

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 370/JP/2022  
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Pradeep Kumar S/o Dhanraj, ACTO, Choudhary Colony, W. No. 18, Chirawa, The. Chirawa, Jhunjhunu.	बनाम Vs.	The Income Tax Officer, Ward 2, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AUSPK 0411 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharwan Kumar Gupta, Advocate.

राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/12/2022  
उदघोषणा की तारीख / Date of Pronouncement: 11/01/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT(A), National Faceless Appeal Centre, Delhi dated 18.08.2022 for the assessment year 2011-12. The assessee has raised the following grounds of appeal :-

1. The impugned assessment order u/s 143(3) rws 148 dated 11.12.2018 as well as the notice u/s 148 and the action taken by the Id. AO u/s 147 are bad in law and on facts of the case, for want of jurisdiction, barred by limitation, without proper approval or satisfaction and various other reasons and hence the same may kindly be quashed.
2. The Id. CIT (A) has erred in passing the order partly taking into consideration our WS and paper book filed during the course of physical hearing and without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the addition so made by the Id. AO may kindly be quashed and delete.

3. Rs. 7,65,000/- : The Id. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 7,65,000/- on account of Long ash deposits in the bank account as alleged undisclosed income. Hence the addition so made by the AO and confirmed by the Id. CIT (A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be deleted in full.
4. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A, B, C. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.
5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee is having income from trading of commodity and other sources. He has not filed his return of income originally being the income below taxable limit. The Id. AO has issued the notice u/s 148 on dated 26.03.2018 on the reason that "*Since, the assessee neither filed his return of income nor furnished any evidence/documents/explanation in regard to such commodity transaction therefore I have reasons to believe that the transaction were made out of his undisclosed income and profit/loss on such transaction remained explained by the assessee hence I have reason to believe that the income of the assessee chargeable to tax for the A.Y. 2011--12 to the tune of Rs 10,00,000/- has escaped assessment.*" But the assessee has not complied with the said notice. Thereafter notice under section 148 dated 16.05.2018 was issued fixing the date of hearing on 25.05.2018. In response to the said notice, the assessee has appeared and filed the reply. Being not satisfied with the reply the AO issued show cause notice under section 148 dated 10.09.2018 requiring the assessee to file reply by 17.09.2018. In response to the said notice, the assessee has filed his return of income on 17.09.2018 declaring the income of Rs.12,050/-(PB7-9A). In response to

the notice under section 142(1)/143(2) along with query letter, the assessee has filed the reply wherein he has stated that during the year under consideration the assessee was doing business in commodity share market in which he has suffered loss. The assessee has also filed the copy of bank statement. The Id. AO after considering the same has stated that on perusal of the bank statement of the assessee for the year it is found that there is cash deposits of Rs.7,65,000/-. The Id. AO asked the assessee to explain source of cash deposits. The Id. AO has alleged that the assessee has not explained the source of cash deposits in the bank. The Id. AO has stated that the source of cash deposit in the bank account is not proved from the documents and bank statement filled by the assessee and treated the same as undisclosed income and accordingly completed the assessment by making an addition of Rs. 7,65,000/-. Being aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) upheld the order of the AO by observing in para 8.2 of his order as under :-

"8.2. The appellants claim that the addition made is invalid since the same did not form a part of the reasons recorded for re-opening u/s 148 is incorrect. Section 147 clearly authorizes the AO to make addition on account of any income escaping assessment notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148. In this case it is seen that the AO had opened the case on the ground that as per information the assessee has entered into commodity transactions and not filed the return of income for the assessment year 2011-12. During assessment the assessee submitted that he was doing commodity trading through the Reliance Money office and had suffered loss. The reasons recorded by the AO were therefore correct. But despite so called loss the appellant has made cash deposits in the bank account amounting to Rs. 7,65,000/-. The appellant has failed to give an explanation for the same during assessment and appellate proceedings. The AO has rightly held these to be his unaccounted income. In view of the clear provisions of section 147 read with Explanation 3 the addition made by the AO is upheld. This ground of appeal is dismissed."

Now the assessee has preferred the present appeal before this Tribunal.

3. Ground Nos. 1 & 2 raised by the assessee are inter connected and inter related and relate to challenging the order of the Id. CIT (A) on the ground that assessment order passed under section 143(3)/148 dated 11.12.2018 as well as notice under section 148 are bad in law and on facts of the case for want of jurisdiction. Therefore, we think it fit to decide both the issues together.

4. At the outset, Id. A/R appearing on behalf of the assessee reiterated the same submissions as made before the Id. CIT (A) and in this regard filed his written submissions as under :

**"1. No addition made on the reasons recorded u/s 148:** At the very outset it is submitted that as the Id. AO issued the notice u/s 148 on the reasons recorded that *"Since, the assessee neither filed his return of income nor furnished any evidence/documents/explanation in regard to such commodity transaction therefore I have reasons to believe that the transaction were made out of his undisclosed income and profit/loss on such transaction remained explained by the assessee hence I have reason to believe that the income of the assessee chargeable to tax for the A.Y. 2011-12 to the tune of Rs 10,00,000/- has escaped assessment.."* However on perusal of the assessment order admittedly it has been come to know that the Id. AO has not made any addition on this issue or on the issue recorded in the reason for reopening the case and he has made different addition on account of cash deposit in the bank account, which is illegal and now it is the settled legal position of law that if no addition on the reasons recorded has

been made then no other addition can be made, for this kindly refer following decisions:

**(a) In the case of CIT vs. Shri Ram Singh 306 ITR 0343 (Raj.)** the Hon'ble High Court Of Rajasthan Held that It is only when, in proceedings under s. 147 the AO assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under s. 147. To put it in other words, if in the course of proceedings under s. 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under s. 147. It is a different story that for such other income, the AO may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the AO is required to withhold his hands, at that only. Once the AO came to the conclusion, that

the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of reassessment proceedings, which were found by him, to have escaped assessment.—[CIT vs. Atlas Cycle Industries](#) (1989) 180 ITR 319 (P&H) **concurred with.**

**(b) In the case of CIT vs. Jet Airways (I) LTD 331 ITR 0236 (Bom):**

*Held Reassessment—Scope—Items unconnected with escapement for which notice was issued—When Expln. 3 to s. 147 was introduced, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain Courts that the AO has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment—However, Expln. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147—AO 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 s. 148, he accepted 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 to*

*independently assess some other income—If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee*

**(c) In the case of Ranbaxy Laboratories Ltd. vs. CIT 336 ITR 0136(Del)** held that *The crux of s. 147 is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the AO may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention in the reasons recorded and the notice issued under s. 148. Since there was confusion prevailing with regard to the powers of the AO to assess or reassess on the issues for which no reasons were recorded, Expln. 3 came to be inserted as clarificatory. Now, after the insertion of Expln. 3, the position is that the AO may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under s. 147 though the reasons for such issue were not included in the reasons recorded in the notice under s. 148(2) on the basis of which he had initiated proceedings under s. 147.—[Vipan Khanna vs. CIT](#) (2002) 175 CTR (P&H) 335 : (2002) 255 ITR 220 (P&H) and [Travancore Cements Ltd. vs. Asstt. CIT](#) (2008) 219 CTR (Ker) 359 : (2008) 305 ITR 170 (Ker) held no longer good law.*

*The heading of s. 147 is "Income escaping assessment" and that of s. 148 "Issue of notice where income escaped assessment". Sec. 148 is supplementary and complimentary to s. 147. Sub-s. (2) of s. 148 mandates reasons for issuance of notice by the AO and sub-s. (1) thereof mandates service of notice to the assessee before the AO proceeds to assess, reassess or recomputed escaped income. Sec. 147 mandates recording of reasons to believe by the AO that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Expln. 3 if during the course of these proceedings the AO comes to 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. However, the legislature could not be presumed to have intended to give blanket powers to the AO that on assuming jurisdiction under s. 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before AO 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 s. 148.—*

[CIT vs. Jet Airways \(I\) Ltd.](#) (2011) 239 CTR (Bom) 183 : (2011) 52 DTR (Bom) 71 : (2011) 331 ITR 236 (Bom) concurred with.

*The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the AO proceeded to reduce the claim of deduction under ss. 80HH and 80-I which as per above discussion was not permissible. Had the AO proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of the discussion as above, he would have been justified as per Explan. 3 to reduce the claim of deduction under ss. 80HH and 80-I as well. In view of the above discussions, the Tribunal was right in holding that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive.*

**(d) In the case of CIT vs. Dr. Devendra Gupta 336 ITR 0059(Raj):** held Reassessment—Scope—Addition in respect of items other than the one on which notice in given—Income alleged to have escaped assessment in reasons recorded not having been actually found to .

**(e)** Also refer **AVG Construction Pvt. Ltd v/s ITO Ward 6(2) Jaipur in ITA no. 90/Jp/2020 dt. 02.09.2021** under the same facts and circumstances copy is enclosed.

**(f) Recently the Honble ITAT Jaipur Bench in the case of Shri Shambhu Dayal Saraf v/s IT in ITA No. 558/Jp/2013 dt 02.07.2018 58 TW 355(Jp),** has also held the same view copy of order is enclosed

**(g)** Also refer latest decision of this Honble ITAT in the case of **Pappu Qureshi v/s ITO in ITA No. 314//Jp/2019 dt. 28.04.2020**

***Sec. 292B is no applicable:*** *S. 292B could not be invoked to correct a foundational/substantial error as it was meant so as to meet jurisdictional*

*requirement—Therefore, both impugned notice and impugned order were quashed and set aside—It was made clear that this order would not prohibit Revenue from issuing a fresh notice for reassessment, if requirement of Ss 147/148 were satisfied, including limitation period therein Kindly refer **Sumit Balkrishan Gupta v/s ACIT 104 CCH379(Bom.HC)(2019)**.*

*Thus, cannot be said that it is an irregularity curable u/s. 292B—*

**(h) In the case of Saraf Gramodyog Sansthan vs. ITO 108 ITD 115(Agra)** it has been held that *Further, AO had referred to wrong bank account number in the reasons recorded by him—Sec. 292B cannot take care of any mistake in recording the reasons because that section refers to "return of income, assessment, notice, summons or other proceedings"—It does not refer to the reasons recorded by the AO—Any invalid proceedings for assumption of jurisdiction cannot be corrected by s. 292B*

**(i) In the case of Vikram Singh vs. Income Tax Officer (2021) 63 CCH 0044 Lucknow Trib** *Reassessment—Escapement of income—Case of assessee was reopened u/s. 147 for deposits in bank amounting Rs.11,00,000—Held, Bombay High Court in case of CIT vs. Jet Airways (I) Ltd., 331 ITR 236 has held that sec. 147 has this effect that AO has to assess or reassess income ("such income") which escaped assessment and which was basis of 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 course of proceedings—However, if after issuing a notice under s. 148, he accepted contention of assessee and holds that 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 fresh notice under s. 148 would be necessary, legality of which would be tested in event of a challenge by assessee—In view of above facts and circumstances and in view of judicial precedent—Assessee's ground allowed.*

**(j) In the case of CIT(EXEMPTION) vs. B.P. Poddar Foundation For Education Sep 13, 2022 (2022) 115 CCH 0026 KolHC** *Reassessment—Reopening of assessment—Assessee filed return of income declaring a total income of Rs. NIL—Return was processed under Section 143 (1—A survey was conducted from which it was found that assessee has deposited money with NIL—It was further seen that said company is a specified person of assessee—According to Assessing Officer, assessee is hit by Section 13(1)(c)(ii) and Section 13(1)(d) for such reason assessment was reopened under Section 147—Assessing Officer observed that from impugned documents it was seen that assessee had deposited sums with N and both these companies are specified persons of assessee—Therefore, Assessing Officer held that these amounts are to be taxed separately at Maximum Marginal Rate in terms of proviso to Section 164(2)—Total amount was treated as income by invoking Section 13(1)(b) read with Section 11(5)—*

*Amount said to have received as donation was added back to income of assessee under Section 69A—CIT(A) affirmed view taken by Assessing Officer except for granting partial relief such as with regard to claim for carry forward of depreciation etc—Tribunal after taking note of factual position, more particularly, that addition which was made in reassessment proceedings having been deleted by CIT(A) reassessment on heads which were not part of reasons recorded for reopening assessment is not sustainable—Held, in case of GKN Driveshafts (India) Ltd. Versus Income-Tax Officer and Ors., (2003) 259 ITR 19 (SC) it was held that assessing officer is bound to furnish reasons within a reasonable time and noticee is entitled to file their objection to such notice and assessing officer is bound to dispose of same by passing a speaking order—Though Explanation 3 inserted by amendment empowers assessing officer to assess income in respect of any issue which has escaped assessment when such issue comes to his notice subsequently in course of proceedings under Section 147 notwithstanding that reasons for such issue have not been included in reasons recorded under Sub-Section 2 of Section 148, prerequisite is there should be a valid notice—Admittedly, in case on hand, notice was held to be not sustainable—If that be so, assessing officer cannot be stated to be empowered to make a roving enquiry into other issues which according to him came to his notice during reassessment proceedings—Foundation of a reassessment proceeding is a valid notice and if this notice is held to be invalid entire edifice sought to be raised on such foundation has to collapse—Tribunal was right in granting relief to assessee—Revenue's appeal dismissed.*

**(k) In the case of Satyawan vs. ITO ITA No. 3423/Del/2019 Jun 20, 2022 (2022) 65 CCH 0217 DelTrib Reassessment—Reopening of assessment—Assessee is challenging very validity of assessment made by Assessing Officer as assessment was reopened for escapement of income on account of cash deposits made into bank account by assessee and whereas while completing assessment Assessing Officer made various disallowances of expenses other than reason for which assessment was reopened—Held, a plain reading of reasons recorded Assessing Officer has reason to believe that income of assessee has escaped assessment in respect of cash deposits of Rs.68,68,705/- as they were remained unexplained—However, while completing assessment Assessing Officer disallowed 25% of purchases for want of bills and vouchers—Assessing Officer also disallowed opening capital shown by assessee in his capital account as no explanation was offered by assessee—There is one more addition which was made by assessee is in respect of license fee paid by assessee for want of supporting documents—Other than these three additions there is no other addition or disallowance made by Assessing Officer, which relates to cash deposits by assessee made into his bank account—In other words, Assessing Officer did not make any addition for which assessment was reopened—In case of Ranbaxy Laboratories Limited Vs. CIT (ITA. No. 148/2008) Delhi High Court held that if Assessing Officer does not make any addition on primary ground on basis of which proceedings under Section 147 were initiated he cannot make other**

*additions—Ratio of decision of Delhi High Court squarely applies to facts of case since Assessing Officer did not make any addition for which reopening was made—Assessing Officer made various other additions other than addition for which assessment was reopened—In view of above, respectfully following above decision of jurisdictional High Court, reassessment order passed by Assessing Officer under Section 143(3) read with Section 147 is bad in law—Assessee's grounds allowed.*

**2. Approval of 36 assesseees in one letter illegal:** Further the Id. Pr. CIT has given one consolidated approval of 36 assessee's through one letter dt. 27/28.03.2018 (PB2-3) and this show how the Pr. CIT has acted in formal way. On perusal of the assessment order and documents it may be possible that there may be no approval in original letter or documents. The document of approval may be in the photocopy. And it is also appear that the approval has been given or reach in the office of the Id. AO after the 31.03.2018, the same was much after the reasons recorded. How the approval can be given of all the 36 different assessee's in one documents, all are the independent or separate assessee and reason are different. Thus it all shows how the wrong and illegal manner have been adopted by all the authorities. On this preposition and issue kindly refer the decision of this Honble ITAT in the case of **Sh. Satya Naraya Bairwa v/s ITO in ITA No...867 & 869/Jp/2018 dt. 15.09.2021** Copy is enclosed, wherein under the same facts and circumstances the Honble ITAT has held that

*"20. The Id. A/R has also drawn our attention on the approval of the Pr. CIT placed at page Nos. 7-8 of the paper book and also from the assessment record placed before us, we found that he has given one consolidated approval of 56 different assessee's in one shot through one letter dated 29.03.2016 which is even not signed by him but signed by ITO (T&J), who is not a competent authority to give and signed the approval letter, which shows how the PR. CIT has acted in very formal way. When we examined of the assessment record, it is gathered that the approval was in photocopy and not*

*in original or there was no original letter or documents of approval. Further the name of the assessee was at Sr. 46 out of 56 assessee's and even there was no tick on the name of the assessee in the approval list, which creates a doubt that the approval has been received before the issue of notice u/s 148 of the Act as the approval letter lying on the file after issuance of the notice u/s 148 or not before or attached with the notice u/s 148 and may reach in the office of the AO after 31.03.2016. Thus, in our view, approval u/s 151 cannot be given of all the 56 assessee's in a single documents, as all assessee's are the independent and separate also the reason recorded are different in each case and it is not possible that there shall be same reasons. Looking to these facts and record it is also held that the procedures and way of approval and satisfaction is not proper. Here AO initiated proceedings u/s. 147 r.w.s. 148 on basis of information furnished and CIT gave approval without applying his mind in slipshod manner. As approval/sanction given by CIT was without recording his own independent satisfaction as noted above, therefore the reopening was not sustainable as per above judicial pronouncements and irregularities noted. There were clear irregularities and violation of the provision of Sec. 151 of the Act and very foundation of the issuance of the notice u/s 148 was not as per law. Then in that eventuality, we are of the view that the issuance notice 148 of the Act and all the consequent proceedings and assessment order passed was not in accordance with law. The case laws relied upon by the Id. DR are not tenable in the facts and circumstances of present case, therefore, considering the totality of facts and circumstances of the case as well as the judicial pronouncements qua the issue under consideration, we find merit in the contention of the Id AR, therefore, we quash the proceedings U/s 147 of the Act."*

Here is the same position.

**3.** Regarding the observation of the Id. CIT(A) on online approval given on 19.09.2017, it is submitted that at that time there was no provision for on line approval . Further if online approval has been given on 17.09.2017, than why the letter dt. 25.03.2018 was sent again for approval u/s 151 and why the Id. Pr. CIT office has given the approval on 27/28/.03.2018 again. The Id. CIT(A) or AO nowhere has state that the letter dt. 27/28.03.2018 was bogus or incorrect. Further our arguments are the same as has given in the order of Sh. Staya Narayn Bairwa;s order so kindly consider the same here also.

Therefore all the proceedings are illegal, invalid, void-ab-initio and liable to be quashed.

**4. No income escaped:** further it is submitted that the notice u/s 148 can be issued only when there is any escapement of income because S.147 provides that If the Assessing Officer has reason to believe that an income chargeable to tax has escaped assessment for any assessment year, here the assessee has not escaped any income because the assessee has not earned income of Rs.10,00,000/- on the commodity transaction as admitted by the Id. AO himself. Which shows that there was no escapement of income by the assessee. Then it cannot be said that there is the escapement of income by the assessee nor proved then the notice issued u/s 148 is invalid.

**5. Reason to believe and not reason to suspect:**

**5.1** It is further submitted that even under the amended law by the finance act 1989 the condition precedent or words, which continues right since inception till date, are "reason to believe" and not "reason to suspect". The word "believe" has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. Kindly refer **Gangasharan & Sons Pvt. Ltd. 130 ITR 1 (SC), and ITO v. Lakhmani Mewal Das, (1976) 103 ITR 437 (SC).**

**5.2** The belief of the Officer should be as to escapement of income and the belief should not be a product of imagination or speculation. There must be reason to induce the belief. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be

*investigated by the Court (Sheo Nath Singh v. AAC, (1971) 82 ITR 147 (SC).*

**In the case of Mukesh Modi & Ors. vs. DCIT 366 ITR 418 (Raj)** held that *Evasion of tax was menace to society but Assessee contributing to the exchequer in form of tax could not be allowed to suffer on mere pretence that it had evaded payment of tax. Rowing and fishing enquiry in hands of AO on mere suspicion or change of opinion could not satisfy expression "reason to believe" exposing Assessee for reopening of assessment. Notice for reopening of assessment was not in consonance and in conformity with under Section 147 and made specified notice vulnerable. High Court pointed that, reasons given by AO for issuance of notice for Re-assessment were not plausible and convincing. In fact order, where objections were rejected by AO, was not self-contained speaking order. Upon perusal of the order, it was amply clear that the same contains conclusions and is bereft of reasons.(para 12)*

*Notices issued to Assessee by AO under Section 147/148 were not satisfying the pre-requisites for same. There was no whisper in the notice, or iota of proof that while issuing same. AO had reason to believe that any income chargeable to tax had escaped assessment for the assessment year. Notice issued by AO simply for his own verification and to clear his doubts and suspicions to re-examine the material which were already available on record at the time of passing of t earlier assessment orders. The legislature under Section 147 has not clothed AO with such jurisdiction therefore the action could not be upheld in the background of facts of instant case. One more redeeming fact which had direct nexus with the subsequent re-assessment proceedings and ramification of the same had culminated into re-assessment orders was the impugned order where AO rejected the objections submitted by Assessee pursuant to notice under Section 147/148. Order passed by AO in this behalf was not a speaking order which could not be sustained. In view of legal infirmity in the notice under Section 147/148 and laconic order of AO while rejecting objections Assessee the consequential assessment Orders were liable to be annulled.(para16)*

Hence in view of the above submissions the action taken u/s 148 and consequent proceedings may kindly be quashed."

5. On the other hand, the Id. D/R supported the orders passed by the Revenue Authorities and also relied upon the report submitted by the AO which is already placed on record.

6. I have heard rival contentions, perused the material on available record and gone through the orders of the revenue authorities. From the facts of the present case, I find that the case of the assessee was reopened by the AO by recording the following reasons :-

*"Since, the assessee neither filed his return of income nor furnished any evidence/documents/explanation in regard to such commodity transaction therefore I have reasons to believe that the transaction were made out of his undisclosed income and profit/loss on such transaction remained explained by the assessee hence I have reason to believe that the income of the assessee chargeable to tax for the A.Y. 2011--12 to the tune of Rs 10,00,000/- has escaped assessment.."*

However, during the assessment proceedings, the AO has not made addition on the issue recorded in the reasons for reopening of the case and rather the AO had made different addition on account of cash deposit of Rs. 7,65,000/- in the bank account. The said fact was challenged by the assessee before the Revenue Authorities. However, the said arguments of the assessee were negated by the Revenue authorities by holding that section 147 clearly authorizes the AO to make addition on account of any income escaped assessment notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub section (2) of section 148 of the Act. After analyzing the entire factual position and hearing the parties at length and after perusal of the judgments cited the respective parties and the orders of the revenue authorities, I find that the AO has not made addition on the issue recorded in the reasons for reopening the case of the assessee but has made addition altogether on a different account by holding that the assessee could not explain the source of cash deposit of Rs. 7,65,000/- in the bank account and in

this regard I am of the view that as per provisions of section 147, the AO can assess or reassess any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax the other income chargeable to tax, which has escaped assessment and which has come to his notice subsequently, in the course of proceedings under section 147 of the Act.

6.1. In the case of CIT vs. Shri Ram Singh 306 ITR 0343 (Raj.), the Hon'ble High Court of Rajasthan held that it is only when, in proceedings under sec. 147 the AO assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under sec. 147. To put it in other words, if in the course of proceedings under sec. 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under s. 147. It is a different story that for such other income, the AO may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the

AO is required to withhold his hands, at that only. Once the AO came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of reassessment proceedings, which were found by him, to have escaped assessment.

6.2. On this proposition, I also draw strength from the decisions of CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 (P&H) and also in the case of CIT vs. Jet Airways (I) Ltd., 331 ITR 0236 (Bom.) wherein it was held as under :-

*"Reassessment—Scope—Items unconnected with escapement for which notice was issued—When Explan. 3 to s. 147 was introduced, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain Courts that the AO has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment—However, Explan. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147—AO 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 s. 148, he accepted 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 to independently assess some other income—If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."*

In the case of Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 0136 (Del.), the Hon'ble High Court held as under :-

*"The crux of s. 147 is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to the notice of the AO subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the AO may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention in the reasons recorded and the notice issued under s. 148. Since there was confusion prevailing with regard to the powers of the AO to assess or reassess on the issues for which no reasons were recorded, Expln. 3 came to be inserted as clarificatory. Now, after the insertion of Expln. 3, the position is that the AO may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under s. 147 though the reasons for such issue were not included in the reasons recorded in the notice under s. 148(2) on the basis of which he had initiated proceedings under s. 147.—[Vipan Khanna vs. CIT](#) (2002) 175 CTR (P&H) 335 : (2002) 255 ITR 220 (P&H) and [Travancore Cements Ltd. vs. Asstt. CIT](#) (2008) 219 CTR (Ker) 359 : (2008) 305 ITR 170 (Ker) held no longer good law.*

*The heading of s. 147 is "Income escaping assessment" and that of s. 148 "Issue of notice where income escaped assessment". Sec. 148 is supplementary and complimentary to s. 147. Sub-s. (2) of s. 148 mandates reasons for issuance of notice by the AO and sub-s. (1) thereof mandates service of notice to the assessee before the AO proceeds to assess, reassess or recomputed escaped income. Sec. 147 mandates recording of reasons to believe by the AO that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Expln. 3 if during the course of these proceedings the AO comes to 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. However, the legislature could not be presumed to have intended to give blanket powers to the AO that on assuming jurisdiction under s. 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before AO 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 s. 148.—*

[CIT vs. Jet Airways \(I\) Ltd. \(2011\) 239 CTR \(Bom\) 183 : \(2011\) 52 DTR \(Bom\) 71 : \(2011\) 331 ITR 236 \(Bom\) concurred with.](#)

*The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the AO proceeded to reduce the claim of deduction under ss. 80HH and 80-I which as per above discussion was not permissible. Had the AO proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of the discussion as above, he would have been justified as per Explan. 3 to reduce the claim of deduction under ss. 80HH and 80-I as well. In view of the above discussions, the Tribunal was right in holding that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive.”*

**In the case of CIT vs. Dr. Devendra Gupta 336 ITR 0059(Raj):** held Reassessment—Scope—Addition in respect of items other than the one on which notice in given—Income alleged to have escaped assessment in reasons recorded not having been actually found to .

Also refer **AVG Construction Pvt. Ltd v/s ITO Ward 6(2) Jaipur in ITA no. 90/Jp/2020 dt. 02.09.2021** under the same facts and circumstances copy is enclosed.

**Recently the Honble ITAT Jaipur Bench in the case of Shri Shambhu Dayal Saraf v/s IT in ITA No. 558/Jp/2013 dt 02.07.2018 58 TW 355(Jp),** has also held the same view copy of order is enclosed.

Therefore, lastly considering the totality of facts and circumstances of the case, submissions of both the parties as well as judicial pronouncements referred in this regard, I am of the view that on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the

reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, 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 accepted 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 fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. Therefore, I found merit in the contention of the Id. AR and the case laws relied upon by the Id D/R are not applicable in the case of the assessee, therefore, I quash the proceedings initiated U/s 147 of the Act.

7. Since I have already quashed the proceedings, therefore, there is no need to adjudicate the other issues.
8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11/02/2023.

Sd/-  
(संदीप गोसाईं)  
**(SANDEEP GOSAIN)**  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/01/2023.

Das/

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

1. अपीलार्थी / The Appellant-Shri Pradeep Kumar, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2, Jhunjhunu.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 370/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

