Ld. CIT(A) concluded that the assessment in this case could have been reopened only on the basis of reasons recorded by the AO on his own and not on the basis of the report received from the Investigation Wing as has been done in the present case. Secondly, the purpose of issuing notice u/s 148 of the Act is that in case some objections are raised and found to be correct, the proceedings u/s 147 may be dropped by the AO. However, in*

*this case the AO has not disposed of the objections raised by the appellant by passing speaking order and continued with the assessment proceedings. This is against the spirit of law. The Ld. CIT(A) further observed that thus, in view of the facts stated above, it is found that the assessment was reopened in his case in a routine and mechanical manner and without application of mind on the part of the AO. The AO did not conduct independent inquiries to form his own belief that income had escaped assessment in the present case. Accordingly, it is held that the reopening of the assessment made in this case u/s 147 of the Act is not as per the provisions of the Act and void ab initio. The notice issued u/s 147 of the Act is therefore quashed. The Ld. CIT(A) further held that the proceedings u/s 147 & 148 of the Act were held to be invalid in the present case and there is no need to go into the merit of the case.*

#### **4.2** Let us to peruse the relevant provisions of law:

"147. *If the AO has reason to believe that any income chargeable to tax has escaped assessment for any A.Y., he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the a.y. concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Provided that where an assessment under subsection (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub section (1) of section 142 or section 148 or to disclose fully and truly all*

*material facts necessary for his assessment for that assessment year.*

*Explanation 1.- Production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

*Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment namely:-*

*(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax.*

*(b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the assessing officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.*

*(c) Where an assessment has been made, but-*

- (i) income chargeable to tax has been under assessed; or*
- (ii) such income has been assessed at too low a rate; or*
- (iii) such income has been made the subject of excessive relief under this act; or*
- (iv) excessive loss or depreciation allowance or any other allowance under this act has been computed."*

The law on the provisions of section 147 is very clear. Section 147 authorizes the Assessing Officer to assess or re-assess the income chargeable to tax if he has reason to believe that the income for any assessment order has escaped

assessment and has duly recorded the reasons, however as it well settled that the reasons to believe must be bona fide and must be based upon relevant material on which a reasonable person could have formed the requisite belief.

**4.3** In the present case, we find that the first few lines of the so-called reasons recorded by the assessing Officer speaks that *"It is intimated that Investigation Wing of the Department conducted enquiries in your case and on the basis of investigation/detail provided by you to them during the course of enquiry proceedings and also from filed enquiries conducted by them, concluded that you have suppressed the room rent income for the year. The income reported by you from M/s Thakur Guest House was for 14 rooms only whereas spot enquiries conducted by them confirmed that M/s Thakur Guest House was having 25 rooms.*

*Last part says that in view of this provision of section 147 were invoked in your case after seeking approval from the competent authority."*

**4.4** The first part is only information and the last part of the so-called reasons is mere invoking of provisions of section 147 of the Act on the directions of the superior authority. From the so-called reasons, it is not at all discernible as to whether the Assessing Officer had made any exercise and applied his independent mind to the information and independently arrived at a belief that on the basis of the material which he had before him, income had escaped assessment. The Assessing Officer simply relied upon the investigation report of the investigation Wing of the Income tax Department, which was simply forwarded to the ITO, who while recording reasons for selection

of the case, neither verified the facts qua information nor made any effort to find out the veracity and authenticity of investigation report and any corroborative evidence/material thereto, but only acted on the investigation report which according to our mind does not sound good reason for reopening of the case. It is clear that the Assessing Officer failed to make any exercise for reopening of the case independently and with corroborative material. Even the Assessing Officer has not made any exercise to gather any material evidence on record. The initiation of reassessment itself is based upon no evidence and/or un-corroborative material, therefore in any sense cannot survive, because initiation of the proceeding u/s 147 itself is a vague and based upon no substantive reasoning and/or material at all, hence in our considered opinion, the Ld. CIT(A) was absolutely justified in quashing the reopening of the assessment u/s 147 of the Act, while judiciously considering and appreciating the peculiar facts of the case. Consequently the order under challenge liable to be affirmed.

**5.** In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open Court on 09/10/2019.

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated:09/10/2019.

/PK/ Ps.

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By Order