

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. A. D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3692/Del/2018 : Asstt. Year : 2008-09

Ghanshyam, S/o Late Shri Hari Singh, R/o Village-Saddique Nagar, Sehani, Ghaziabad	Vs	Income Tax Officer, Ward-1(2), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AQHPG9011C		

Assessee by : Sh. Amit Goel, Adv.

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 25.10.2021

Date of Pronouncement: 30.11.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Ghaziabad, dated 27.03.2018.

2. Heard the arguments of both the parties and perused the material available on record.

3. The moot issue before us is "whether the reasons recorded by the Assessing Officer u/s 148 of the Act can be construed as "reasons to believe" that any income of the assessee had escaped assessment or not."

4. In order to initiate proceedings u/s 147, the Assessing Officer has to comply with the provisions of Section 148 to 153 of the Act. Under the scheme of the Act, the Assessing Officer

can initiate proceedings u/s 147 of the Act only if he has "reasons to believe" that any income of the assessee has escaped assessment.

5. The reasons recorded before issue of notice u/s 148 of the Income Tax Act, 1961 are as under:

"09.03.2015: On the basis of AIR information received, it is found that Shri Ghanshyam, the assessee deposited cash to the tune of Rs.20,00,000/- in saving bank account held in his name, during the F.Y. 2007-08 relevant to A.Y. 2008-09. Since no return of income has been filed by the assessee, the source of this cash deposit remains unexplained.

In view of the facts above, I have reasons to believe that cash deposit in saving bank to the tune of Rs.20,00,000/- is out of undisclosed sources and the same is chargeable to tax as escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961."

6. In terms of Section 148 of the Act, the Assessing Officer is required to record the reasons on the basis of which proceedings u/s 147 of the Act are initiated. The reasons recorded must show application of mind by the Assessing Officer to come to the belief that any income of the assessee had escaped assessment and thus acts as the stepping stone in initiation of proceedings u/s 147 of the Act. The validity or otherwise of the proceedings initiated u/s 147 is adjudged on the basis of such reasons recorded.

7. A plain look at the reasons for reopening the assessment, as produced before us, show that these reasons are not comprehensive to arrive to a belief but a cursory factual statement.

8. While we accept that it is only elementary reasons that are to be recorded before issuance of notice, the reasons to believe must emanate from the reasons recorded.

9. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor anything can be deleted from the reasons so recorded.

10. Therefore, the reasons are to be examined only on the basis of the reasons as recorded. 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.

11. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. Vs. ITO. (268 ITR 332), held that "*it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons.*"

12. It was further held that "*the reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence.*"

13. Merely because 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.

14. The 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.*"

15. 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 it is 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.

16. **In the instant case**, as mentioned above, all that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs.20,00,000/- 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 or otherwise and the income from such activity has not been returned by the assessee.

17. If we look into 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 belief of escapement of taxable income cannot be arrived at. The Assessing Officer has believed that an income of Rs.20,00,000/- has escaped assessment of income because the assessee has that amount in his bank account. Thus, he presumed that the bank deposits constitute undisclosed income and no preliminary enquiry whatsoever has not been undertaken by the AO. The reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how suspicious that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

18. In view of the specific facts of the case and judicial pronouncements narrated above, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, do not spelt out the "reasons for belief" for initiating the reassessment 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 hence nor required to be adjudicated.

19. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 30/11/2021.

Sd/-

(A. D. Jain)
Vice President

Dated: 30/11/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR