

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

Before Sh. Saktijit Dey, Judicial Member

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

ITA No. 1465/Del/2020 : Asstt. Year : 2013-14

Rajesh Kumar, Krishan Nagar, Narnaul, Mohindergarh, Narnaul, Haryana-123001	Vs	Income Tax Officer, Ward-2, Narnaul, Haryana-123001
(APPELLANT)		(RESPONDENT)
PAN No. AXQPK2406F		

**Assessee by : Sh. Lalit Mohan, CA &
Ms. Monika Agarwal, Adv.
Revenue by : Ms. Indu Bala Saini, Sr. DR**

Date of Hearing: 30.06.2022	Date of Pronouncement: 03.08.2022
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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 Id. CIT(A), Rohtak, dated 13.02.2020.

2. Following grounds have been raised by the assessee:

"1. That both the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act were without jurisdiction and hence deserve to be quashed as such.

1.1 That since there was no specific relevant, reliable and tangible material on Jurisdictional ground therefore not considered separately record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal u/s 147 of the Act, untenable and therefore unsustainable.

1.2 That reasons were recorded mechanically without application of mind and therefore do not constitute

valid "reason to believe" for assumption of jurisdiction u/s 147 of the Act.

1.3 That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.

2. That even otherwise, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of service of notice under section 148 of the Act, there was no valid assumption of jurisdiction to frame the impugned assessment and as such, the proceedings initiated were not in accordance with law and therefore, unsustainable.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the disallowance of Rs. 97,49,250/- out of aggregate expenditure incurred of Rs. 1,27,19,231/- incurred on property development expenses for land leveling of Rs. 90,59,338/- and Rs. 36,59,893/- for Road Banvai.

3.1 That while upholding the aforesaid disallowances, the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in disregarding the remand report of the learned Assessing Officer who had verified the claim made by the appellant in the remand proceedings and stated that disallowance should at best of Rs. 14,50,583/- out of total expenditure incurred of Rs. 1,27,19,231/- by the appellant and thus, disallowance made in excess to the above is altogether untenable.

3.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that disallowance sustained is also in excess to the disallowance made in the order of assessment when the disallowance had only been made of Rs. 63,59.615/- being 50% of the aggregate expenditure incurred by the appellant and thus apparently disallowance sustained is untenable.

3.3 That furthermore, even the basis adopted by learned Commissioner of Income Tax (Appeals) to restrict the claim made by the appellant on the basis of CPWD rates for site development and deny the

expenditure incurred in excess thereto is illegal, invalid and untenable.

3.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that even the disallowance recommended of Rs. 14,50,583/- in the remand report made by the learned Assessing Officer is not in accordance with law and therefore, untenable.

4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining a disallowance of Rs. 31,50,480/- out of plot boundary expenses incurred by the appellant company.

5. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining a disallowance of Rs. 13,18,835/- out of aggregate expenditure of Rs. 26,37,670/- under the head "Sewerage and Water Pipe Expenses."

6. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining a disallowance of Rs. 4,23,750/- being 50% of the expenditure incurred of Rs. 8,47,500/- under the head 'brokerage expenses'.

7. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding addition of Rs. 1,79,735/- out of opening balance of capital declared in the balance sheet filed alongwith the return of income for the instant assessment year.

8. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the disallowances made and sustained relating to expenses claimed by the appellant in the return of income are without jurisdiction and untenable as they are beyond the scope of order of assessment framed under section 147/143(3) of the Act.

8.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since the proceedings under section 148 of the Act had been initiated on the basis of cash deposits in the bank account in respect of which, no addition had been

made in the impugned order of assessment, disallowances made in the order of assessment and sustained in appeal are perse without jurisdiction and therefore, unsustainable."

3. The reasons recorded u/s 147 by the Assessing Officer are as under:

"As per information available with this office, the assessee had made huge cash deposits in bank accounts with HDFC Narnaul. On enquiry it was found that that assessee is having one saving bank account No. 06231930006693 and a perusal of the account reveals that following amounts were deposited in this account -

SB A/c No. 06231930006693

<i>Sr. No.</i>	<i>Date of deposit</i>	<i>Amount</i>
1.	22.09.2012	1,50,000/-
2.	25.09.2012	10,00,000/-
3.	26.09.2012	25,00,000/-
4.	26.09.2012	4,25,000/-
5.	27.09.2012	6,50,000/-
6.	27.09.2012	4,10,000/-
7.	01.10.2012	48,60,000/-
8.	01.10.2012	23,50,000/-
9.	26.10.2012	27,90,000/-
10.	22.02.2013	12,50,000/-
	<i>Total</i>	<i>1,63,85,000/-</i>

Thus there are total cash deposits of Rs. 1,63,85,000/- during F.Y. 2012-13 relevant to A.Y. 2013-14. The query notices were issued to the assessee on 17.04.2015, 26.05.2015, 22.07.2015 and 05.10.2015 but no response has been received from the assessee.

