

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 59/JP/2019
निर्धारण वर्ष / Assessment Year :2011-12

Vijay Kumar Agarwal, 7/58, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	I.T.O., Ward 4(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ADVPA 6150 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pravin Kr. Saraswat (CA)
राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 24/05/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Ajmer dated 27/12/2018 for the A.Y. 2011-12 in the matter of order passed U/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- "1. *The Learned C.I.T. (A) has erred for not considering the issue for validity of issue notice U/s 148 of I.T. Act, 1961, while there was no escapement of income on part of assessee.*

The initiation of proceedings was only on behest of I.T.O. Ward 3(2), who has intimated to A.O. for advancement of loan Rs.53,95,000/- given by assessee to Pooja Agarwal, while concern A.O. has accepted said loan in her hands after detailed examination. Hence initiation of

proceedings merely on the reason that income to extent of loan given has escaped assessment is not justified.

- 2 *The Learned C.I.T. (A) has erred in confirming addition of Rs.51,28,143/- made on account of alleged un-explained expenditure in executing contract, while assessee has satisfactory explained nature of work and payments. Hence addition made is not justified.*
- 3 *The Learned C.I.T. (A) has erred in disallowing claim of 80C Rs.10,000/- in spite of evidence available at (APB-20-21).*

The assessee has also taken additional ground, which reads as under:

Additional Ground No. 1 B

Ld. Assessing Officer erred in law by making addition on some other grounds, while not making any addition in the assessment order on the primary issue which led to the reopening of assessment.

Ld. AO did not have valid jurisdiction to make addition on some other grounds not forming part of the reasons recorded u/s 148(2), if no addition is made on the primary / basic issue, for which the reopening was initiated.

Additional Ground No. 1C

Ld. Joint CIT, Range-4, Jaipur has merely mentioned 'Yes' at Serial No. 12 in the printed form for seeking his satisfaction u/s 151 on reopening reasons, which signifies non-application of mind on the reasons recorded by Ld. AO, and approval granted in a mechanical manner. In absence of satisfaction, the notice u/s 148 is without valid approval, rendering the whole proceedings invalid and void.

Additional Ground No. 2A

That in the facts and circumstances of the case, the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the addition of the sum of Rs. 5128143/-, being 92% of turnover, as an unexplained expenditure under the Income Tax Act, 1961."

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Since the additional grounds raised by the assessee are legal in nature, therefore, these additional grounds No. 1, 1B and 1C are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in upholding the validity of reopening of reassessment proceedings as well as issuance of notice U/s 148 of the Act, therefore, we have decided to adjudicate these grounds by the present consolidated order.

4. At the outset, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

"1.1 REOPENING WAS BASED ON BORROWED SATISFACTION:

1.1.1 *The information received (on 14/07/2014) from the another AO of same ranking, was neither verified nor subjected to any independent examination by the Ld. Assessing Officer and he simply `copy-paste` this information in the reasons recorded u/s 147. While recording the reasons, there was no transaction specific valid material available with the Ld. Assessing Officer to form his belief for escapement. Such an approach of Ld. AO is a clear breach of the settled position of law that re-opening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction of another AO/ Investigating Authority.*

1.1.2 *Above submission of appellant, also finds the support from the fact that even at the time of recording reasons and forming a belief, the Ld. Assessing Officer was not sure about the nature of escapement, if any. Ld. Assessing Officer has mentioned in the reasons:*

"..... In the course of assessment Proceedings in the case of Smt. Pooja Agarwal for AY 2011-12, it was found that Shri Vijay Kumar Agarwal had given total unsecured loan of Rs. 71,45,000/- (Rs. 17,50,000/- in AY 2010-11 & Rs. 53,95,000/- in AY 2011-12),"

Whereas, the addition in the assessment order has been made for 'Unexplained Expenditure' in executing contract works met from undisclosed sources of income.

Above sequence of events leading to notice u/s 147, are a clear case of a 'Borrowed Satisfaction', instead of forming own independent satisfaction by the Ld. AO while recording the reasons. Thus, the reopening u/s 147 was solely based on hearsay, surmises & assumptions of Ld. AO.

1.2 *'CAUSE-EFFECT' LINK IN THE MATERIAL AVAILABLE AND REASONS RECORDED IS MISSING*

1.2.1 *Reasons to believe cannot be reasons to suspect. There must be a direct nexus between the material coming to the notice of the assessing officer and the formation of the belief therefrom for escapement of income.*

1.2.2 *Threadbare Analysis of the recorded reasons reveals that reasons have two parts to it:*

(a) *First Part: Ld. AO has reproduced the precise information which he has received from the ITO, Ward 3(2), Jaipur.*

- i) *This information is in the form of details of the amount lent by assessee to Smt. Pooja Agarwal.*
- ii) *Reasons further mention "As per AST system, it has been found that Shri Vijay Kumar Agarwal has not filed his return of income"*
- (b) *Coming to the second part of reasons, this tells us what the Ld. Assessing Officer did with the information so received. He says:*

"Looking to the facts mentioned above, I have reason to believe that the income to the extent of Rs. 53,95,000/- has escaped assessment for the A.Y. within the meaning of section of 147"

Only on the basis of above two facts i.e. a) Giving Loans and b) not filing ITR, Ld. Assessing Officer had jumped to the automatic conclusion that Loans given, per se, to Pooja Agarwal are in the nature of escaped income of assessee.

- 1.2.3 a) *'Giving Loan' need not necessarily come from the income or escaped income. Sources of the funds may be out of exempt income e.g. past savings, loans taken, gifts, liquidation of investment or sale of property, inheritance of asset etc.*

b) Similarly, 'Giving Loan' cannot compel one to file his ITR mandatorily. Section 139 lays down various cases where ITR filing is mandatory but 'Giving Loan' is not one of them.

Reasons recorded by Ld. AO proceeds on the fallacious assumption that the 'Loan to Pooja Agarwal' constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee.

- 1.2.4 *The 'reason to believe' as recorded by Ld. AO are not in fact reasons, but only conclusions, leaving the reader to guess for the material on basis of which the belief of escapement is founded.*

There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. Ld. AO was expected to point out what he found when he went through the information/examination. In other words, what in such information led him to form the belief that income escaped assessment.

The Assessing Officer, being a quasi-judicial authority, is expected to arrive at a subjective satisfaction independently on an objective criteria. Belief may be subjective but reason has to be objective as held by the Hon'ble Court in the case of Ganga Prasad Maheshwari v. CIT (1983)139 ITR 1043: (1981) 21 CTR 83 (All.). The expression 'reason to believe' occurring in section 147 does not mean a purely subjective satisfaction on the part of the ITO, the reasons for the belief must have a rational connection or relevant bearing to the formation of the belief [ITO v. Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239 (SC)].

- 1.2.4 *Heart of the Section 147 is the formation of belief by the Assessing Officer that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. This is the bare minimum mandatory requirement of the first part of Section 147(1) of the Act. Merely saying that 'loan has been advanced' or 'ITR has not been filed', without disclosing the reasons, which led the assessing officer to hold such a belief, does not confer valid jurisdiction on the Assessing Officer to take action u/s 147 and 148 as held in the case of Birla VXL Ltd. v. ACIT (1996) 217 ITR 1 (Guj.)*

1.2.5 *In ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC), the Hon'ble Supreme Court affirmed the decision of the High Court and held that there was nothing to show in the confession made by a third party related to the loan taken by the assessee much less a loan which was shown to have advanced by that person to the assessee and, therefore, live link or close nexus, which should be there between the material and the belief formed by the Assessing Officer was missing or was too tenuous to provide a legally sound foundation for initiation of assessment proceedings under section 147. If the primary burden u/s 147, lying on AO, remains un-discharged, then the entire proceedings would crumble.*

3 *DISPOSAL OF OBJECTIONS BY LD. AO REVEAL THE MIND OF THE LD. AO:*

1.3.1 *Objections of the assessee against the notice u/s 148 were as under:*

"That assessee has submitted confirmation of Pooja Agarwal to whom loan was given Rs. 5405000/- during the year as well as proof of immediate source of deposit, which was received from Vandana Leasing Pvt Ltd. thru bank account. Thus the source of deposit was explained. Hence amount given to Mrs. Pooja Agarwal was justified, which has no co-relation with the income earned during the year....."

