

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

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.1805/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2010-11)

Kishin Ramchand Balani Kishin Ramchandra Balani 201 LA VIE, 14 <sup>th</sup> Road, Khar West, Mumbai- 400052.	<b>बनाम/</b> Vs.	ITO-22(2)(1) Mumbai.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHDPB0362N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri N. M. Porwal
Revenue by:	Smt. Nayana K. Kumar

सुनवाई की तारीख / Date of Hearing: 01/12/2022

घोषणा की तारीख /Date of Pronouncement: 13/01/2023

**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 (Appeals)/NFAC, Delhi dated 16.06.2022 for AY. 2010-11.

2. The assessee has challenged the validity of the reopening by AO (jurisdiction) u/s 147 of the Income Tax Act, 1961 (hereinafter "the Act"). So the legal issue is taken up first.

3. Facts in brief are that the return of income was e-filed by the assessee on 7<sup>th</sup> October, 2010 declaring total income of Rs.11,89,561/-. The return was processed u/s 143(1) of the Act. Subsequently, an information was received from DGIT(Inv.), Mumbai that the assessee had made purchases from two (2) entities viz M/s. Kangan Jewels Pvt. Ltd. of Rs.67,22,845/- and M/s. Maniprabha Impex Pvt. Ltd. of



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Rs.7,36,824/- which were indulged in issuing only accommodation entries and did not carry out any genuine transaction.

4. So the AO issued notice u/s 148 of the Act on 29.03.2017 and reopened the assessment. Since the assessee has challenged the jurisdiction of AO to have reopened the assessment, the reasons recorded by AO need to be examined to see whether he had satisfied the conditions precedents necessary for doing so as prescribed u/s Section 147 of the Act i.e. Firstly whether AO has recorded the reasons before reopening the assessment. And if so, whether the reasons recorded fulfil the requirement of law or not. The fundamental requirement of law as stipulated u/s 147 of the Act is that before reopening as assessment AO has to record the reasons wherein he has to spell out the “*Reasons to believe, escapement of income*”. It is well settled that “*Reasons to believe*” postulate foundation based on information and belief based on reason. After a foundation based on information is made, there still must be some reason which should warrant the holding of a belief that income chargeable to tax has escaped assessment. And one should bear in mind the fine distinction between “*Reason to Suspect*” and “*Reason to believe*”. Information adverse may trigger “*Reason to Suspect*” which is not sufficient to reopen an assessment because as per section 147 of the Act, AO should have “*Reasons to believe*”, *escapement of income*” and not Reasons to suspect escapement of income. So when AO receives adverse information, he should make preliminary inquiry and collect material which would make him believe, that there is infact an



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escapement of income. Then only AO should record the “*reason to believe escapement of income*” and thereafter issue notice u/s 148 of the Act. When the AO satisfies the aforesaid requirement of law, then only invocation of jurisdiction of reopening assessment be held to be valid in the eyes of law. Moreover, when the validity of re-opening is tested, the reasons recorded by AO has to be tested on a standalone basis. Nothing can be added nor nothing can be deleted from the reasons so recorded. No inference can be allowed to be drawn on the basis of reasons not recorded by him. AO has to speak through the reasons so recorded by him. The reasons recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provide the link between conclusion and evidence. So the reasons recorded by the AO before re-opening as it is, it should be examined to see whether AO had met in the “reasons recorded”, the essential condition precedent to do so i.e. “*Reason to believe, escapement of income*”. So in this back-drop let us look at the reasons recorded in this case by AO to re-open the assessee’s assessment for AY 2010-11.

#### ANNEXURE

##### REASON FOR REOPENING

Shri Kishin Ramchand Balani

AY. 2010-11, PAN: AHDPB0362N

An information was received from office of DCIT Cent. Circle-4, Surat vide Letter No.SRT/DCIT/CC-4/Rajendra Jain, Dharmichand Jain, Sanjay “Choudhary Gr/2015-16 dated 26.11.2015 that certain assesseees were beneficiaries of accommodation entries provided by Rajendra Jain, Dharmichand Jain and Sanjay Choudhary group. A search and



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seizure action was carried out on these entry providers by the DGIT(Inv.), Mumbai and statements of these persons were recorded during the search action.

2. The assessee is one of the beneficiaries who has availed accommodation entry in the nature of bogus purchase entries in F.Y. 2009-10 relevant to A.Y. 2010-11 from the following parties:

1	Kangan	Rs.67,22,845/-
2	Maniprabha	Rs.7,36,824/-
	Total	Rs.74,59,669/-

3. On perusal of the statements recorded on oath during the course of search action carried out in the case of Rajendra Jain, Dharmichand Jain and Sanjay Choudhary group, it is observed that Kangan and Maniprabha are just paper entities indulged in giving accommodation entries and do not carry out any genuine business transactions.

4. In view of the above facts, I have reason to believe that income chargeable to tax has escaped assessment to the extent of Rs. Rs.74,59,669/- for A.Y. 2010-11 in the case of assessee within the meaning of section 147 of the I.T. Act 1961.

5. The case is put up before the Pr. Commissioner of Income Tax 22, Mumbai for his kind sanction (to issue notice u/s.148 in the light of proviso to sub-section (1) of section 151 of I. T. Act, 1961.

(Mahalaxmi Krishnan)  
Income Tax Officer-22(2)(1),  
Mumbai

5. In this context, the Ld. AR drew our attention to page no. 80 of PB wherein the details of purchase and sales of both the parties ie. M/s. Kangan Jewels Pvt. Ltd and M/s. Maniprabha Impex Pvt. Ltd. is



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inter-alia given. A perusal of the same reveals that assessee had transacted/purchased twice from M/s. Kangan Jewels Pvt. Ltd (i) Rs.15,48,950/- (03.06.2009) (ii) on 22.07.2009 Rs. 51,73,895/-. Thus, total of Rs.82,71,795/-. And assessee has purchased from M/s. Maniprabha Impex Pvt. Ltd only once on 08.07.2009 for Rs.7,44,192/-. Thus the Ld. AR pointed out that AO in the reasons recorded (supra) has alleged bogus purchase from M/s. Kangan Jewels Pvt. Ltd to the tune of Rs.67,22,845/- and M/s. Maniprabha Impex Pvt. Ltd. Rs.7,36,824/-. Thus total of Rs. 74,59,699/- whereas it can be seen from the page no. 80 PB, that assessee has made purchases from M/s. Kangan Jewels Pvt. Ltd. to the tune of Rs.82,71,795/- and M/s. Maniprabha Impex Pvt. Ltd. to the tune of Rs.7,44,192/-. So the information which AO has received from investigation wing, according to Ld. AR itself does not match/tally. And the Ld. AR wondered as to how the adverse information which was based on 3<sup>rd</sup> party statement taken behind the back of assessee which was factually riddled with in-accuracy can be the basis for drawing “*reason to believe escapement of income*” and according to him at best it can be termed “*Reasons to Suspect*” which is not sufficient for invoking jurisdiction to reopen the assessment of assessee.

**6.** I find force in the submission of Ld. AR. From a bare reading of the reasons recorded by AO it reveals the following facts (i) he got information from office of DCIT Central Circle-Surat dated 26.11.2015; (ii) information was that there was search on the premises of Shri Rajendra Jain, Darmichand Jain and Sanjay Chand Jain group (iii) During search the statement of these persons were recorded



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(iv) And on perusal of statements, the AO observed that M/s. Kangan and M/s. Maniprabha are just paper entities indulged in giving accommodation entries and do not carry out any genuine business transaction (v) assessee has availed accommodation entry in the nature of bogus purchases in the relevant AY. 2010-11 from (a) M/s. Kangan to the tune of Rs.67,22,845/- & (b) M/s. Maniprabha to the tune of Rs.7,36,824/- and thus total of Rs.74,59,669/-. (v) Based on the aforesaid facts AO had reasons to believe that income chargeable to tax has escaped assessment to the tune of Rs.74,59,669/-.

7. From a perusal of the aforesaid discussion, it is clear that there is a disconnect between (iv) & (v) (supra). AO observes after giving through the statement of the three (3) persons named at (ii) that two entities M/s. Kangan & M/s. Maniprabha are paper-entities indulging only in providing accommodation entries. Then at (v) AO concluded that assessee has availed accommodation entry in the nature of bogus purchases of total Rs.74,59,669/-. Based on the statement of the three persons AO understood that M/s. Kangan & M/s. Maniprabha were entry providers. But the question is how the AO concluded that assessee has availed accommodation entry in the nature of purchase from these two entities to the tune of Rs.74,59,669/- which is factually also wrong because as seen (supra) total purchases made by assessee from these two concern are to the tune of Rs.90,15,987/- (Rs.82,71,795/- + Rs.7,44,192/-). Thus, the information from DCIT CC – Surat at best can be said to trigger only “Reasons to Suspect” and on receipt of such an information AO ought to have conducted



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preliminary enquiry and collected material which would make him believe that there is infact an escapement of income. Here in this case, the AO on receiving the information concluded that assessee is a beneficiary of accommodation entry since he had transacted with the two entities. AO has not even bothered to examine whether there was any dealing by assessee with these two concern? If so what and how much was the transaction? And then recorded the correct facts of such transaction in his reasons recorded to re-open. Unfortunately, such as exercise has not been done by the AO, so the condition precedent i.e. reasons to believe is absent and only reason to suspect can be inferred from the reasons to re-open which is not sufficient and I am of the opinion that in the reasons recorded (supra) the AO has not met the requirement of law for validly reopening the assessment for AY. 2010-11 and so assessee succeeds on the legal issue. Consequently, the notice u/s 148 of the Act on 29.03.2017 is itself bad in law and so consequently re-assessment order dated 15.12.2017 is non-est in eyes of law.

**8.** In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 13/01/2023.

**Sd/-**  
**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 13/01/2023.  
Vijay Pal Singh, (Sr. PS)



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**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,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**