

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-1' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)

ITA No.6759/DEL/2018

[A.Y 2008-09]

K K Jewellers G-23, South Extension, Part-1, New Delhi-110049	Vs.	ITO Ward- 47 (3) New Delhi
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Appellant by : Sh. Abhishek Mathur, CA
Respondent by : Ms. Rakhi Vimal, Sr. DR

Date of Hearing : 14.09.2020
Date of Pronouncement : .09.2020

ORDER

PER N. K. BILLAIYA, AM:

1. This appeal by the assessee is preferred against the order of the CIT(A)-16, New Delhi dated 12.03.2018 pertaining to A.Y. 2008-09.

2. The grievance of the assessee is twofold. Firstly, the assessee challenged the reopening of the assessment and second the assessee is aggrieved by the additions sustained by the CIT(A) amounting to Rs.5,93,335/-.

3. Since the challenge to the reopening of the assessment goes to the root of the matter, I proceed to decide this issue first.

4. Representatives of both the sides were heard at length. Case record carefully perused and with the assistance of the counsel I have carefully considered the relevant documentary evidences brought on record in the form of paper book in the light of rule 18 (6) of the ITAT Rules.

5. Briefly stated the facts of the case are that action u/s.147 of the Act was taken and accordingly notice u/s.148 was issued. The basis for issuing the notice u/s.148 is the information received from DGIT (Investigation), Mumbai from which the AO came to know that the assessee has received accommodation entries from a group owned by Rajendra Jain. Be that as it may, the reassessment proceedings are triggered by service of notice u/s. 148 of the Act and the root for the issue of such notice lie in the reasons recorded.

6. The reasons recorded by the AO is as under :-

कार्यालय आयकर अधिकारी वार्ड 47(3)
Office of the Income Tax Officer, Ward 47(3),
कमरा नं. 204, ड्रम शेप बिल्डिंग, इन्द्र प्रस्थ एस्टेट, नई दिल्ली - 110002
Room No. 204, Drum Shaped Building, I P Estate, New Delhi - 110002
F.No. ITO/Ward-47(3)/2015-16/318
Phone No. 011-23371
Dated- 21.08.2015

To,

M/s K.K. Jewellers
G-23, NDSE Part-I Market,
New Delhi-110049

Sir,

Sub:- Communication of reasons on the basis of which notice u/s 148 of Income Tax Act, 1961 issued for A.Y. 2008-09- Reg-

Please refer to your letter dated 15.04.2015, vide which you have requested to convey the reason for issuing the notice u/s 148 of the I.T. Act, 1961


In this regard, it is to convey that reason for issuing the notice u/s 148 is as under :

[As per information, it is seen that one of the benami concerns M/s AVI Exports, has provided accommodation entry to the assessee i.e. M/s K.K. Jewellers (PAN-AACFK3449) during the financial year 2007-08 relevant to the A.Y. 2008-09 to the tune of Rs.5,93,335/- per details given below

S.No.	From	PAN	A.Y.	Amount involved
1	AVI Exports	ABIPJ5587A	2008-09	Rs.5,93,335/-

In view of the information, it is evident that the assessee has taken accommodation entry by providing cash which has not been reflected in the books of accounts of the assessee

Yours faithfully,


(RAJ KUMAR)
Income Tax Officer,
Ward-47(3), New Delhi



राज कुमार
आयकर अधिकारी
वार्ड-47(3), नई दिल्ली

7. I have given a thoughtful consideration to the aforementioned notice. A perusal of the same show that the source of the information has not been mentioned anywhere nor there is any reference to the person who has given this information. The notice simply says that “as per information” but how that information pertains to the assessment year under consideration is not known. I fail to understand how the AO came to the conclusion that income has escaped assessment which requires reassessment. It appears that the AO is simply carried away with a borrowed satisfaction.

8. Though the DR strongly supported the assessment order and vehemently stated that the investigation report received from DGIT (Investigation), Mumbai was the basis for reopening the assessment and on the basis of such information the AO has applied his mind. It is the say of the DR that the information which was in possession of the AO was very much in the knowledge of the assessee.

9. I failed to persuade myself in agreeing with the contentions of the DR. As mentioned elsewhere the AO has to give his opinion of escapement of income while issuing the notice and recording the reasons. As I have observed earlier the entire reopening is based on a borrowed satisfaction.

10. The Hon'ble High Court of Delhi in the case of Meenakshi Overseas Private Limited had the occasion to consider a similar issue when it was seized with the following question of law.

11. "Whether the ITAT erred in law and on facts in quashing the assessment proceedings u/s. 147 /148 of the Act and the Hon'ble High Court upheld the order of the Tribunal upholding that reassessment proceedings was not legal. The relevant findings of the Hon'ble High Court read as under :-

26. The first part of section 147(1) of the Act requires the Assessing Officer to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The Assessing Officer being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation.

The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

27. Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the Assessing Officer for a valid assumption of jurisdiction under section 147 of the Act to reopen a past assessment.

28. 28.1 In *Signature Hotels Pvt. Ltd. v. ITO (supra)*, the reasons for reopening a case recorded by the Assessing Officer in a pro forma and placed before the Commissioner of Income-tax for approval read thus (page 56 of 338 ITR) :

"11. Reasons for the belief that income has escaped assessment.— Information is received from the DIT (Inv.-I), New Delhi that the assessee has introduced money amounting to Rs. 5 lakhs during the financial year 2002-03 relating to the assessment year 2003-04.

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Details are contained in annexure. As per the information amount received is nothing but accommodation entry and assessee is a beneficiary."

28.2 The annexure to the said pro forma gave the name of the beneficiary, the value of entry taken, the number of the instrument by which entry was taken, the date on which the entry was taken, name of the account holder of the bank from which the cheque was issued, the account number and so on.

28.3 Analysing the above reasons together with the annexure, the court observed (page 59 of 338 ITR) :

"The first sentence of the reasons states that information had been received from Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during the financial year 2002-03 as per the details given in the annexure. The said annexure, reproduced above, relates to a cheque received by the petitioner on October 9, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.

The aforesaid reasons do not satisfy the requirements of section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except the annexure, which has been quoted above. The annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. The annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

28.4 The court in *Signature Hotels Pvt. Ltd. v. ITO* (supra) quashed the proceedings under section 148 of the Act. The facts in the present case are more or less similar. The

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present case is therefore covered against the Revenue by the aforementioned decision.

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29. 29.1 The above decision can be contrasted with the decision in *AGR Investment Ltd. v. Asst. CIT* (supra), where the "reasons to believe" read as under (page 151 of 333 ITR)

"Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/ accommodation entries provided by certain individuals/companies. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. In the said information, it has been inter alia reported as under :

Entries are broadly taken for two purposes :

1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans, etc.

2. To inflate expense in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

It has been revealed that the following entries have been received by the assessee :"

29.2 The details of six entries were then set out in the above "reasons". These included name of the beneficiary, the beneficiary's bank, value of the entry taken, instrument number, date, name of the account in which entry was taken and the account from where the entry was given the details of those banks. The reasons then recorded :

"The transactions involving Rs. 27,00,000, mentioned in the manner above, constitutes fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income/income from other sources of the assessee-company, which has not been offered to tax by the assessee till its return filed.

On the basis of this new information, I have reason to believe that the income of Rs. 27,00,000 has escaped assessment as defined by section 147 of the Income-tax Act. Therefore, this is a fit case for the issuance of the notice under section 148."

29.3 The court was not inclined to interfere in the above circumstances in exercise of its writ jurisdiction to quash the proceedings. A careful perusal of the above reasons reveals that the Assessing Officer does not merely reproduce the information but takes the effort of revealing what is contained in the investigation report specific to the assessee. Importantly he notes that the information obtained was "fresh" and had not been

offered by the assessee till its return pursuant to the notice issued to it was filed. This is a crucial factor that went into the formation of the belief. In the present case, however, the Assessing Officer has made no effort to set out the portion of the investigation report which contains the information specific to the assessee. He does not also examine the return already filed to ascertain if the entry has been disclosed therein.

30. 30.1 In CIT v. Highgain Finvest (P.) Ltd. [2008] 304 ITR 325 (Delhi) ; [2007] 16 Taxman 142 (Delhi) relied upon by Mr. Chaudhary, the reasons to believe read as under (page 327 of 304 ITR) :

"It has been informed by the Additional Director of Income-tax (Investigation), Unit VI New Delhi, vide letter No. 138 dated April 8, 2003 that this company was involved in the giving and taking bogus entries/transactions during the financial year 1996-97, as per the deposition made before them by Shri Sanjay Rastogi, CA during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transactions of this nature are as under :

Date	Particulars of cheque	Debit amount	Credit Amount
18-11-96	305002	5,00,000	

Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the PNB, New Rohtak Road, New Delhi.

Note : It is noted that there might be more such entries apart from the above.

The return of income for the assessment year 1997-98 was filed by the assessee on March 4, 1998 which was accepted under section 143(1) at the declared income of Rs. 4,200. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs. 5,00,000 (as mentioned above) has escaped the assessment within the meaning of the proviso to section 147 and clause (b) to Explanation 2 of this section.

Submitted to the Additional Commissioner of Income-tax, Range 12, New Delhi for approval to issue notice under section 148 for the assessment year 1997-98, if approved."

30.2 The Assessing Officer was not merely reproducing the information received from the investigation but took the effort of referring to the deposition made during the survey by the chartered accountant that the assessee-company was involved in the giving and taking of bogus entries. The Assessing Officer thus indicated what tangible material was which

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enabled him to form the reasons to believe that income has escaped assessment. It was in those circumstances that in the case, the court came to the conclusion that there was prima facie material for the Assessing Officer to come to the conclusion that the assessee had not made a full and true disclosure of all the material facts relevant for the assessment.

31. In *Principal CIT v. G and G. Pharma India Ltd.* (supra) there was a similar instance of reopening of assessment by the Assessing Officer based on the information received from the DIT (I). There again the details of the entry provided were set out in the "reasons to believe". However, the court found that the Assessing Officer had not made any effort to discuss the material on the basis of which he formed prima facie view that income had escaped assessment. The court held that the basic requirement of section 147 of the Act that the Assessing Officer should apply his mind in order to form reasons to believe that income had escaped assessment had not been fulfilled. Likewise in *CIT v. Independent Media P. Limited* (supra) the court in similar circumstances invalidated the initiation of the

proceedings to reopen the assessment under section 147 of the Act.

32. In *Oriental Insurance Co. v. CIT* [2015] 378 ITR 421 (Delhi) it was held that "therefore, even if it is assumed that, in fact, the assessee's income has escaped assessment, the Assessing Officer would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the assessment, the question of assessing or reassessing the income under section 147 of the Act would not arise".

33. In *Rustagi Engineering Udyog (P.) Limited* (supra), it was held that ". . . the impugned notices must also be set aside as the Assessing Officer had no reason to believe that the income of the assessee for the relevant assessment years had escaped assessment. Concededly, the Assessing Officer had no tangible material in regard to any of the transactions pertaining to the relevant assessment years. Although the Assessing Officer may have entertained a suspicion that the assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under section 147 of the Act. A reason to believe—not reason to suspect—is the precondition for exercise of jurisdiction under section 147 of the Act".

34. Recently in *Agya Ram v. CIT* (supra), it was emphasised that the reasons to believe "should have a link with an objective fact in the form of information or materials on record . . ." It was further emphasised that "mere allegation in reasons cannot be treated equivalent to material in eyes of law. Mere receipt of information from any source would not by itself

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tantamount to reason to believe that income chargeable to tax has escaped assessments".

35. In the decision of this court dated March 16, 2016, in *W. P. (C) No. 9659 of 2015 (Rajiv Agarwal v. Asst. CIT [2017] 395 ITR 255 (Delhi))* it was emphasised that "even in cases where the Assessing Officer comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an assessee has escaped assessment, form a belief that income of the assessee has escaped assessment".

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the Assessing Officer one after the other. There is no independent application of mind by the Assessing Officer to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report. Indeed it is a "borrowed satisfaction". The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the court is satisfied that in the facts and circumstances of the case, no error has been committed by the Income-tax Appellate Tribunal in the impugned order in concluding that the initiation of the proceedings under section 147/148 of the Act to reopen the assessments for the assessment years in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.

12. In the light of the aforementioned decision of the Hon'ble Jurisdictional High Court I have no hesitation in quashing the notice issued u/s. 148 of the Act thereby quashing the assessment order itself. Since I have quashed the assessment order I do not find it necessary to dwell into the merits of the case.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.09.2020.

Sd/-
[N. K. BILLAIYA]
 ACCOUNTANT MEMBER

Dated: 17.09.2020

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	15.09.2020
Date on which the typed draft is placed before the dictating Member	17.09.2020
Date on which the typed draft is placed before the Other member	17.09.2020
Date on which the approved draft comes to the Sr.PS/PS	17.09.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	17.09.2020
Date on which the fair order comes back to the Sr. PS/ PS	17.09.2020
Date on which the final order is uploaded on the website of ITAT	17.09.2020
Date on which the file goes to the Bench Clerk	17.09.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

