

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

**Before Sh. Amit Shukla, Judicial Member**

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

**(Through Virtual Hearing)**

**ITA No. 1423/Del/2017 : Asstt. Year : 2011-12**

ACIT, Circle, Rohtak	Vs	Sh. Ravi Parkash Aggarwal, Prop. M/s R.P. Jewellers, 1186, 1 <sup>st</sup> Floor, Kucha Mahajani Chandni Chowk, New Delhi-110006
(APPELLANT)		(RESPONDENT)
<b>PAN No. ADAPA3506E</b>		

**CO No. 98/Del/2019 : Asstt. Year : 2011-12**

Sh. Ravi Parkash Aggarwal, Prop. M/s R.P. Jewellers, 1186, 1 <sup>st</sup> Floor, Kucha Mahajani Chandni Chowk, New Delhi-110006	Vs	ACIT, Circle, Rohtak
(APPELLANT)		(RESPONDENT)
<b>PAN No. ADAPA3506E</b>		

**Assessee by : Sh. Sanjay Mehra, FCA**

**Revenue by : Sh. Hemant Gupta, Sr. DR**

<b>Date of Hearing: 24.11.2021</b>	<b>Date of Pronouncement: 17.02.2022</b>
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**ORDER**

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

The present appeal has been filed by the Revenue and Cross Objection by the assessee against the order of Id. CIT(A), Rohtak dated 14.12.2016. The CO filed by the assessee reads as under:

*"Reopening notice issued by the Assessing Officer based on information received by him from the DDIT(Inv.) and not on his own satisfaction amounts to reopening on borrowed satisfaction*

*in clear breach of settled position of law rendering the reassessment proceedings without jurisdiction.”*

2. The assessee has filed return of income on 30.09.2011 declaring total income of Rs.1,66,73,810/-. Owing to the search conducted u/s 132 of the Income Tax Act, 1961 notice u/s 153A has been issued to the assessee. The assessee filed letter dated 07.02.2014 that the return filed u/s 139(1) dated 30.09.2011 may be treated as return filed in response to notice u/s 153A. Assessment was completed on 31.03.2014 by making addition of Rs.1,05,918/- at an assessed income of Rs.1,67,79,730/-.

3. Subsequent to this, an information was received from the DIT(Investigation)-II, Mumbai vide letter no. DIT(Inv.)-II/ Information / BLJ/ SAL/ 2014-15 /458 dated 16.07.2014 through the Range regarding bogus purchases made by the assessee worth Rs.56,75,500/- from concern of Bhanwar Lal Jain Group namely M/s Lucky Exports during the A.Y. 2010-11 and worth Rs.26,26,25,669/- from concern of Bhanwar Lal Jain Group namely M/s Look at me Retail Pvt. Ltd. during the A.Y. 2011-12. On perusal of the information and case records, the case was reopened after recording reasons of reopening as under:

Office of the Deputy Commissioner of Income-tax, Circle, Rohtak

Name and address of the assessee	:	Sh. Ravi Prakash Aggarwal Prop. M/s R.P. Jewellers, 1186 (1 <sup>st</sup> Floor) Kucha Mahajan, Chandni Chowk, Delhi-6
Status	:	INDIVIDUAL
PAN	:	ADAPA3506E
Assessment Year	:	2011-12


**Reasons in brief for reopening the case under Section 147 of the Income-tax Act, 1961 :**

In this case information was received in this office from the DIT (Investigation)-II, Mumbai vide his office letter no. DIT (Inv.)-II/Information/BLJ/SAL/2014-15/458 dated 16-07-2014 regarding Bogus purchase accommodation entries given by Bhanwar Lal Jain, Group. DDIT (Inv.) unit-IX (2), Mumbai vide her letter dated 15-07-2014 has stated that after search operation u/s 132 of the IT Act 1961 was conducted on 03-10-2013, it was established that Bhanwar Lal Jain, Group was providing accommodation entries of unsecured loans and bogus purchases to various beneficiaries like Sh. Ravi Prakash Aggarwal. It is established from the above report that Sh. Ravi Prakash Aggarwal had taken accommodation entries to the tune of Rs. 26,26,25,669/- for the A.Y. 2011-12 i.e. Financial Year 2010-11, from M/s Bhanwar Lal Jain Group concern like M/s Look At Me Retail (P) Ltd.

Therefore, I have reason to believe that income of Rs. 26,26,25,669/- has escaped assessment for the Assessment Year 2011-12, due to failure on the part of Sh. Ravi Prakash Aggarwal to disclose fully and truly all material facts necessary for his assessment. So, I may reassess the above mentioned income alongwith any other escaped income chargeable to tax which comes to my notice, subsequently during the course of assessment proceedings.

Issue Notice under Section 148 r.w.s. 147 of the Income-tax Act, 1961 for the assessment year 2011-2012.

Dated:- 10-10-2014

  
 ( Jeetendra Chand )  
 Dy. Commissioner of Income-tax,  
 Rohtak Circle, Rohtak

4. We have gone through the reasons recorded. The first four lines consists of a factual information received from the DDIT (Inv.), Mumbai, the second part indicates that it has been established from the report that the assessee has taken accommodation entries and the third part consists of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

5. The AO mentions so as to reopen the case, it was established that BL Jain Group was providing accommodation entries of unsecured loan and bogus purchases. Then, he goes on to mention that it is established from the report that the assessee has taken accommodation entries and hence he has reasons to believe that the income has escaped assessment.

6. Primarily, we find that the reasons recorded by the assessee are too sketchy and does not instill any confidence with regard to the reasons recorded for reopening. It is not even clear whether the assessee has received entries pertaining to loans or purchases. The details of the report wherein it was alleged that the assessee has received bogus entries could not be made as a basis for reopening. The existence of belief has to be bonafide and has to be based on material which is relevant hence specific in nature. The basis of the belief should be discernable from the facts on record and ascertainable with regard to the escapement of income.

7. *Joshi Vs. Income-Tax Officer and Another, 2010 (324) ITR 154 (Bom.)* and it was held as under:

*"Section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 to 163, assess or reassess such income and also any other income chargeable to tax, W.P. (C) NO. 8067/2010 Page 10 which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The first proviso to section 147 has no application in the facts of this case. The basis postulate which underlies section 147 is the formation of the belief by the Assessing Officer that any income chargeable to tax has escaped assessment for any assessment year. The Assessing Officer must have reason to believe that such is the*

*case before he proceeds to issue a notice under section 147. The reasons which are recorded by the Assessing Officer 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 section 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under section 148."*

8. In *Hindustan Lever Ltd. vs. R.B. Wadkar*, [2004] 268 ITR 332 (Bom), a Division Bench has opined thus:

*".... the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not*

*suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment."*

9. In this case, a regular assessment u/s 153B(1) has also been completed on 31.03.2014. The reasons, in the instant case recorded by the AO do not satisfy the requirements of Section 148 of the Act. The reasons and the information referred is extremely scanty and sudden jump to the conclusions. There is no reference to any specific document except the Annexure which cannot be regarded as material or *prima facie* evidence to establish the link to point out escapement of income. The Annexure is not a pointer and does not indicate escapement of income *per se*. Hence, going through the reasons recorded of the AO on 10.10.2014 and the judicial pronouncements mentioned above, in the absence of any tangible material to establish the escapement of income for assessment, we hold that the action of the AO issuing the notice u/s 148 cannot be held to be legally valid.

10. Since, at the outset, the reopening has been held to be invalid, we refrain to adjudicate on the merits of the case.

11. In the result, Cross Objection of the assessee is allowed and consequently the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 17/02/2022.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 17/02/2022**

\*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**