IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER

ITA Nos.357 & 388/CTK/2019
Assessment Years : 2009-10 & 2010-11

Bikash Dev, Flat No.101, Haraprity Apartment, Vivekananda Marg, Old Town, Bhubaneswar.	Vs.	DCIT, Circle-2(1), Bhubaneswar.
PAN/GIR No.AHEPD 0737 C		
(Appellant)	..	(**Respondent**)

Assessee by : Shri K.K.Bal, Adv
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 17/01/2023
Date of Pronouncement : 17/01/2023

O R D E R

Per Bench

These are appeals filed by the assessee against the separate orders of the ld CIT(A)-1, Bhubaneswar both dated 3.9.2019 in Appeal No.0391/16-17 and No.0390/16-17 for the assessment years 2009-10 & 2010-2011, respectively. Since facts are identical, they are clubbed together and are being disposed of by this common order. We take up the appeal for the assessment year 2009-10.

2. Shri K.K.Bal, ld AR appeared for the assessee and Shri M.K.Gautam, ld CIT DR appeared for the revenue.

3. It was submitted by ld AR that the assessee is in the business of mining. It was the submission that original license was in the name of Shri M.S.Deb, father of the assessee. The assessee's father expired on 22.2.1982. The assessee, as a legal heir, continued with the mining operation. For the relevant assessment year 2009-10, the assessee had filed his return of income on 31.3.2011. The intimation u/s.143(1) came to be issued on 11.4.2014. Notice u/s.148 of the Act came to be issued on 28.3.2016 after the expiry of four years from the end of the assessment year proposed to be reopened. It was the submission by ld AR that the reasons recorded for the purpose of reopening was at page 5 of the paper book, which reads as follows:

> 'The assessee individual derives income from mining business. The assessee filed his return of income for the A.Y. 2009-10 on 31.3.2011 showing a total income of Rs.2,05,26,930/-. The return was processed on 11.4.2014 u/s.143(1) of the I.T.Act, 1961.
>
> As per information available with department, Shri B.C.Deb, its lease period expired on 19.11.1973. It has produced 1162260 MT of iron ore illegally. The State Government issued show cause notice for recovering an amount of Rs.243,48,48,107/- u/s.21(5) of MM(DR) Act, 1957 on the ground that Shri B.C.Deb has raised iron and manganese ores from the area which is outside the lease area. B.C.Deb did unlawful mining operation to an extent of 1,46,755.848 Cubic Meter. The DDM, Joda also reported that Shri B.C.Deb has illegally raised iron and manganese ores from outside the leased area and safety zone to an extent of 5803094 MT of iron ore and 355228 MT of manganese ore valued at Rs.158,71,60,491.00 and Rs.67,48,99,832.00 respectively. Despite the fact that no lease is

granted in favour of Shri B.C.Deb, the mine has been operated and is allowed to illegally extract 11,85,345 MT of iron ore and 36,726 MT of manganese ore from the year 2006-07 to 2009-10. B.C.Deb mines illegally extract 11,85,345 MT of iron ore and 36,726mT of manganese ore from the year 2005-06 to 2009-10. B.C.Deb mines do not obtain environment clearance under the EIA notification.

On verification of assessment record of Shri Bikash Dev, it is noticed that the assessee has not shown the above alleged income in the return of income for the assessment year 2009-10. Hence, I have reason to believe that there is a considerable amount of taxable income, which escaped assessment. Therefore, the case of the assessee requires to be reopened u/s.147 of the Act for the assessment year 2009-10.

The Joint Commissioner of Income Tax, Range-2, Bhubaneswar is requested to accord his kind approval for issuing notice u/s.148 to the assessee."