I, therefore, have reason to believe that the assessee has deposited cash amounting to Rs. 1,63,85,000/- out of his income from unexplained sources. Accordingly income to the extent of Rs. 1,63,85,000/- and any other income which subsequently comes to the notice of the undersigned has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.

Issue notice u/s 148 of the I.T. Act, 1961 for the assessment year 2013-14."

4. Thus, the assessment proceedings were initiated by issuing notice u/s 148 of the Act.

5. During the assessment proceedings, the assessee was asked vide letter F.No. ITO/W-2/NNL/2016/2016-17/1029 dated 21.12.2016 to explain the source of capital introduced during the year under consideration and was show caused as to why an amount of Rs.23,79,835/- of capital introduced during the year should not be added to the income of the assessee for F.Y. 2012-13.

6. On receiving the reply from the assessee, that the capital introduced during the year was out of the gift received from his father, the Assessing Officer held that the assessee has failed to submit any supporting document which prove that the capital taken as opening balance during the F.Y. 2012-13 amounting to Rs.23,79,835/-. The AO held that the assessee has not furnished any copy of Gift Deed regarding gift given by his father and no documentary evidence regarding creditworthiness of his father and genuineness of the transactions has been filed. The AO held that the burden lies on the assessee to prove the genuineness of capital introduced which he has failed to do and the assessee has not discharged his onus. It was held that the assessee was given many opportunities to produce or give the documentary evidences and to prove the genuineness and creditworthiness of capital introduced during the F.Y. 2012-13 by the assessee and since the assessee failed to furnish satisfactory explanation and after treating the amount of Rs.6,00,000/- which was paid for the advance to purchase of land on 07.12.2011 pertaining to the earlier year, the AO added

an amount of Rs.17,79,835/- u/s 68 of the Income Tax Act, 1961.

7. Further, taking cue from the balance sheet, the AO made addition on account of unsecured loans received from Sh. Alok Sharma of Rs.10,00,000/-, Sh. Arvind Kumar of Rs.8,50,000/- and Sh. Satinder of Rs.80,000/-. With regard to these loans, it was submitted by the assessee that these loans have been taken in course of business and through the banking channels. The AO has brought this amount to tax u/s 68 of the Act.

8. The AO has also made an amount of Rs.1,36,48,599/- on account of land development expenses. Based on the valuation of closing stock, the AO made an addition of Rs.69,29,647/-. The AO has also made an addition of Rs.19,15,374/- on account of the fee paid to Municipal Committee for development charges.

9. Out of the above addition, the Id. CIT(A) confirmed an amount of Rs.97,49,250/- on account of land development expenses and others.

10. The only issue argued before us was on jurisdictional grounds that in the absence of any addition made on the vary reasons recorded, no further addition in this case is warranted.

11. We have gone through the record and find that there is no relation between the reasons recorded and the additions made. As per the record before us, the AO has not enquired about the deposits in the bank and no addition has been made on account of any of the amounts received on 10 occasions as mentioned in the reasons recorded.

12. With regard to the addition, over and above the reasons recorded u/s 147, the established jurisprudence is as under:

1. [2011] 331 ITR 236 (Bom)
[IN THE BOMBAY HIGH COURT]
COMMISSIONER OF INCOME-TAX
Vs.
JET AIRWAYS (I.) LTD.

DR. D. Y. CHANDRACHUD and J. P. DEVADHAR JJ.

April 12, 2010.

Section(s): Income-tax Act, 1961, s. 147

Assessment Year: 1994-95 ,1995-96

RE-ASSESSMENT — SCOPE OF POWER OF ASSESSING OFFICER
— LAW APPLICABLE — EFFECT OF AMENDMENT OF SECTION 147
W.E.F. 1-4-1989 — ASSESSING OFFICER CAN ALSO ASSESS
OTHER INCOMES NOT REFERRED TO IN NOTICE OF
REASSESSMENT — POWER TO ASSESS SUCH OTHER INCOME
ONLY IF INCOME REFERRED TO IN NOTICE OF REASSESSMENT
HAS BEEN ASSESSED — INCOME-TAX ACT, 1961, s. 147

Explanation 3 to section 147 of the Income-tax Act, 1961, was inserted by the Finance (No. 2) Act of 2009, with effect from April 1, 1989. The effect of the Explanation is that even though the notice that has been issued under section 148 containing the reasons for re-opening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On

the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as well as "also" have been used together and in conjunction. Evidently, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) such income; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a notice under section 148 would be necessary in the event of challenge by the assessee. The effect of section 147 as it now stands after the amendment of 2009 can therefore, be summarized as follows : (i) the

Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or re-computation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148 ; (Hi) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income, chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section ; and (iv) though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.

2. [2011] 336 ITR 136 (Del) (Del)
[IN THE DELHI HIGH COURT]
- RANBAXY LABORATORIES LTD.
Vs.
COMMISSIONER OF INCOME-TAX
- A. K. SIKRI and M. L. MEHTA JJ.

June 3, 2011.

Section(s): Income-tax Act, 1961, ss. 147,148

RE-ASSESSMENT — ITEMS OF INCOME SAID TO HAVE ESCAPED ASSESSMENT ON WHICH REASSESSMENT PROPOSED NOT ADDED BUT OTHER DEDUCTIONS REDUCED —NOT PERMISSIBLE —INCOME-TAX ACT, 1961, ss. 147, 148

The assessee-company was engaged in the business of manufacture and trading of pharmaceuticals products. The Assessing Officer accepted the returned income of the assessee but initiated reassessment proceedings under section 147 of the Income-tax Act, 1961, in respect of club fees, gifts and presents and provision for leave encashment. While completing the reassessment however, he did not make additions on account of these items but instead reduced the deductions under sections 80HH and 80-1. The Commissioner (Appeals) held that in the original assessment the powers of the Assessing Officer were limited to the extent of prima facie adjustment only. On the merits of the additions, the Commissioner (Appeals) followed his order of assessment year 1996-97. On appeal the Tribunal held that the assumption of jurisdiction by initiating reassessment proceedings was valid and reassessment could not be annulled. It was a separate issue that after validly assuming jurisdiction the points on which reassessment was proposed were not added/disallowed. At the same time under section 147 the Assessing Officer could also assess such income which had escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147. On appeal:

Held, that section 148 was supplementary and complementary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or re-compute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax had escaped assessment. All these conditions were required to be fulfilled to assess or reassess the escaped income chargeable to tax. Under Explanation 3 if during the

course of the proceedings the Assessing Officer comes to the conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which was not permissible. 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 were initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive.

3. [2018] 99 taxmann.com 311 (Bom.)

HIGH COURT OF BOMBAY

Pr. Commissioner of Income-tax-1 v. Lark Chemicals (P.) Ltd.

M.S. SANKLECHA AND SANDEEP K. SHINDE JJ.

IT APPEAL NO. 1083 OF 2015

FEBRUARY 28, 2018

ORDER

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th February, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

2. The Revenue has urged the following question of law for our consideration :—

“Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the reopening done by the Assessing Officer was not in accordance with Section 147 of the I.T. Act when the fact and circumstance indicate otherwise on the basis of substantial evidence brought on record?”

3. *We find that the impugned order of the Tribunal while allowing the respondent assessee's appeal has held that there was no reasonable belief in the Assessing Officer to issue the reopening notice seeking to reopen the subject assessment year i.e. A.Y. 2004-05. Besides, the impugned order holds that the order which was passed consequent to reassessment, has not confirmed the addition attributable to the reasonable belief of the Assessing Officer while issuing the reopening notice. The reassessment order has made an addition on an issue which is not a subject matter of the reasons recorded in support of the*

reopening notice as forming its reasonable belief that income chargeable to tax has escaped assessment.

4. In the above view, the question as formulated becomes academic as our Court in CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236/[2010] 195 Taxman 117 (Bom.) while examining Explanation 3 to Section 147 of the Act has held that the Assessing Officer has to necessarily assess/re-assess the income which escaped assessment on the basis of the formation of the reasonable belief for opening the assessment. It is only on assessing/reassessing such income which has escaped assessment in the reasons recorded, would it be open to the Assessing Officer to assess/reassess any other income, which came to his notice during the reassessment proceedings. However, in the absence of reassessing the income which escaped assessment and which was the basis for formation of belief in issuing the notice, the order passed on reassessment is bad in law.

This order of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Apex Court.

4. [2018] 99 taxmann.com 312 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income-tax

Vs.

Lark Chemicals (P.) Ltd.

ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.

SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 34183 OF 2018

OCTOBER 5, 2018

Section 143, read with section 147 of the Income-tax Act, 1961
- Assessment - Additions to income (Reassessment) -

Assessment year 2004-05 - In course of appellate proceedings, Tribunal noticed that order passed consequent to reassessment, had not confirmed addition attributable to reasonable belief of Assessing Officer while issuing reopening notice - Tribunal thus set aside reassessment order - High Court upheld Tribunal's order - Whether, on facts, SLP filed against decision of High Court was to be dismissed - Held, yes [Para 2]

13. Since, no addition has been made on the reasons recorded and since the additions made have no relation with the reasons recorded while reopening the case and cannot be attributable to the reasons recorded, respectfully following the order of the Hon'ble Apex Court, we hold that the Assessing Officer had deficiency of jurisdiction in assessing any other income unrelated to the reasons recorded and owing to the facts of the instant case, the Explanation 3 to Section 147 is not attracted.

14. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 03/08/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Sd/-

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

Dated: 03/08/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR