



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT

ITA No.593/LKW/2019
Assessment Year: 2010-11

Smt. Swaroopma Tripathi 820, Awas Vikas Colony Amaniganj Faizabad	v.	ITO-II Faizabad
TAN/PAN:AGLPT9805D		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Ajay Kumar, D.r.		
Date of hearing:	15	01	2020
Date of pronouncement:	15	01	2020

ORDER

This is assessee's appeal against the order of the ld. CIT(A)-1, Lucknow, dated 22/8/2019 for assessment year 2010-11, taking the following grounds:

1. BECAUSE the "CIT(A)" was not justified in dismissing the appeal in-limni by passing ex-parte order without affording proper opportunity of hearing to the "appellant" and consequently the impugned order deserves to be set-aside and matter restored to "CIT(A)" for passing the order afresh after providing due and effective opportunity of being heard to the appellant.
2. BECAUSE the re-assessment proceedings were neither initiated nor concluded as per provisions of law and consequently the "CIT(A)" should have quashed the assessment order dated 04.03.2016 passed under section 143(3)/147 of the "Act".

3. BECAUSE the reassessment proceedings under section 147 of the "Act" got wholly vitiated on account of infirmity in the reasons recorded by the Assessing Officer, and consequently "CIT(A)" should have quashed the reassessment order dated 04.03.2016 passed u/s 143(3)/147 of the "Act".

4. BECAUSE the reasons were recorded only with a view to verify the source of cash deposits in the savings bank account which narration did not amount to requisite satisfaction for belief of escapement of income and owing to such a fundamental deficiency in the recording of reasons, the entire proceedings of assessment in pursuance of such reasons got wholly vitiated and consequently assessment order dated 04.03.2016 deserved to be quashed.

5. BECAUSE mandatory notice under section 143(2) of the "Act" was not issued after filing of return in response to notice u/s 148 of the "Act", the assessment order passed u/s 143(3)/147 of the "Act" deserved to be quashed.

6. BECAUSE without prejudice to the aforesaid grounds and in any case, no addition having been made on the basis of reasons recorded for escapement of income, the addition of Rs.5,46,1277/- on account of suppressed income paid as liability in the O.D. account in the bank wrongly upheld by "CIT(A)", deserves to be deleted.

7. BECAUSE even on merits, the addition of Rs.5,46,127/- made on account of suppressed income paid as liability in the O.D. account in the bank is not sustainable, as the source of the said amount did not represent income of the "appellant".

8. BECAUSE the overdraft account with Punjab National Bank was squared up during the year by way of transfer of

funds from certain parties which did not constitute the income of the assessee and consequently, the authorities below were not correct in making/sustaining the addition of Rs.5,46,127/- by treating the said amount as suppressed income of the assessee.

9. BECAUSE the addition of Rs.5,46,127/- made/sustained by the authorities below is without appreciating the material and information placed on assessment record and consequently, the addition deserves to be deleted.

10. BECAUSE the addition of Rs.5,46,127/- has been made/sustained on wrongful assumption of facts and consequently the same deserves to be deleted.

11. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

2. The Id. D.R. has produced the record, as he was requested to do, vide order sheet entry dated 16/12/2019. A copy of the reasons of the Assessing Officer for formation of belief of escapement of income has been filed. These reasons read as follows:

“05.03.2015

As per AIR information available in the office it is noticed that during the year relevant to the assessment year 2010-11, the assessee had made cash deposits to the tune of Rs.13,19,000/- in her saving bank account maintained with Punjab National Bank. The source of money deposited in Saving Bank account, which are not verifiable at this stage.

Return of income for the year under consideration has been filed by the above named assessee but from the perusal of return, cash deposits in the bank account cannot be verified at this time. The source of deposit to the tune of Rs.13,19,000/- extent of business, nature and source(s) of

deposits are required to be examined in the case of assessee. I have reason to believe that deposits to the tune of Rs.13,19,000/- has escaped assessment for the relevant assessment year. Hence, proceedings u/s 147 of the I. T. Act, 1961 are being initiated.

Issue notice under section 147 of the Income Tax Act, 1961.

*Sd/-
(Gulab Singh)
Income Tax Officer II, Faizabad”*

3. Arguing Ground no.4 first, the ld. Counsel for the assessee has submitted that the reasons were recorded only with a view to verify the source of the cash deposits in the savings bank account, which did not amount to requisite satisfaction for belief of escapement of income, and owing to such a fundamental deficiency in the recording of the reasons, the entire proceedings of the assessment, in pursuance of such reasons, got wholly vitiated and consequently the assessment order dated 04.03.2016 deserves to be quashed. The ld. Counsel for the assessee has placed reliance on the order of the ITAT Delhi Bench in ‘Bir Bahadur Singh Sijwali, Haldwani vs. ITO, Haldwani’ in ITA NO.3814/Del/2011(copy placed on record).

4. This issue, it is seen, has been raised for the first time, before this Tribunal. However, this being a legal issue, going to the root of the matter and not requiring anything further to be brought on record, can be so allowed to be raised. It is so ordered.

5. Heard. In ‘Bir Bahadur Singh Sijwali’ (supra), it has been held, inter alia, as under:

“7.....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 Vs 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. *Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs.10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of*

holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs.10,24,100 has escaped assessment of income because the assessee has Rs.10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

9. Learned Departmental Representative has referred to a number of judicial precedents in support of her stand that even deposits in the bank account, as having come to the notice of the Assessing Officer through AIR, can be reason enough for holding the belief that income has escaped assessment. She has relied upon the decisions in the cases of CIT Vs Nova Promoters & Finlease Pvt Ltd [(2012)342 ITR 169] but then none of the questions before Hon'ble High Court had anything to do with reopening of assessment and this decision cannot, therefore, be taken as an authority on the legal issue which did not even come up for specific adjudication before Their Lordships. As for her reliance on Hon'ble Supreme Court's judgment in the case of Phool Chand Bajrang Lal Vs ITO [(1993) 203 ITR 456], that was case in which Their Lordships concluded that the AO "rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific relevant and

reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and, therefore, income chargeable to tax had escaped assessment" and we are unable to see anything on the facts of the present case which are materially similar to the facts of the said case. As regards her reliance on the decision of a coordinate bench in the case of Mithila Credit Services Limited Vs ITO (ITA No. 1078/Del/2013; order dated 23.5.2014), it is important to bear in mind the fact that it was a case in which the Assessing Officer had reopened the assessment on the basis of receipt of information from Directorate of Investigation, and, as noted by the Assessing Officer in the reasons recorded for reopening the assessment, "the name of the assessee figures as one of the beneficiaries of these alleged bogus transactions" in the information given by the directorate. If the assessee was a beneficiary of such a scam, the income was indeed to have been taxed in its hands but then in the case before us the only reason for reassessment proceedings was the fact of deposit of bank account which by itself does not lead to income being taxed in the hands of the assessee. Learned Departmental Representative has referred to several other judicial precedents in support of the proposition that at the stage of initiation of reassessment proceedings, all that is to be seen as existence, rather than adequacy, of the material to come to the conclusion that income has escaped assessment. To us, there cannot be any, and there is no, doubt on the correctness of this proposition but then, as we have elaborately explained earlier in this order, the material must indicate income escaping assessment rather than desirability of further probe in the matter which may or may not lead to income escaping the assessment. On the basis of reasons as

recorded in this case, such an inference about income escaping assessment, in our humble understanding, cannot be drawn.

10. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.”

6. Thus, as per ‘Bir Bahadur Singh Sijwali’ (supra), the material forming the basis of the Assessing Officer’s belief of escapement of income must indicate income escaping assessment, rather than desirability of further probe in the matter which may, or may not, lead to income escaping assessment. On the other hand, in the reasons recorded in the present case, as reproduced hereinabove, the Assessing Officer himself states that:

“.....The source of the deposit of Rs.13,19,000/-, the extent of business, nature and source(s) of the deposits are required to be examined in the case of the assessee.....”

7. The Assessing Officer further states in the reasons that:

“.....I have reason to believe that deposits to the tune of Rs.13,19,000/- has escaped assessment for the relevant assessment year.” and that “hence, proceedings u/s 147 of the I. T. Act, 1961 are being initiated.”

8. Here, again, ‘Bir Bahadur Singh Sijwali’ (supra) is specific that what has to be examined is whether the fact of

deposits, per se, in the bank account of the assessee could be the basis of holding the view that the income has escaped assessment. It is only belief of escapement of *income*, which would enable the Assessing Officer to reopen a completed assessment. Herein, however, the Assessing Officer himself is of the belief that what has escaped assessment is the bank deposits of Rs.13,19,000/-. Now, these deposits, as also held in 'Bir Bahadur Singh Sijwali' (supra), by themselves, do not lead to income being taxed in the assessee's hands.

9. No decision contrary to 'Bir Bahadur Singh Sijwali' (supra) has been cited.

10. For the above discussion, it is hereby held that in the present case, the reasons recorded by the Assessing Officer were not reasons sufficient enough to enable reopening of the completed assessment. The reassessment proceedings and all further proceedings pursuant thereto, culminating in the impugned order, are held to be null and void. Nothing further survives for adjudication, nor was anything else argued.

11. In the result, the appeal is allowed.

Order pronounced in the open Court on 15/01/2020.

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED: 15/01/2020

JJ:1501

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order
Assistant Registrar