

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1734/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2008-09)

Saytidevi Kantilal Bhandari 162, TP Street, 6 Kumbharwada, Mumbai- 400004.	बनाम/ Vs.	ITO, Ward-19(3)(2) Room No. 224, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGHPB9079K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sanjiv M. Shah & Rajesh Chamaria	
Revenue by:	Smt. Nayana K. Kumar	

सुनवाई की तारीख / Date of Hearing: 01/12/2022
घोषणा की तारीख /Date of Pronouncement: 22/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax-30, Mumbai dated 16.12.2019 for assessment year 2008-09.

2. At the outset, the assessee drew our attention to the grounds of appeal wherein he has raised the legal issue regarding validity of reopening of assessment by AO u/s 147 of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts relating to the legal issue are that the assessee is an individual and has filed return of income originally on 13.02.2019 declaring total income of Rs.3,03,080/- and the return was processed



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u/s 143(1) of the Act. Later on, the AO received information from the DDIT(Inv.) Wing, Mumbai dated 08.11.2012 based on which he recorded reasons for reopening the assessment of AY 2008-09 on 27.03.2015 u/s 147 of the Act and consequently issued notice u/s 148 of the Act. Then during the re-assessment proceedings, the AO found that the assessee had obtained accommodation entries to the tune of Rs.6,00,000/- for the scrip of M/s.MMTC which was routed through Shri Kamal Kishore Rathi (entry operator) during AY. 2008-09 even though in reality there was no such transaction. According to the AO, this accommodation entry of Rs.6,00,000/- (for the scrip of M/s. MMTC at Rs.6,00,000/-) is nothing but income earned from a source not disclosed to the department. And accordingly, the assessee has suppressed the primary facts required to be made by her while filing her return of income. And since the department came to know from the statements of Shri Kamal Kishore Rathi who used to provide accommodation entries through the companies of Shri Mukesh Chokshi who had been controlling thirty four (34) companies inter-alia, M/s. Alliance Intermediaries, M/s. Network Pvt. Ltd., M/s. Mahasagar Securities Pvt. Ltd. and M/s. Goldstar Finvest Pvt. Ltd. etc. which was engaged in fraudulent billing activities and are in the business of providing to beneficiaries entries for speculation profit and loss, short term/long term capital/loss, share application money, commodities profit/loss on commodities (through MCX) and mentors about other entry operator like Shri Sunil Mansinghani & two NSE Brokers (suspended). The AO in the re-assessment order had reproduced few question and answer of Shri Mukesh Chokshi which



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was recorded on 11.12.2009 and the AO was of the view based on statement of Shri Mukesh Chokshi that the transaction carried out by the assessee in the scrip of M/s. MMTC of Rs. 6,00,000/- is an accommodation entry and is not genuine transaction. Therefore, he added Rs.6,00,000/- to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee had raised the legal ground about the validity of reopening of the assessment which was dismissed by Ld. CIT(A). Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee has preferred the legal issue i.e. validity of reopening of the assessment by AO u/s 147 of the Act. For adjudicating this legal issue it is necessary to look at the reasons recorded on a standalone basis and see whether condition precedent stipulated u/s 147 of the Act for invoking the reopening jurisdiction was satisfied by the AO or not. The reasons recorded by the AO u/s 147 of the Act is reproduced as under: -

“Reasons for re-opening of the assessment u/s. 147 of the Act.

1. Information has been received from the Addl.D.LT, (Inv.) Unit-I, Mumbai vide letter No. Addl. DIT (Inv.)/Unit-I/Kamal Rathi/2012-13 dated 8.11.2012 regarding issue of accommodation entries in the nature of bogus long term capital gain and short term capital gain by one Shri Kamal Kishore Rathi. During the course of Survey Action u/s. 133A in the case of Shri Kamal Rathi, it was found that the above mentioned assessee was providing accommodation entries for bogus LTCG and STCG to its various clients. This fact has also been accepted by Shri Rathi in his statement recorded under oath during the course of survey proceedings.



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2. The modus operandi adopted by Shri Kamal K. Rathi - as has been elaborately explained in his statement recorded under oath is that he is engaged in the business of providing accommodation entries in the nature of Long term and short term capital gains to various clients, and for this purpose he takes back-dated bills for purchase of shares from various companies of Shri Mukesh M.Choksi, viz. - M/s. Alliance Intermediaries, M/s. Network Pvt. Ltd., Mahasagar Securities Pvt.Ltd., Goldstar Finvest Pvt.Ltd. etc. He also had account with M/s. Sunchan Securities owned by one Mr. Sunil Mansinghani for arranging accommodation entries. Simultaneously he also issues the bogus purchase contract notes in the name of Vijay Bhagwandas & Co., and Durga Prasad & Co., the suspended NSE/BSE brokers. He gets the stationery printed in the name of these companies and hand over the same to one Mr. Jugal Kishore Lahoti for printing the bogus contract notes. He provides accommodation entries in the form of long term capital gain, short term capital gain, speculation profit/loss, bogus share capital introduction, bogus commission entries, bogus donation, bogus loan entries and bogus billing.

3. During the course of survey action, the list of all the beneficiaries of such accommodation entries was obtained from Shri Kamal K. Rathi. As per the list, the above mentioned assessee has availed accommodation entries from the said person.

4. On verification of the return of income furnished by the assessee and on the basis of information received from the Addl.D.I.T. (Inv.) Unit-I, Mumbai, it is observed that the above mentioned assessee has obtained accommodation entries to the



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tune of Rs.6,00,000/for the script of MMTC routed through Shri Kamal Kishore Rathi during the F.Y. 2007-08 relevant to A.Y. 2008-09 in order to account for a transaction which-does not exist in reality. This is nothing but income earned from a source not disclosed to the department in the return of income. Hence, the assessee has suppressed the primary facts required in her return of income.

5. In view of the fact that since the accommodation entries are provided to account for a transaction that does not exist in reality, I have reason to believe that the income chargeable to tax to the tune of Rs.6,00,000/- or any other income chargeable to tax which comes to my notice subsequently in the course of proceedings for re-assessment, has escaped assessment, within the meaning of provision of Sec. 147 of the Act,1961. Therefore, I am satisfied that the assessee has failed to disclose true and complete particulars of her income for the year under consideration. Accordingly, the case is proposed to be re-opened u/s. 147 of the IT Act for Asst. Year 2008-09.

6. As per the Proviso to Sec. 151(2) of the Income tax Act 1961, permission of the Jt. Commissioner of Income tax, Range 19(3), Mumbai is hereby sought to re-open the case of the assessee for A.Y. 2008-09 by issue of notice u/s. 148 of the Income tax Act 1961.

Put up for kind perusal and sanction please.”

Date: 27.03.2015

ITO. 19(3)(2), Mumbai

4. Before examining the reasons recorded for reopening (supra) and adjudicate as to whether the condition precedents required for re-



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opening of assessment for AY. 2008-09 is satisfied or not, let us re-visit the judicial precedent on the subject i.e. requirement of law u/s 147 of the Act before AO validly re-open an assessment. The essential condition for reopening a completed assessment is the requirement of AO to record his “*reason to believe, escapement of income*”. It is settled that “*Reasons to believe*” postulates foundation based on information and belief based on reason. Even if there is foundation based on information, there still must be some reason warrant holding a belief that income chargeable to tax has escaped assessment. It has to be borne in mind that an adverse information against an assessee would trigger “*Reason to Suspect*” and not “*Reason to believe*” which is the requirement of law to successfully re-open the assessment. So when AO gets adverse information against an assessee, he has to first conduct a preliminary enquiry and collect material which would make him believe, that there is infact an escapement of income; and not that AO on receipt of adverse information from investigation wing (without collecting information about assessee’s case) jumps to conclusion and records reason to re-open the assessment, which may fall foul of the requirement of law to validly re-open the assessment because reason to belief will be absent. Keeping the aforesaid well-settled principle of law, let us examine the reason’s recorded by the AO in the instant case to adjudicate whether AO in the ‘reasons recorded’ has met the same.

5. A perusal of the reasons recorded shows that the AO received information from the Investigation Wing dated 08.11.2012 regarding issue of accommodation entries in the nature of bogus Long Term



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Capital Gain (LTCG) and Short Term Capital Gain (STCG) from an entry operator Shri Kamal Kishore Rathi. According to the information, the department under took a survey u/s 133A of the Act in the case of Shri Kamal Kishore Rathi who admitted on oath during the course of survey proceedings that he was providing accommodation entries for bogus LTCG and STCG to various clients beneficiaries. And for providing such accommodation entries, he used to organize bogus, bills for purchase of shares from various companies controlled by Shri Mukesh Chokshi viz. M/s. Alliance Intermediaries, M/s. Network Pvt. Ltd., M/s. Mahasagar Securities Pvt. Ltd. and M/s. Goldstar Finvest Pvt. Ltd. etc.; and at para no. 2 (reasons recorded) the AO states the modus-operandi of other entry operators, brokers etc. And thereafter in para no. 3 says about the department obtaining list of beneficiaries of accommodation entry given by Shri Kamal Kishore Rathi; and as per the AO the assessee has availed accommodation entry from the said Shri Kamal Kishore Rathi. Thereafter, the AO at para no. 4 notes that the assessee has obtained accommodation entry to the tune of Rs.6,00,000/- for the scrip of M/s. MMTC from Shri Kamal Kishore Rathi which was a transaction which does not exist in reality. According to the AO, this was nothing but income earned from a source not disclosed to the department in the return of income. And therefore, the assessee has suppressed the primary facts required in her return of income. And therefore, the AO was of the view that he has reason to believe that the income chargeable to tax to the tune of Rs.6,00,000/- have escaped assessment. To counter the alleged facts recorded in the “*reasons to believe*” by the AO, the Ld. AR drew our



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attention to the page no. 3 of the PB which is balance-sheet of the assessee wherein it is noted that the assessee had shown to have brought shares of M/s. MMTC (Public Sector undertaking) for price of Rs.1,21,740/- (59 shares). And it was pointed out by the Ld. AR that there was no transaction whatsoever regarding Rs.6,00,000/- regarding the scrip M/s. MMTC. And there is no banking transaction of Rs.6,00,000/- in AY. 2008-09. According to the assessee, the assessee has sold this fifty nine (59) shares of MMTC which fact is discernable from page no. 44 of the PB wherein the assessee has made LTCG of Rs.3,57,239/-in AY. 2009-10 (next assessment year) which was accepted by the department. In this context one should borne in mind that the adverse information would only trigger "*reason to suspect*", and not "*Reasons to believe*" which is the essential condition precedent for reopening [*"Reasons to believe escapement of income"*] and not "*Reason to suspect*". In this case if the AO upon receipt of information from DDIT(Inv.) had conducted a preliminary enquiry, then he could have found out that the assessee has only purchased shares of M/s. MMTC share through M/s. Alliance Intermediateries and M/s. Network Pvt. Ltd. for Rs. 1,27,740/- (59 shares) and recorded the correct facts as noted herein; and not stated in the reason recorded wrong facts about Rs.6,00,000/- from transaction of shares of M/s. MMTC. So the assumption of facts by the AO while recording the reason was incorrect, so the formation of belief about escapement of income was on wrong footing/foundational facts; and therefore the action of reopening of assessment is bad in law and thus according to me on the strength of the aforesaid reason recorded by AO (supra) the



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assessment of AY. 2008-09 could not have been re-opened by AO (supra). Therefore the enhancement in addition made by Ld. CIT(A) also should fall. Since from the aforesaid facts discussed it is clear that the AO has not applied his mind while the reasons were recorded before re-opening the assessment and has resorted to re-opening on wrong facts, I hold that AO has not met the requirement of law to successfully re-open the assessment, so it is quashed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 22/12/2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/12/2022.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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