1.3.2 *Ld. AO disposed the objections vide notice u/s 142)1) dated 28/11/2016 (See PB No. 34) as under:*

"In this regard it is to communicate you that you have not filed return of income for AY 2011-12 within time allowed u/s 139 of the I. T. Act, 1961 whereas you have taxable income. Therefore, as per explanation 2(a) to Section 147, your case is deemed to be the case where income chargeable to tax has

escaped assessment. Further, the loans advanced by you were also not subject to verification”

1.3.3 *Analysis of above disposal confirms the view that the reasons were defective as per following discussions:*

a) "In this regard it is to communicate you that you have not filed return of income for AY 2011-12 within time allowed u/s 139 of the I. T. Act, 1961 whereas you have taxable income. Therefore, as per explanation 2(a) to Section 147, your case is deemed to be the case where income chargeable to tax has escaped assessment.

Ld AO has relied upon Clause 2(a) of the Explanation 1 to the Section 147 which reads as under:

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”

Above reveals the hollowness and fallacy of the reasons justifying the reopening. It has no-where been mentioned in the reasons that assessee has total income which has exceeded the maximum amount which is not chargeable to income tax. Therefore, reliance on `Explanation 2(a)' for deeming the escapement is a post-reopening improvement of reasons by the Ld. AO in the disposal order. Subsequent improvement in the reasons is not permissible.

1.3.4 *Second part of the disposal communication mentions:*

"Further, the loans advanced by you were also not subject to verification"

Notice under section 148 cannot be issued for verification of information. 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.

If primary burden u/s 148 lying on AO remains un-discharged then entire proceedings shall crumble (refer latin maxim sublato fundamento cadit opus meaning once foundation fails super structure falls). Therefore, Your honors may please hold the entire proceedings without jurisdiction and void.

Additional Ground No. 1B

Ld. Assessing Officer erred in law by making addition on some other grounds, while not making any addition in the assessment order on the primary issue which led to the reopening of assessment.

Ld. AO did not have valid jurisdiction to make addition on some other grounds not forming part of the reasons recorded u/s 148(2), if no addition is made on the primary / basic issue, for which the reopening was initiated.

The reasons recorded at the time of reopening and the additions finally made in the assessment order are as under:

<i>Reopening Reason recorded before initiation of assessment proceedings (See PB No. 33)</i>	<i>Actual addition in the Page No. 8 of the assessment order</i>
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<p>An information was received from ITO, Ward 3(2), Jaipur's letter No. 311 dated 14/07/2014 that during the course of asstt. Proceedings in the case of Smt. Pooja Agarwal for AY 2011-12 it was found that Shri Vijay Kumar Agarwal had given total unsecured loan of Rs. 71,45,000/- (Rs. 17,50,000/- in AY 2010-11 & Rs. 53,95,000/- in AY 2011-12). As per.</p> <p>Looking to the facts mentioned above, I have reasons to believe that the income to the extent of Rs. 53,95,000/- has escaped assessment for the A.Y. 2011-12 within the meaning of Section 147 of the IT Act, 1961.</p>	<p>a) Unexplained expenditure in executing contract works met from undisclosed sources of income Rs. 51,28,143/-, being 92% of deemed expenditure of turnover of Rs. 5574068/-</p> <p>b) Interest income from bank Rs. 3620/-</p>
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As no addition for Rs. 5395000/-, being loan given, forming the main `reason for escapement of income' u/s 147 has been made by the Ld. AO and, instead, the additions have been made on new different grounds, it can be very fairly said that reasons recorded did not exist and hence the assessment framed u/s 147 read with section 143(3) of the Income Tax Act deserves to be quashed.

Ld.Assessing Officer had no jurisdiction to travel beyond the reasons for reopening the assessment. This contention of assessee is based on well settled law and a few judgements in support, including binding judgments of Hon'ble Jurisdictional Rajasthan High Court, are as under:

- a) *Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd reported in 331 ITR 236 has held in concluding para No. 17 of the order, that*

"17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 47(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field"

- b) *Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v. Shri Ram Singh [2008] 306 ITR 343 (See PB No. 35 to 41) held:*

"If in the course of proceedings under section 147, the Assessing Officer were to come to conclusion that any income chargeable to tax which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then the mere fact, that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction to subject to tax any other income chargeable to tax which the Assessing Officer may find to have escaped assessment and which may come to his notice subsequently in the course of proceedings under section 147. It is a different story that for such other income, the Assessing Officer may have

recourse to such other remedies as may be available to him under law but then once it is found that the income regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the Assessing Officer is required to withhold his hands at that only.

- c) *Hon'ble Court of Rajasthan held in the case Commissioner of Income Tax v. Dr. Devender Gupta 174 Taxman 438 (Raj.):*

"The precise controversy is, that reasons were recorded for assuming certain income to have escaped assessment, however during reassessment proceedings, that income was not found to have escaped assessment, but then on the basis of certain other material, certain other incomes were found to have escaped from assessment to tax, and therefore, reassessment had been made. As such, the question precisely is, as to whether in case where despite existence of material on record, to arrive at a conclusion about escapement of certain income from assessment, in the reassessment proceedings where such income is not found to have escaped assessment, it is open to the Assessing Officer to complete the reassessment proceedings, by finding some other income, to be liable to be subjected to tax, which is found by the Assessing Officer, in the reassessment proceedings, to have been required to be taxed in the original assessment. Following the aforesaid judgment in Ram Singh's case (supra), the questions are answered against the revenue, and in favour of the assessee."

- d) *Hon'ble High Court of Delhi held in the case of Ranbaxy Lab. Ltd. Vs. Commissioner Income Tax [2011] 336 ITR 136:*

"The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make dis-allowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as

per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue."

- e) *In case of Commissioner of Income Tax Vs. Atlas Cycle Industries reported in 180 ITR 319*

Hon'ble Punjab and Haryana High Court had observed as under:

" Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income-tax Officer does not get the jurisdiction to make a reassessment."

- f) *In the case of Oriental Bank of Commerce v. Additional Commissioner of Income-tax [2014] 49 taxmann.com 485 (Delhi), the Hon'ble High Court of Delhi held:*

"25. We are afraid that we cannot accept this argument either. This general statement at the end of the reassessment order cannot be regarded as a finding or an addition with regard to reason (b). If we recall, reason (b) was a specific allegation that the assessee was liable to pay interest under Section 234D on excess refund of Rs. 125,55,01,247/- and that because of the „mistake“ that the assessee had not been required to pay the interest amount, there was a short levy of interest of Rs.62,77,506/-. We do not find any conclusion with regard to this in the reassessment order. The Assessing Officer having indicated the specific amount of alleged short levy of interest had to return a conclusive finding resulting in an addition. There

was none. Therefore, even in respect of reason (b) there was no addition made."

Additional Ground No. 1C

Ld. Joint CIT, Range-4, Jaipur has merely mentioned 'Yes' at Serial No. 12 in the printed form for seeking his satisfaction u/s 151 on reopening reasons, which signifies non-application of mind on the reasons recorded by Ld. AO, and approval granted in a mechanical manner. In absence of satisfaction, the notice u/s 148 is without valid approval, rendering the whole proceedings invalid and void.

A simple reading of the provisions of section 151(1) with the proviso clearly show that no notice u/s 148 shall be issued unless the Commissioner is satisfied on the reason recorded by the Assessing Officer that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the Assessing Officer.

As discussed above, that the reasons were defective, borrowed, without having any cause-effect relationship and live link was missing. Section 151 of the Act provides a safe-guard that the sword of section 147 of the Act may not be used unless the competent statutory officer is satisfied that the AO has good and adequate reasons to invoke the reopening provisions. As per the mandate of section 151 (2) of the Act, the Competent Authority has to examine the reasons, material or grounds on which the reopening is sought to be based and to judge as to whether they are sufficient and adequate to the formation of the necessary

belief of escapement of income from taxation on the part of the AO

In the case of assessee, Ld. Joint CIT has just mentioned 'Yes' in the relevant place (See PB No. 35) for indicating his satisfaction without elaborating the justification of reasons for reopening. This indicates mechanical satisfaction of Ld. Joint CIT, without application of mind, which is not the sufficient compliance of Section 151. Law on this point is now well settled that mechanical satisfaction is not sufficient.

- a) *In Chhugamal Rajpal Vs S.P. Chaliha, 79 ITR 603 (SC), the Hon'ble Supreme Court held*

"We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature there-under. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance".

- b) *CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable. German Remedies Ltd. v. DCIT (2006) 287 ITR 494 (Bom.)*
- c) *Hon'ble Delhi High Court held that the power vested in the Commissioner under Section 151 to grant or not to grant approval to the Assessing Officer to reopen an assessment is*

coupled with a duty. The Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. That power cannot be exercised casually, in a routine and perfunctory manner (United Electrical Co. P. Ltd. v. CIT (2002) 258 ITR 317)

- d) *Additional Commissioner of Income-tax and the Commissioner of Income-tax having simply written "yes, I am satisfied" on the same while according sanction under section 151, does not in any manner shed any light as to whether there was any application of mind at all by the two senior officers. Therefore, sanction granted by the Commissioner of Income-tax is invalid and consequently, the notice under section 148 issued by the tax is invalid and consequent, the notice under section 148 issued by the Assessing Officer is bad in law. (Assessment Year 2004-05).-[DCIT v. Dharampal Satyapal Ltd. (2006) 175 TTJ 663:130 DTR 241(ITAT Delhi)]"*

5. On the other hand, the Id DR has vehemently supported the orders of revenue authorities.

6. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, the reopening proceedings were initiated by the A.O. by recording the following reasons:

"An information was received from ITO, Ward 3(2), Jaipur's letter No. 311 dated 14/07/2014 that during the course of asstt. Proceedings in the case of Smt. Pooja Agarwal for AY 2011-12 it was found that Shri Vijay Kumar Agarwal had given total unsecured loan of Rs. 71,45,000/- (Rs.

17,50,000/- in AY 2010-11 & Rs. 53,95,000/- in AY 2011-12). As per AST System it has been found that Shri Vijay Kumar Agarwal has not filed his return of income for AY 2010-11 and 2011-12.

Looking to the facts mentioned above, I have reasons to believe that the income to the extent of Rs. 53,95,000/- has escaped assessment for the A. Y. 2011-12 within the meaning of Section 147 of the IT Act, 1961. Therefore it is a fit case to issue notice u/s 148 of the IT Act, 1961"

From the record, we noticed that the information was received by the A.O. from another A.O., however, the said information was neither verified nor subjected to any independent examination by the A.O. of the assessee and while recording reasons, there was no transaction specific valid material available with the A.O. to form his belief with regard to escapement of income by the assessee. According to us, the reopening notice can be issued by the A.O. on his own satisfaction and not on borrowed satisfaction of another A.O./Investigating Agency. After considering the facts which led to recording of reasons by the A.O., we found that the A.O. even at the time of forming of belief was not sure about nature of escapement if any as the A.O. has mentioned specifically in the reasons as under:

"..... In the course of assessment Proceedings in the case of Smt. Pooja Agarwal for AY 2011-12, it was found that Shri Vijay Kumar Agarwal had given total unsecured loan of Rs. 71,45,000/- (Rs. 17,50,000/- in AY 2010-11 & Rs. 53,95,000/- in AY 2011-12),"

7. Whereas the addition in the assessment order has been made by the A.O. on account of unexplained expenditure in executing the contract works

met from undisclosed source of income. The above sequence of events leading to the notice U/s 147 of the Act clearly reflects a borrowed satisfaction by the A.O. instead of forming own independent satisfaction by the A.O. while recording the reasons, therefore, according to us, the reopening U/s 147 of the Act was solely based on the information received by the A.O. We are also of the view that the reasons to believe cannot be reasons to suspect and there must be a direct nexus between the material coming to the notice of the A.O. and the formation of belief therefrom for escapement of income. On the scrutiny of the recorded reasons, we found that those reasons recorded by the A.O. are in two parts as in the first part, the A.O. has reproduced precise information which he has received from ITO Ward 3(2), Jaipur and this information is in the form of details of the amount lent by the assessee to Smt. Pooja Agarwal and the reasons recorded further mentions that the assessee has not filed his return of income. The second part of the reasons recorded by the A.O. reflects the escapement of income by the assessee. The A.O. has not considered or mentioned any material on the basis of which the belief of escapement is founded by the A.O. In our view, there has to be some kind of cause and effect relationship between reasons recorded and the income escaping assessment, therefore, the A.O. was required to point out what he found when he went through the information/examination. In other words, what

in such information led him to form the belief that income had escaped assessment. The A.O. should have arrived at a subjective satisfaction independently on an objective criteria, in our view, the belief may be subjective but reasons has to be objective as has already been held by the Hon'ble Allahabad High Court in the case of **Ganga Prasad Maheshwari Vs CIT (1983) 139 ITR 1043** wherein it was held that *the expression 'reason to believe' occurring in section 147 does not mean a purely subjective satisfaction on the part of the ITO, the reasons for the belief must have a rational connection or relevant bearing to the formation of the belief.* The said proposition has already been upheld by the Hon'ble Supreme Court in the case of **ITO v. Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239 (SC).**

8. Heart of the Section 147 is the formation of belief by the A.O. that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. This is the bare minimum mandatory requirement of the first part of Section 147(1) of the Act. Merely saying that 'loan has been advanced' or 'ITR has not been filed', without disclosing the reasons, which led the A.O. to hold such a belief, does not confer valid jurisdiction on the A.O. to take action u/s 147 and 148 as has already been held by the Hon'ble Gujarat High Court in the case of **Birla VXL Ltd. v. ACIT (1996) 217 ITR**

1 (Guj.) In the case of **ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)**, the Hon'ble Supreme Court affirmed the decision of the High Court and held that *there was nothing to show in the confession made by a third party related to the loan taken by the assessee much less a loan which was shown to have advanced by that person to the assessee and, therefore, **live link or close nexus**, which should be there between the material and the belief formed by the Assessing Officer was missing or was too tenuous to provide a legally sound foundation for initiation of assessment proceedings under section 147. If the primary burden u/s 147, lying on AO, remains un-discharged, then the entire proceedings would crumble.*

9. Apart from the above, we further noticed that the reasons recorded at the time of reopening and the additional finally made in the assessment order are mentioned in the tabular form and the same is reproduced as under:

Reopening Reason recorded before initiation of assessment proceedings (See PB No. 33)	Actual addition in the Page No. 8 of the assessment order
<i>An information was received from ITO, Ward 3(2), Jaipur's letter No. 311 dated 14/07/2014 that during the course of asstt. Proceedings in the case of Smt. Pooja Agarwal for AY 2011-12 it was found that Shri Vijay Kumar Agarwal had given total unsecured loan of</i>	a) Unexplained expenditure in executing contract works met from undisclosed sources of income Rs. 51,28,143/-, being 92% of deemed expenditure of turnover of Rs. 5574068/-

<p>Rs. 71,45,000/- (Rs. 17,50,000/- in AY 2010-11 & Rs. 53,95,000/- in AY 2011-12). As per.</p> <p><i>Looking to the facts mentioned above, I have reasons to believe that the income to the extent of Rs. 53,95,000/- has escaped assessment for the A. Y. 2011-12 within the meaning of Section 147 of the IT Act, 1961.</i></p>	<p>b) Interest income from bank Rs. 3620/-</p>
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From the above we noticed that no addition for Rs. 53,95,000/- being loan given forming the main 'reason for escapement of income' u/s 147 of the Act has been made by the AO and instead, the additions have been made on new different grounds, it can be very fairly said that reasons recorded did not exist and hence the assessment framed u/s 147 read with section 143(3) of the Act deserves to be quashed. The A.O. had no jurisdiction to travel beyond the reasons for reopening the assessment. This contention of assessee is based on well settled law and a few judgments in support, including binding judgments of Hon'ble Jurisdictional Rajasthan High Court, are as under:

- a) Hon'ble Bombay High Court in the case of **CIT vs. Jet Airways (I) Ltd reported in 331 ITR 236** has held in concluding para No. 17 of the order, that

"17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the

submission which has been urged on behalf of the assessee that section 47(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field"

- b) Hon'ble Rajasthan High Court in the case of **Commissioner of Income-tax v. Shri Ram Singh [2008] 306 ITR 343** has held as under:

"If in the course of proceedings under section 147, the Assessing Officer were to come to conclusion that any income chargeable to tax which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then the mere fact, that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction to subject to tax any other income chargeable to tax which the Assessing Officer may find to have escaped assessment and which may come to his notice subsequently in the course of proceedings under section 147. It is a different story that for such other income, the Assessing Officer may have recourse to such other remedies as may be available to him under law but then once it is found that the income regarding which he had "reason to believe" to have escaped assessment,

is not found to have escaped assessment, the Assessing Officer is required to withhold his hands at that only.

- c) Hon'ble High Court of Rajasthan held in the case **Commissioner of Income Tax v. Dr. Devender Gupta 174 Taxman 438 (Raj.):**

"The precise controversy is, that reasons were recorded for assuming certain income to have escaped assessment, however during reassessment proceedings, that income was not found to have escaped assessment, but then on the basis of certain other material, certain other incomes were found to have escaped from assessment to tax, and therefore, reassessment had been made. As such, the question precisely is, as to whether in case where despite existence of material on record, to arrive at a conclusion about escapement of certain income from assessment, in the reassessment proceedings where such income is not found to have escaped assessment, it is open to the Assessing Officer to complete the reassessment proceedings, by finding some other income, to be liable to be subjected to tax, which is found by the Assessing Officer, in the reassessment proceedings, to have been required to be taxed in the original assessment. Following the aforesaid judgment in Ram Singh's case (supra), the questions are answered against the revenue, and in favour of the assessee."

- d) Hon'ble High Court of Delhi held in the case of **Ranbaxy Lab. Ltd. Vs. Commissioner Income Tax [2011] 336 ITR 136:**

"The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make dis-allowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as

per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue."

- e) In case of **Commissioner of Income Tax Vs. Atlas Cycle Industries reported in 180 ITR 319**, the Hon'ble Punjab and Haryana High Court had held as under:

" Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income-tax Officer does not get the jurisdiction to make a reassessment."

- f) In the case of **Oriental Bank of Commerce v. Additional Commissioner of Income-tax [2014] 49 taxmann.com 485** (Delhi), the Hon'ble High Court of Delhi held as under:

"25. We are afraid that we cannot accept this argument either. This general statement at the end of the reassessment order cannot be regarded as a finding or an addition with regard to reason (b). If we recall, reason (b) was a specific allegation that the assessee was liable to pay interest under Section 234D on excess refund of Rs. 125,55,01,247/- and that because of the „mistake“ that the assessee had not been required to pay the interest amount, there was a short levy of interest of Rs.62,77,506/-. We do not find any conclusion with regard to this in the reassessment order. The Assessing Officer having indicated the specific amount of alleged short levy of interest

had to return a conclusive finding resulting in an addition. There was none. Therefore, even in respect of reason (b) there was no addition made."

Therefore, from the totality of facts and circumstances of the case, we are of the view that reopening proceedings initiated by the A.O were uncalled for and without jurisdiction, therefore, we quash the same.

10. Since, we have quashed the reopening proceedings; therefore, there is no need to adjudicate the other grounds raised by the assessee in this appeal.

11. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 24th May, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 24/05/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Vijay Kumar Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 4(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 59/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar