

143 r.w.s. 147 of the Income Tax Act, 1961 in short “the Act”, respectively.

Heard assessee as well as the department. Case files perused.

2. It is noticed first of all that the assessee’s respective pleadings challenge correctness of the learned lower authorities action invoking section 148/147 mechanism by recording the following reasons :

“In the case of M/s. Sinhagad Technical Education Society and Shri Maruti Navale Group, the search and seizure operation u/s.132 of the Income Tax Act, 1961 was conducted on 06/08/2013. The examination of assessee’s savings Bank account statement of account number 7194 at Sangole Urban Co-operative Bank, Sangole, Dist – Solapur (SUCB, Sangole), and other bank accounts for the period F.Y. 2008-09 to 2011-12 and after careful perusal, it is noticed that Shri Sukhdeo Nivrutti Navale has deposited cash in his said saving bank account during the F.Y. 2009-10, on various dates as under :

The source of the said cash deposits in SUCB and other bank accounts amounting to Rs.5,30,000/- for F.Y. 2009-10 cannot be explained from the known sources of income of the assessee evident from the return of income filed and other evidences available on record.

In view of the above facts, I have reason to believe that the income chargeable to tax of Rs.5,30,000/- has escaped assessment and hence it is requested to approve the case for reopening of the case u/s.148 of the I.T. Act, 1961 for the A.Y. 2010-11”.

3. Both parties reiterate their respective stands against the stand in support of the correctness of the Assessing Officer’s action having set into motion the impugned section 148/147

mechanism in motion. Mr. Desai vehemently argues that the Assessing Officer had duly found the assessee's taxable income to have escaped assessment which has culminated in the impugned addition(s). I find no merit in the Revenue's instant arguments. This is for the reason that the Assessing Officer has mainly gone by the fact that the cash deposits made at the assessee's behest "cannot be explained" from the known sources of income of the assessee from the return of income filed and other evidence(s) available on record whereas these taxpayers turned out to be non filers only. Such non application of mind in recording reasons does not deserve to be concurred with as held in *Meenakshi Overseas Pvt. Ltd. Vs. CIT (2017) 395 ITR 677 and PCIT Vs. RMG Polyvinyl Ltd. (2017) 83 taxmann.com 348 (Del.)* This is coupled with the hon'ble jurisdictional landmark decision in *Hindustan Lever Ltd. vs. R.B. Wadkar (2004) 268 ITR 332* held long back that the reopening reasons have to be read on standalone basis without any scope of addition, deletion or substitution therein even if supportive material emerges at a later stage.

4. Mr. Desai sought to buttress the point that these assessee's have been found to have made cash deposits in their respective bank accounts. I find no substance in the Revenue's instant argument as well in light of *Bir Bahadur Singh Sijwali Vs. ITO (2015) Tax Corp (AT) 39421 (ITAT-DELHI)* held as under :

“5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. A plain look at the reasons for reopening the assessment, as produced before us, show that these reasons were recorded after the notice was served on 14th September 2009 as a mention about the fact of service of notice is set out in the recorded reasons itself. It is only elementary that the reasons are to be recorded before issuance of notice, and in the absence of any reasons for reopening having been recorded prior to reopening of assessment, the reassessment proceedings fail for this short reason alone. Hon’ble Bombay High Court, in the case of Prashant S. Joshi vs. ITO [(2010) 230 CTR (Bom) 232.] has observed: "The AO must have reasons to believe that such is the case (i.e. any income chargeable to tax has escaped assessment for a particular year) before he proceeds to issue notice under s. 147". In other words, when no reasons are recorded for reopening the assessment prior to issuance of notice, the reassessment proceedings must fail for that reason alone. However, for the reasons we will set out now, the conclusions will be no different even if it is presumed that this communication, extracts from which are reproduced before, only conveys the reasons already recorded prior to issuance of notice.

7. 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. Hon’ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, inter alia, observed 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." Their Lordships added 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....". Therefore, the reasons are to be examined only on the basis of the reasons as recorded. 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.”

5. I adopt the foregoing detailed reasoning *mutatis mutandis* to quash the impugned reopening thereby rendering all other pleadings as academic. Ordered accordingly.

6. These assessee's three appeals are allowed in above terms.

Order pronounced in the Open Court on 31st May, 2022.

Sd/-

(S.S.GODARA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 31st May, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The Pr.CIT(Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

*ITA Nos. 452 to 454/PUN/2019
Sanjay S. Navale &
Sukhdeo N. Navale*

		Date	
1.	Draft dictated on	27-05-2022	Sr.PS
2.	Draft placed before author	30-05-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		