4. It was the submission that the reasons recorded for reopening the assessment did not quantify the value of escapement of income. It was the submission that even approximate estimate has not been mentioned by the Assessing Officer. It was the further submission that the Assessing Officer only mentions that considerable amount of taxable income has escaped assessment. It was the submission that the provisions of section 149 in fact require a quantification to be in excess of amount of Rs.1 lakh. It was the submission that even this has not been mentioned by the Assessing Officer. It was the submission that though the Assessing Officer mentions a show cause notice in respect of penalty of Rs.243.48 crores issued by the State Government, the assessee has replied to the show cause notice issued and no further action has been done by the State Government till today. It was the further submission that the Assessing

Officer talks of unlawful mining operation but on perusal of assessment order itself shows that as early as 11.9.2009 itself it had been held by the Committee constituted under the Chairmanship of Addl. District Magistrate, Keonjhar with the officers of the Mining Department and Forest Department that there was no illegal mining in any area outside the leased area in the case of the assessee. It was the further submission that in respect of illegal mining itself, the Assessing Officer had written a letter to the Director, Mines and the Director of Mines had referred the issue to the Dy. Director of Mines in respect of illegal mining and till today, the Assessing Officer has not got any reply on the issue of illegal mining. It was the submission that the Assessing Officer talks of mining of 321500 MTs of iron ore and 13025 MT of Manganese in the assessment year 2009-10 and 36500 MT of iron ore and 4255 MTs of Manganese in the assessment year 2010-11. It was the submission that the actual mining done by the assessee and disclosed by the assessee far exceeds these figures also. It was the further submission that no illegal mining has been found nor proved in the case of the assessee by any of the authorities whose reports and allegations have been adopted by the Assessing officer for the purpose of reopening of the assessment of the assessee. It was the submission that even as on today, though the Hon'ble Supreme Court has restored the issue of the question of illegal mining to the State Government as early as 8.6.2016, there is no further action done by the State Government against the assessee till date.

It was thus the submission that the said very foundation of the information as alleged to have been received by the revenue itself no more exists, therefore, the reasons recorded is unsubstantiated and reopening is liable to be quashed. Ld AR placed reliance on the decision of Hon'ble High Court of Bombay in the case of Khubchandani Healthparks (P) Ltd vs ITO (2016) 68 taxmann.com 91 (Bombay), wherein, the Hon'ble High Court has held that as the notice itself does not indicate the approximate amount of income, which the Assessing Officer has reason to believe has escaped assessment nor does it quantify the extent to which the share premium received was in excess of intrinsic value, which has escaped assessment had held the reopening to be invalid. In the present case, it was the submission that there is no mention of even an estimate of income that has escaped assessment. He has also placed reliance on the decision of the Hon'ble High Court of Bombay in the case of Pr. CIT vs Shodiman Investments Pvt Ltd., 442 ITR 357 (Bom), wherein, the Hon'ble High Court has in para 13 held as follows:

> 3. In this case, the reasons as made available to the Respondent-Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reason even does not indicate the amount which according to the Assessing Officer, has escaped Assessment.

This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment."

5**.** It was the submission that in these circumstances, the reopening as done by the Assessing Officer is liable to be set aside and consequently, the assessment is liable to be quashed.

6. In reply, ld CIT DR filed written submission, as follows:

" In the present case, the assessee is engaged in the mining business. The assessee had filed returns of income for two assessment years under reference which were processed u/s. I43(1) of the Act. Though the lease period of the assessee had expired on 19.11.1973, yet he had produced 11,62,260 MT of iron ore illegally. The State Government had issued a show cause notice for recovering an amount of Rs.243,48,48,107/- u/s.21(5) of MMDR Act, 1957 on the ground that the assessee had raised iron and manganese ores from the area which was outside the lease area. The assessee had done unlawful mining operations to the extent of 1,46.756 cubic metres. The DDM (Deputy Director of Mines), Joda also reported that the assessee had unlawfully raised iron ore to the extent of 58,03,094 MT of iron ores valued at Rs. 158.71 crores and 3,55,228 MT of manganese ores valued at Rs.67.48 crores. Despite the fact that no lease was granted in favour of the assessee, he had illegally raised 11,85,345 MT of iron ores and 36,726 MT of manganese ores from the years 2006-07 to 2009-10. Since the said income was not disclosed in the returns of income of Ay 2009-10 & Ay 2010-11, the A.o. had reasons to believe that income had escaped assessment. The information supplied by DDM, Joda being the appropriate authority, was authentic in nature. Hence after recording the reasons, notices dated 28.03.2016 u/s.14B of the Act were issued to the assessee for two assessment years and served on 28.03.2016.

2. The argument of the Id. AR of the assessee that reopening was bad in law and without jurisdiction, is totally absurd. The allegation that there should have been reasons to believe and not reason to suspect is vague and baseless. The Id. AR of the assessee has ignored the fact that the A.O. had received information from DIT(Inv.), Bhubaneswar vide letter dated 18.12.2014 about the illegal mining of iron and manganese in the state of Odisha. This was a credible fresh information which was not available at the time when

the return of income was processed u/s. r43(l) of the Act. A.O. This issue is covered in the favour of Revenue by the following judgements:

i.) Hon'ble Supreme Court in the case of ITO vs. Selected Dalurband Coal Co. (P.) ttd. (217 ITR 597). The observations of Hon'ble Supreme Court are reproduced as under:

"After hearing learned counsel for the parties at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income-tax Officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January g, L967, by the officers of the Mining Department in the presence of the representatives of the assessee and according to the opinion of the officers of the Mining Department, there was under-reporting of the raising figure to the extent indicated in the said letter. The report is made by a Government Department and that too after conducting a joint inspection. It gives a reasonably specific estimate of the excessive coal-mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may well be that the assessee may be able to establish that the facts stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as as a result of our order, the reassessment proceedings have now to go on we do not and we ought not to express any opinion on the merits".

ii.) ln the following cases, it was held that where the A.O. had received information from the Investigation wing, the reopening us.L47 of the Act on the basis of said information was justified.

- Hon'ble Punjab & Haryana High Court in the case of Rakesh Gupta vs. CIT (93 taxmann.com 271)

- Hon'ble Delhi High court in the case of Rajat Export Import India (p.) Ltd. vs. ITO (18 taxmann.com 311) .

- Hon'ble Delhi High Court in the case of Paramount Intercontinental (p.) Ltd. vs. ITO (BB taxmann.com 595)

- Hon'ble Gujarat High Court in the case of Peass Industrial Engineers (p.) Ltd. vs. DCIT (73 taxmann.com 185)

- Hon'ble Delhi High Court in the case of AGR Investment Ltd. vs. Additional CIT (197 Taxman 177)

- Hon'ble Kolkata High Court in the case of Brij Mohan Agarwal vs. ACIT (140 Taxman 317)

iii.) The Hon'ble Karnataka High Court in the case of Prasanna V Ghotage vs. DCIT (79 tuo:rann.com 103) has held that in case of assessee, engaged in trading of iron ore, assessment could be reopened on basis of report submitted by a committee (M. B. Shah Commission) that he was involved in illegal mining and moreover, there was huge under invoicing in respect of sale of iron ore. The observations of the Hon'ble High Court in paras-6, 7 & B are reproduced as under:

"6. It is stated that subsequently, the committee Justice M.B. Shah, Commission which was appointed by investigate the illegal iron ore mining, submitted a report. It is further stated that as per the report submitted by the Commission, the petitioner has been accused of being involved in illegal mining and the material relied upon by the Commission disclose huge under invoicing in the sale of iron ore. The details of the invoices and the relevant invoices are also furnished and the invoices are dated 14.1.2009 to 25/9/2009 pertaining to the assessment year 2009-10. The reasons and the grounds on which the respondent authorities have arrived at the conclusion of under invoicing is also furnished in the tabular column. Based on the comparative invoices in respect of the sales effected on the same day, the authorities have arrived at the conclusion.

7. The respondents have placed on record the materials that gave them the reason to believe that there is escapement of Income. The ground for re-assessment is "under-invoicing" which in the opinion of this Court is "sufficient reason to believe that there is escapement of income. The sufficiency of reasons cannot be gone into in a writ proceedings. The contents of the Invoices have to be ascertained which is a factual issue and to be adjudicate after hearing the assessee

8. Hence, prima-facie. no illegality can be attached to the reasoning of the assessing authority for arriving at a conclusion, that there has been under invoicing and consequent escapement of income."

3. The argument of the Id. AR of the assessee that the A.O. had erred in issuing the notice u/s.148 of the Act prior to the recording of the reasons is also absurd. The original assessment records for both the assessment years are being produced for the perusal of Hon'ble members of the Bench. As per order sheet entry, the reasons were recorded by the A.O. on 21.03.2016. The notice u/s.148 was issued on 28.03.2016 after receipt of approval from CIT-I, Bhubaneswar on 28.03.2016. Hence there is no infirmity in the action of the A.O. and allegations of the assessee are totally baseless.

4. The argument of the Id. AR of the assessee that re-assessment proceedings were initiated after 4 years from the end of the relevant assessment year without specifically stating that there was also a failure on the part of the assessee disclose fully and truly all the facts necessary for assessment is also absurd since no assessments u/s.143(3) were made by the A.O. for two assessment years and returns for A.y. 2009-10 & A.y. 2010-11 were only processed us.143(1) of the Act.

5. The argument of the Id. AR of the assessee that the re-opening resorted to by the A.O. was based on surmises and suspicion rather than any concrete evidence is also absurd. The assessee has shown lower production of iron ores/manganese ores in the books of account than that reported by Deputy Director of Mines, Joda. Hence there was credible information from a government authority which formed reasons to believe that income chargeable to tax had escaped assessment for both the assessment years.

6. The argument of Id. AR of the assessee that the CIT-I, Bhubaneswar had mechanically approved the proposal of the A.0. for re-opening u/s. 147 of the Act is also baseless. The Hon'ble Punjab & Haryana High Court in the case of Rakesh Gupta vs. CIT (93 tilmann.com 271) has held in para-43, 44 and 45 as under:

"43. This brings us to Mrs. Suri's contention that the satisfaction recorded by the Principal Commissioner of Income Tax, Panchkula, under Section 151 of the Act was mechanical. We do not agree. From a perusal of the record, it is evident that the section has been duly complied with and he has not signed on the dotted line. If he approves the reasons he is not bound to reiterate the same. That

would be an empty formality. Mr. Putney's reliance upon the following observations of the Calcutta High Court in ITO vs. Mahadeo Lal Tulsian (L977) 110ITR 786 is well founded:

"He has contended that there had been no due compliance with the provisions of section 151(2) of the said Act since the Commissioner of Income tax had failed to arrive at a bona fide satisfaction or record the same. Here again, the issue has to be considered from the point of view of what the facts establish in substance. Now, facts indicate that the proposal for reopening the assessment with reasons indicated hereinbefore was placed before the Commissioner of Income- tax. Obviously he applied his mind as is indicated by his endorsement: "Yes, I am satisfied." If the Commissioner records his satisfaction in a positive maru1er, as aforesaid, and there being no other material before us to show that notwithstanding such a record the Commissioner never applied his mind but merely signed on a dotted line without application of his mind, we are unable to accept the contention that the Commissioner never arrived at a bona fide satisfaction in recording the same. This objection raised by Mr. Banarjee,therefore, must fail and is overruled."

We are in respectful agreement with the judgment.

44. Mrs. suri relied upon judgment of the supreme court in Chhugamal Rajpal's case (79 ITR 603) and in particular paragraph 9 thereof. This judgment does not support the petitioner's case. It is clearly distinguishable. As noted in the earlier part of paragraph 9, the Supreme Court held that the reasons recorded by the ITO for initiating proceedings under Sections L47 and, 148 were not in accordance with law. As in that case, the Commissioner merely accorded permission under Section 151 without stating any reason himself. It is axiomatic that his order would also not be in accordance with Section 151. The case before us is entirely different. We have found that the reasons recorded by the AO justify the initiation of proceedings under Sections 147 and 148. As the Principal Commissioner agreed with these reasons, it was not necessary for him in his order according sanction to reiterate the reasons furnished by the AO. There is nothing that indicates that he did not apply his mind to the reasons furnished by the AO.

45. Reasons to believe are there. The reasons are based on tangible material. The return and account books of assessee had not undergone scrutiny at the time of assessment. The information is specific and not vague. A reasonable person can form an opinion on

the basis of the material. The information received could form the basis of reason to believe that income has escaped assessment and the re-opening is not on mere suspicion. Hence, the assumption of Jurisdiction is in accordance with law.'

The Hon'ble Kolkata High Court in the case of Prem Chand Shaw Jaiswal) vs. ACT (62 Tuonann.com 339) held that mere fact that Additional Commissioner did not record his satisfaction would not render invalid, sanction granted under section 151(2), when reasons on basis of which sanction was sought for could not be assailed. The Hon'ble High Court held in para-2z & 23 as under:
"22.In the case of CIT (Central) vs. T.O. Abraham & Co. (2011) 333 ITR 1821203 Taxman 63 (Mag.y712 raxmann.com 433 (Ker.) the Kerala High Court held that the whole purpose of Section 2928 is not to defeat on technicalities the object of the statute that is to assess and collect the tax legitimately due under the Act. The mere fact that the Additional Commissioner did not record his satisfaction in so many words would not render invalid the sanction granted under Section 151(2) when the reasons on the basis of which sanction was sought for could not be assailed. Even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. We are supported in our view by the Judgment of the Apex Court in R.P. Bhatt vs. Union of India AIR 1986 SC 1040. In R.p. Bhatt (supra) the Apex court relied on judgment rendered by a Constitutional Bench in the case of Som Datt Datta v. Union of India AIR 1969 SC 414 wherein their lordships held as follows:

"Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

23. In view of the aforesaid discussion the questions No.1 and 2 are answered in the negative and in favour of the revenue."

The Delhi High Court in the case of Esperion Developers (p.) Ltd. vs. ACIT (115 tuonann.com 338) held that where necessary sanction to issue notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer. It was

held in para-42 that there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the Principal Commissioner is satisfied with the reasons recorded by the Ao. Similarly, in case of virbhadra Singh vs. Deputy Commissioner Circle Shimla l20l7l BB taxmann.com BBB (HP) where the competent authority was in agreement with the reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded with proper application of mind, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 147 /14B was held to be valid.

7. As far Instruction No.40/2016 issued by CBDT is concerned, same is not applicable to the facts of the present case. The said instruction states that the country has shifted to digital mode of payments. In this scenario, no financial transaction would remain undisclosed. Hence there is an apprehension that there would be an increased turnover in the current year might lead to reopening of earlier years' assessments. It was thus conveyed that on the ground of mere increase in turnover, it would not be a reason to reopen the assessments of earlier years. This instruction has no application in the present case. In fact, Instruction No.14 of 2015 dated 14.10.2015 is more applicable in the present case.

8. The argument of the Id. AR of the assessee that the A.O. has simply reproduced the findings of DIT (Inv.) without applying his mind is also not valid. After receipt of information, the A.O. has examined the return of income for A.Y. 2009-10 & A.Y. 2010-11 filed by the assessee. He has also gone through the assessment records and then formed a belief that income chargeable to tax has escaped assessment. The Hon'ble Punjab & Haryana High Court in the case of Rakesh Gupta vs. CIT (93 tuonann.com 271) has held in para-I9 as under:

"19. It is not a case where merely on receipt of information a notice had been issued. Thus although the information may be borrowed, the satisfaction was not. The respondents with their reply have annexed the material chart on the basis of which the AO recorded his reasons. The merely receipt of information from another source would not be a ground to challenge the initiation of proceedings. The only requirement would be the satisfaction of the AO regarding and based on the said information. The issue of borrowed satisfaction and issuance of notice on the direction of a higher authority is not there. The data qua the petitioner was analysed by the AO and thereafter, notice was issued. The reliance on the concluding lines of

the information received from Ahmedabad to contend that it contained a direction to initiate proceedings is ill founded. It was only a suggestion to the concerned AO."

9. The Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. vs. ITO (236 ITR 34) held as under:

"In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. we are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed.

There will be no order as to costs."

The Hon'ble Kerala High Court in the case of G. Sukesh vs. DCIT (118 Taxman 427) held in para-4, 5 & 6 as under:

"4. On an examination of the matter, I have to agree with the counsel for the revenue that the writ petition is premature. It is also too early for anybody to pronounce that the Assessing Officer had no business or reason to believe that income had escaped assessment. The section gives power to assess or reassess such income or any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the section. The petitioner is, therefore, not justified in submitting that all definite figures should be with the officer, well beforehand, and then only notice is contemplated. The expression in the course of proceedings' is wide in its amplitude, and it will, therefore, be proper to conclude that the information at the time of issuing notice need not be complete and accurate.

5. Also there is power to re-compute the loss or depreciation allowance or any other allowances, and these are pointers to indicate

that the reassessment can be thorough and complete. Explanations to the section also suggest to the wide power and discretion. when an assessee makes a declaration of his income, and verifies particularly to its correctness, he has to stand by the same, and cannot object to the Department pointing out that from materials collected, there appears to be an error in the returns. The sanctity of a return become susceptible to acid tests when the Assessing Officer stumbles on materials indicating that the returns were not true as is claimed. An opportunity is given for making a clean breast of the affairs, and one need not be apprehensive unless he has skeleton in his cupboard. I may quote from the decision of the supreme Court reported in phool chand Bajrang Lal vs. ITO [f 993] 203 ITR 456 as following :

"one of the purposes of section 147 appears to us to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would be a travesty of justice to allow the assessee that latitude." (p.478) As reliable evidence has come to the possession of the officer as he claims, the background for a reassessment has been set. It is for the assessee to utilize the opportunity offered."

6. In the aforesaid circumstances, I am not interfering in the proceedings now. I also record the statement of the counsel for the revenue that in case there is a reassessment and fresh orders coercive steps will not be straightaway resorted to. The original petition is, therefore, dismissed."

In view of above facts, the appeal filed by the assessee is required to be dismissed."

7. Ld CIT DR has relied on the decision of the Hon'ble Supreme Court in the case of ITO vs Selected Dalurband Coal Co.(P) Ltd., (1996) 217 ITR 597 (SC), wherein, it has been held that on the basis of a letter from the Mining Department which gives a reasonably specific estimate of the excessive coal mining said to have been done by the assessee over and

above the figures disclosed in its returns and same was adopted by the Assessing Officer, therefore, the reopening is valid.

8. Ld CIT DR has also relied upon the decision of the Hon'ble Kerala High Court in the case of G.Sukesh vs DCIT (2001) 118 TAXMAN 427 (Ker), wherein, it has been held that the expression "in the course of proceedings" is wide in its amplitude and, therefore, the information at the time of issuing notice under section 148 need not be complete and accurate.

9. He has also placed reliance on the decision of Hon'ble Karnataka High Court in the case of Prasanna V Ghotage vs DCIT (79 taxmann.com 103), wherein, the Hon'ble High Court has held that where the Committee has submitted its report wherein, assessee was accused of being involved in illegal mining and, moreover, there was huge under invoicing in sale of iron ore, the reopening initiated by the AO on the basis of the said report was valid. It was the submission that the reopening of the assessment is liable to be upheld

10. It was the submission by ld CIT DR that substantial number of opportunities had been given by the ld CIT(A) to the assessee but the assessee has been non-cooperative. It was the submission that the order of the ld CIT(A) is liable to be upheld.

11. We have considered the rival submissions. A perusal of the reasons recorded specifically shows that there is no quantification of the income

which is alleged to have escaped assessment much less the estimate of the income that is alleged to have escaped assessment.

12. A perusal of the decision of the Hon'ble Bombay High Court in the case of Khubchandani Healthparks (P) Ltd (supra), clearly shows that the notice for reopening of assessment itself does not indicate the approximate amount of income, which the Assessing Officer has reason to believe has escaped assessment nor does it quantify the extent of such income, then the reasons recorded is liable to be held to be invalid and reopening quashed.

13. Same is the view expressed by the Hon'ble Bombay High Court in the case of Shodiman Investments Pvt Ltd.,(supra).

14. A perusal of the decision relied upon by ld CIT DR in the case of Selected Dalurband Coal Co.(P) Ltd(supra) shows that the reopening in that case was on the basis of a letter from the Mining Department giving reasonably specific estimate of the excessive coal mining said to have been done by the assessee . In the present case, there is no such letter from the Mining Department. The information which is being relied upon by the Assessing Officer for the purpose of reopening and mentioned in the reasons recorded is a letter from the Director of Income Tax (Investigation), Bhubaneswar addressed to the Commissioner of Income Tax referring Shah Commission Report, wherein, the said figures are mentioned. A perusal of

the letter of the Director of Income Tax (Investigation), Bhubaneswar to the Commissioner of Income Tax, Bhubaneswar dated 18.12.2014 when compared with the reasons recorded shows that the reasons recorded are identical to the letter issued by the Director of Income Tax (Investigation) to the Commissioner of Income Tax, Bhubaneswar. Thus, the figures adopted by the AO in the reasons recorded are nothing but the figures adopted out of the Shah Commission report by the DIT (Inv) and communicated to the CIT, Bhubaneswar. These figures remain unsubstantiated and have not been acted upon by the State Government in the assessee's case.

15. Coming to the decision in the case of Prasanna V Ghotage (supra), in that case, the Committee has submitted its report, wherein, the assessee has been accused of being involved in illegal mining and there was huge under invoicing in sale of iron ore. In the case of the assessee, herein, though Shah Commission report talks of substantial illegal mining, same did not fructify into any actual finding of illegal mining in the case of the assessee. In fact, the Hon'ble Supreme Court had restored the issue to the State Government in 2016 and even today after a lapse of 7 years, no action is initiated.

16. Coming to the decision of G.Sukesh(supra), Hon'ble Kerala High Court has held that the information at the time of issuing notice u/s.148 need not be complete and accurate. Admittedly, in the present case, at the

time of issuance of notice u/s.148, there was no information which showed that the assessee has done any illegal mining. This is because though the Hon'ble Supreme Court has restored the issue to the State Government on 8.6.2016, this was on account of an appeal filed by the State Government against the decision of the Hon'ble Jurisdictional High Court in favour of the assessee on the issue of illegal mining. Thus, the very foundation of the reasons recorded for reopening of the assessment did not exist when the reasons were recorded.

17. Thus, in these circumstances, as the reasons recorded does not quantify even an estimated amount of the alleged income which has escaped assessment and as it is noticed that the reasons recorded do not contain any live link to the alleged illegal mining, the reasons recorded for the purpose of reopening of assessment are invalid and is nothing but fishing enquiry. Consequently, the reasons recorded are held to be invalid and notice issued u/s.148 of the Act for the purpose of reopening stands quashed. Consequently, the assessment also stands quashed.

18. In the result, both the appeals of the assessee stand allowed.

Order dictated and pronounced in the open court on 17/01/2023.

Sd/-	sd/-
(Arun Khodpia)	**(George Mathan)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cuttack; Dated 17/01/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Bikash Dev, Flat No.101, Haraprity Apartment, Vivekananda Marg, Old Town, Bhubaneswar

2. The Respondent: DCIT, Circle-2(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack