IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 1/Asr/2018
Assessment Year: 2009-10

Smt. Amarjit Kaur W/o Sh. Bugar Singh, Diwana Kothe, VPO Bhikhi Distt. Mansa [PAN: BWJPK 1258A]	**Vs.**	Income Tax Officer, Ward 1(4), Mansa
(Appellant)		**(Respondent)**

Appellant by : None
Respondent by: Sh. S. M. Surendranath, Sr. DR
Date of Hearing: 18.07.2023
Date of Pronouncement: 26.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Bathinda dated 16.11.2017 in

respect of Assessment Year 2009-10 wherein the assessee has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-opening the assessment on the basis of vague information.

2. That on the facts and in the circumstances of the case and in law, as the learned AO has not considered the relevant documents supplied on 23.05.2012. So, the reopening as well as re-assessment is liable to be quashed.

3. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not following the decisions of the jurisdictional Bench of ITAT on account of judicial discipline. Accordingly, the re-assessment is liable to be quashed.

4. That the agreement to sell Dated 03.03.2008 is liable to be accepted as two out of three purchasers have agreed that the agreement in question was entered into for the purchase of 2 killas of agricultural land with Buggar Singh, the seller and husband of the assessee particularly when the CIT(A) has allowed the relief of Rs. 600,000/- out of Rs. 650000/- deposited in bank account on 04.03.2008 out of advance taken at the time of execution of agreement on 03.03.2008. By accepting the deposit of Rs. 650000/- on 04.03.2008 on account of advance received at time of execution of agreement as corollary, the agreement is liable to be accepted in toto. So, the balance sustained addition is liable to be deleted.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not accepting the contention that unregistered documents can be considered for collateral purposes as per proviso to section 49 of the Registration Act, 1908 and also ignoring the direct judgment of the Hon'ble Punjab and Haryana High Court.

6. That the assessment is to be made on the basis of material and not as per the evidence as per Evidence Act, 1872. So, the agreement Dated 03.03.2008 cannot be discarded when two out of the three purchasers

agreed that this agreement was entered into with Buggar Singh for the purchase of 2 killas of agricultural land.

7. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) should have deleted the whole addition in the hands of the assessee as is clear that her husband has deposited the money in the bank account of the assessee out of the advance taken on 03.03.2008 and out of the sale proceeds of his agricultural land sold on 02.07.2008 and on money received from the purchasers.*

8. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not giving the benefit of Rs. 54973/- as on 01.04.2008 on presumption that might have been consumed when the assessee has not claimed benefit of Rs. 150000/- remained with her out of Rs. 800000/-. First, this was not the issue before him. Secondly, he should have given the notice of enhancement to the assessee as per section 251(2) of the Income tax Act, 1961 which was not done.*

9. *That any other relief may kindly be granted to the assessee to whom she is found entitled at the time of hearing of appeal."*

2. This appeal is more than 5 years old and the Ld. AR for the appellant has taken adjournments either by filing adjournment application for seeking adjournment on request or non-attendance at the time of hearing without any valid reasons on various dates viz~a~viz 26.09.2018; 22.02.2019; 24.04.2019; 17.03.2020; 16.06.2022; 14/07/2022; 19/10/2022; 01.03.2023; 11.04.2023 (Adjourned *Sine die*); The case has been adjourned *sine die* to prepare and submit the synopsis if any in support of the grounds of appeal but again. Again, on the date of hearing, he filed adjournment application without adequate reasons. Hence, same is rejected being devoid of merits.

3. The Ground No. 1 to 3 are inter linked to each other wherein the appellant challenged validity of reopening of assessment u/s 147 of the Act.

4. The facts of the case as per record are that in the reassessment proceedings, the statutory notice under section 148 of the Income Tax Act was issued on 22 March 2016 which was received back with postal comments refused. Subsequently the official of the department was sent on 14 April 2016 for service of notice which was received by the appellant by putting thumb impression on the office copy. The AO has recorded the reasons for reopening the Assessment, as under:

> *"This office is in possession of certain information that during the year under consideration, the assessee has made a cash deposit of Rs. 2,930,000/- into his saving bank account maintained by him. On verification from record of this office, it is noticed that the assessee has not filed his ITR for AY 2009-10. I have therefore reasons to believe that the income of Rs. 2,930,000/- chargeable to tax for the AY 2009-10 and any other income which may come to notice subsequently has escaped assessment."*

Based on the reasons the AO issued notice u/s 148 of the Act on 22 March 2016. The AO stated that during the assessment proceedings, since, the assesse failed to comply the notices issued to explain the amount deposited in its bank account and therefore he made and addition of Rs. 29,30,000/- chargeable to tax for the AY 2009-10.

5**.** The assesse being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has confirmed the finding of the AO, by observing as under:

> 6.0 **I have given careful consideration** to the facts of the case in the light of contentions raised by the appellant, remand report submitted by the Assessing Officer and other records. In the reassessment proceedings, the statutory notice under section 148 of the Income Tax Act was issued on 22 March 2016. The Assessing Officer in remand report dated 24 July 2017 clearly mentioned the circumstances that the statutory notice was issued to registered post on 22 March 2016 which was received back with postal comments **refused.** Subsequently the official of the department was sent on 14 April 2016 for service of notice which was received by the appellant by putting thumb impression on the office copy. A copy of this report was given to the appellant and there have been no comments in rebuttal, therefore the contention of the appellant is without any basis.
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> 6.1 The other contentions are emerging from the procedure followed by the Assessing Officer and the reasons recorded for reopening, it would be useful to extract the reasons recorded by the Assessing Officer from the assessment folder which are as under:
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> > This office is in possession of certain information that during the year under consideration, the assessee has made **a cash deposit of Rs.** 2,930,000/- into his saving bank account maintained by him. On verification from record of this office, it is noticed that the assessee has not filed his ITR for AY 2009-10. I have therefore reasons to believe that the income of Rs. 2,930,000/- chargeable to tax for the AY 2009-10 and any other income which may come to notice subsequently has escaped assessment.
>
> 6.2 **Legal issues:** In the recent past, there have been decisions on the powers of Assessing Officer in reopening of assessment based upon the information that cash has been deposited by the assessee in the bank account. The Assessing Officer would issue a query letter to the assessee seeking explanation of the cash deposited and thereafter recording the reasons to come to a conclusion that income has escaped assessment for the purposes of

mounting of proceedings u/s 148 of the Income Tax Act. This procedure adopted by the Assessing Officer has thrown very vital questions of law which can be summarized as under:

i) Whether or not the Assessing Officer is authorized to issue any query letter to the assessee seeking information or explanation about any transaction when there are no proceedings pending without approval from competent authority. Any information so collected, where there could be used of the purposes of initiating reassessment proceedings;
ii) Whether or not the Assessing Officer is competent to come to a conclusion merely based on the fact that cash has been deposited in the bank account.
iii) Whether it is possible for the Assessing Officer to record reasons suggesting that income has escaped assessment, therefore necessitating initiation of reassessment proceedings without using information as above.

6.2 Unauthorized Query Letter:

There has been a detailed decisions given on these points by Hon'ble IT AT in **Gurpal Singh v. 1TO** [2016] 71 taxmann.com 108 (Amritsar - Trib.) which has followed an earlier decision given by Delhi bench of ITAT in the case of **Bir Bahadur Singh** (2015) 53 taxmann.com 360. In order to put the decisions above in succinct manner it is suffice to mention that Hon'ble Tribunals have marshaled through provisions of Section 133(6) and 131 of Income Tax Act to come to conclusion that in the cases where no proceedings were pending before the Assessing Officer, seeking of information without following the due process is illegal. It has also been held that such information cannot **be used** and form the basis for recording reasons that income has escaped assessment.

I have given careful consideration and find that there can be no escape from the legal position that the Assessing Officer is not authorised to call for information when there are no proceedings pending. The Assessing Officer is also not authorised to use this information and much so to draw an adverse inference against the assessee.

6.3 Deposit of cash in Banks:

The above-mentioned two decisions namely Gurpal Singh v. ITO (supra) which has followed an earlier decision given by Delhi bench of ITAT in the case of Bir Bahadur Singh (supra) have also held that merely because there were cash deposits in the bank account this by itself is not sufficient to come to a conclusion that income has escaped assessment. The reasoning given by the Hon'ble Tribunals was that all receipts are not income; therefore the source of deposit of cash can be from any source which is not amenable to tax. It has also been held that on noticing cash in Banks the Assessing Officer may have reason to investigate but this does not mean that there exist reasons to believe that income has escaped assessment. In these circumstances, it has **been** held that there should be something more than a mere cash deposit before coming to a conclusion that income has escaped assessment.

6.3.1 It would be useful to extract **para 7 and 8** of the decision in the case of **Bir Bahadur Singh (supra)** which has been consistently used in other decisions to hold that deposited of cash in bank accounts by itself is not sufficient reason **as contemplated u/s** 147 **of** the Income Tax Act:

7. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor anything can be deleted from the reasons so recorded. *Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd.* v. *R.B. Wadkar [2004] 268 ITR 332/137 Taxmann 479* **,** has, inter alia, observed that " **It** is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordship added that "The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between, conclusion and the evidence....". Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. **Undoubtedly, at the stage of recording the** reasons **for reopening the assessment, all that is necessary is the formation** of prima **facie belief that an income has escaped the assessment and it is not**

necessary **that the fact of income having escaped assessment is proved to the hilt.** What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, **which, if** made, could have led to detection to an income escaping-assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which **indicate a** legitimate suspicion about income escaping the assessment. The former **category** consists of the facts which, if established to be correct, will have a cause **and effect** relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. While dealing with this **aspect** of the matter, it is useful to bear in mind the following observations made by Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Das [1976] 103 ITR 437,

> "the reasons for the formation of the belief must **have rational connection with or relevant bearing on the formation of the belief.** Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of **the** ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. **It** is **no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its** own **opinion for** that **of the ITO on the point as to whether action should** be initiated **for reopening assessment.** At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

> 8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100 have been made in the bank

account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. **The** answer, **in our humble understanding, is in negative.** The Assessing Officer has opined that an income of Rs 10,24,100 has escaped assessment of income because the assessee has Rs 10,24,100 in his bank account **but then such an** opinion proceeds **on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the** facts of a **case, no matter how desirable that be, unless there is a reason to** believe, **rather than suspect, that an income has escaped assessment.**

(emphasis provided)

6.3.2 In arriving at the decision above, Hon'ble ITAT has pressed into service the following legal premises:

a) In para 7 above, based on decision in the case of Hindustan Lever Ltd. (supra) the legal premises used to were that firstly the reasons recorded by the Assessing Officer are to be read as such and no substitution or deletion is permissible. Secondly the reasons should point out income escaping assessment and not merely need for a further enquiry;
b) In para 7 above, based on the case Lakhmani Mewal Das (Supra) the principle noticed was that the formation of belief must have rational connection with **the** material pointing towards escapement of income from assessment;

c) In para 8 above, the necessary conclusion drawn on the basis above **was that it** is fallacious to draw an assumption that bank deposits constitute undisclosed income because it overlooks the fact that the sources of deposit need not necessarily be income of the assessee;

iv) In para 8 above, another conclusion drawn was that finding cash deposits in the bank account would be desirable point for the revenue to examine the matter **in** detail but reassessment proceedings cannot be resorted to only to examine the facts **of** the case no matter how desirable that maybe.

6.3.3 At the outset, it would be relevant to examine the decision in the above-mentioned case from a different viewpoint also. The following needs immediate consideration:

a) The case of Hindustan Lever Ltd. (supra) quoted above also mention **is another aspect** and legal principle which can be reproduced as, **"Undoubtedly,** at the stage **of recording the reasons for reopening the assessment, all that is** necessary **is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt".** The Assessing Officer when finds deposit of **cash** into bank **account then at that** stage he is not required to prove that the said cash would necessarily come to **assessment.** There can be surrounding circumstances which may result in prima **facie belief that** income has escaped assessment. The surrounding circumstances must found mention in the reasons recorded by the Assessing Officer. The courts cannot sit over the sufficiency of reasons but the only examination at that stage which can possibly be done has been laid down by the Hon'ble Court as "cause and effect relationship". If **the material in** possession of the Assessing Officer can sufficiently show that there **is a cause and effect** of income having escaped, no fault can be found.

b) The decision of Lakhmani Mewal Das (supra) was rendered while interpreting the provisions of section 147 of Income Tax Act in the pre-amended period. This section has undergone considerable change w.e.f 01.04.1989. In the earlier set up, besides reasons to believe with the Assessing Officer he was also required to prove that **income has escaped** assessment due to failure on the part of the assessee. In this case, the **question of Hundi** was in consideration which prompted Hon'ble court to give a finding that there **must** be a **rational connection**

showing that the income has escaped assessment due to failure on the part of the assessee. In the post amendment period there is no such requirement.

c) **The** observation that all cash deposits in the bank account may not be the **income** of the assessee and therefore any assumption that it has escaped assessment **would be fallacious** has to also at the same time need to be considered from the viewpoint **that if a large cash** has been deposited by a person who has not been subjected to tax, the onus **would** be **up** on such person to establish that the deposited cash is from explained sources. A prima facie assumption exists as has been laid down by Hon'ble court in the case of ACIT Vs Rajesh Jhaveri Stock Brokers_P. Limited.291 ITR 500 SC.

6.3.4 In order to ascertain whether the decision of Hon'ble **IT**AT above and decisions in similar cases lays down on challenged and unfettered Legal postulate that cash deposit in bank accounts by itself is insufficient for mounting of reassessment, it would be useful to refer to a series of decided cases as under:

a) ACIT Vs Rajesh Jhaveri Stock Brokers P. Limited. 291 ITR 500 SC: At the time of initiation of re-assessment proceedings only reason to believe that income chargeable to tax has escaped assessment is sufficient to invoke jurisdiction of AO to initiate reassessment proceedings.

"Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. *1TO [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant.*

*In other words, at the initiation stage, what is required is "reason to believe", **but not the established fact of escapement of income.** At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. P. Ltd. [1996] 217 ITR 597 (SC)* **;** *Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).*

The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied: firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.

So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued. ”

b) A.L.A. Firm v. CIT [1991] 189 ITR 285 (SC)

The jurisdiction of the Income-tax Officer to reassess income arises if he has, in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe that income chargeable to tax had escaped assessment. **It was held that** even **if the information be such that it could have been obtained by the Income-tax Officer during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income-tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under section 147 of the Act are satisfied.**

c) Raymond Woolen Mills Limited. Vs ITO 236 ITR 34 SC

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.

d) **Gurera Gas Cylinders Pvt. Ltd. vs CIT 258 ITR 170 P&H**

A perusal of the reasons recorded by respondent No. 2 shows that he had applied his mind to the relevant material and formed a belief that the petitioner had not disclosed complete facts which could enable it to claim deduction under section 80-1 and, therefore, its income had not been properly assessed. At this stage, the court can neither go into the sufficiency or adequacy of the reasons recorded by respondent No. 2 nor can it interfere with the notice simply because on an overall reappraisal of material, a different opinion may be formed.

e) **Swaraj Engine Ltd. Swaraj Engine Ltd.Vs ACIT 260 ITR 202 P&H**

The assessment in this case was completed under section 143(3) on December 31, 1999. Deduction under section 80-1 amounting to Rs. 2,59,42,908 was allowed to the assessee. Subsequently, it has been noticed from the documents furnished by the assessee that it was not eligible for deduction under section 80-1 of the Income-tax Act. Therefore, deduction of Rs. 2,59,42,908 was wrongly allowed at the time of assessment under section 143(3).

f) Jawand Sons Vs. CIT 326 ITR 39 P&H

Under section 147 of the Act, after its amendment with effect from April 1, 1989, wide power has been given to the Assessing Officer even to cover cases where the assessee had fully disclosed the material facts. The only condition for action is that the Assessing Officer should have reason to believe that income chargeable to tax had escaped assessment. Such belief can be reached in any manner, and is not qualified by a pre-condition of full and true disclosure of material facts by the assessee as contemplated in the pre-amended section 147(a) **of** the Act. In the instant case, as far as the merits of the case is concerned, with regard to the permissible deduction under section 80-IB **of** the Act, it is clear position that the assessee was not entitled to claim deduction on account of duty drawback and DEPB incentives, as these incentive profits do not fall within expression "profits derived from industrial undertaking" in section 80-IB of the Act. Therefore, duty drawback and DEPB do not form part of net profits of the industrial undertaking for the purposes of section 80-IB of the Act.

g) Sewak Ram Vs ITO 236 CTR 462 (P&H)

After amendment of s. 147 w.e.f. 1st April, 1989, reassessment can be initiated even if there is disclosure in the return if without considering the particulars of the return, processing is done under s. 143(1) or assessment is made under s. 143(3). No doubt, mere change of opinion by itself is not a ground for reassessment as held in the judgments relied upon on behalf of the assessee but if there are reasons to believe that tax has escaped, reassessment is permissible. Reasons can be even on the basis of

particulars of the return without any new material. Even if proceedings under s. 143(2) are not taken, reassessment proceedings can be taken.

h) Aditya and Co. Vs CIT 279 ITR 47 P&H

In the case of an intimation under section 143(l)(a) of the Act the question of examination of the material by the Assessing Officer did not arise at that stage. Therefore, in case of intimation u/s 143(1), re-opening cannot **be challenged** on the ground of change of opinion.

i) Tilak Raj Bedi Vs. JCIT 319 ITR 385 P&H

The power of reassessment can be validly exercised if **satisfaction is arrived at** after following **due procedure** that income had escaped **assessment. Such** satisfaction may involve change of opinion but was not at par with **"mere change** of opinion".

j) Pb. State Cooperative Agriculture Dev Bank Vs. CIT 207 CTR 352 P&H

The notice for reassessment is not based merely on change of **opinion but also on** subsequent judgment of the Hon'ble Supreme **Court** in **U.P. Co-operative's case** (1999) 237 ITR 574 **(SC).** There was material justifying **invoking of jurisdiction** under s. 147 of the Act.

k) Grover Nursing Home 248 ITR 493 P&H

An analysis of the aforementioned decisions of the Supreme **Court makes it clear** that the court can invalidate a notice issued under section 148 **of the Act only if** it is satisfied that no material was available before the Income-tax **Officer** on the basis of which he could form a belief that the income chargeable to tax had escaped assessment or that the said belief was not at all bona fide or was based on vague, arbitrary and nonspecific information. However, the court cannot **go into the sufficiency of the reasons for forming** the belief and sit in appeal **over the opinion formed by the competent authority.**

l) Honda Seil Power Products Ltd. Vs DCIT [2011] 197 Taxman 415,(Delhi)

In this case, the Hon'ble High Court has held that the term 'failure' **on** the part of assessee is not restricted only to income-tax return on **columns of the income-** tax return or tax audit report; expression 'failure to fully and **truly** disclose material facts also relates to stage of assessment proceedings and that merely because material lies embedded in the material or evidence, which Assessing Officer could have uncovered but did not uncover, is not a good **ground** to deny or strike down a notice for reassessment.:

m) Consolidated Photo & Finvest Ltd. Vs. ACIT 281 ITR 394 Del

Action u/s 147 permissible even if AO gathered reasons to believe that income has escaped assessment from the very same record which has **been subject** matter of completed asstt.

n) 'Hindustan Lever Ltd. v. R.B. Wadkar' [2004] 268 ITR 332/137 Taxman 479 (Bom.),

The reasons recorded for reopening the assessment are to **be examined** on **a standalone basis** and nothing can be added to the reasons. It **was also observed** that the reasons must point out to an income escaping assessment and not merely need of an enquiry which may result in detection of an income escaping assessment. It was observed that it is necessary that there must be something which indicates, even if it does not establish, the escapement of income from assessment; that it is only on that basis that the AO can form a prima-facie belief that an income has escaped assessment; that merely because some further investigations have not been carried out, which, if made, could have led to detection of an income escaping assessment, this cannot be reason enough to hold the view that the income has escaped assessment; and that there has to be some kind of **cause and effect of relationship** between the reasons recorded and the income escaping assessment.

6.3.5 On the basis of discussion above, it can be safely concluded that the facts of each case are different and it cannot be universally concluded that simple information cash deposited in bank account is insufficient to come to a conclusion that income has escaped assessment. There can be occasions where the Assessing Officer does not require any other information and still come to believe that income has escaped assessment. It is also settled

principle of law that at the state of notice the Assessing Officer does not required to possess material to conclude that income has escaped assessment without any doubt. At the state of notice a prima facie belief is sufficient for issue of notice. The explanation of the appellant is considered after the issue of notice and at this stage the Assessing Officer may file the reassessment proceedings as has been elaborated the explained by Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. v. ITO & Ors. (2003) 179 CTR (SC) 11 : (2003) 259 ITR 19 (SC) where it has categorically been held that in the light of objections filed by the assessee, the Assessing Officer would pass a detailed order.

6.4 **Reasons Recorded by the Assessing Officer and formulation of belief**

In some of the cases the Assessing Officer records comprehensive reasons a part of which is based on information received in response to alleged unauthorised query letter but there is another part of reasons which has been recorded based on the information in his possession independently. In such cases, whether it is possible to segregate the portion of reasons which is based on query letter from the portion of reasons which have been recorded independently. After segregating these two portions, if the reasons independently recorded are sufficient to come to a conclusion that income has escaped assessment, in those cases none of the decisions above would come into conflict.

It is no more res Integra that it is not the quantity of reasons recorded by the Assessing Officer that matters but it is the quality of the reasons which would be helpful in ascertaining the sufficiency of reasons on the touchstone of provisions of section 148 of Income Tax Act.

6.4.1 In the present case, the reasons recorded are being reproduced here under to find that whether these can stand on their feet:

This office is in possession of certain information that during the year **under** consideration, the assessee has **made a cash deposit of Rs. 29,30,000/-** into his saving bank account maintained **by** him. On verification from record of this office, it is noticed that the assessee has **not filed his ITR** for AY 2009-10. I have therefore reasons to believe that the income of Rs. 2,930,000/- chargeable

to tax for the AY 2009-10 and any other income which may come to notice **subsequently** has escaped assessment.

6.4.2 The Assessing Officer has not drawn any inference from the Querry letter and its response, therefore no fault can be found on that account.

6.5 As discussed above, there has to be a cause and effect relationship **with the** material which formed the belief. The material before the Assessing Officer **was huge** Cash deposit and no return filed. This material became a cause to have an effect on the Assessing Officer that prima facie it is improbable that a person would be capable of depositing such large case and still not subject to tax (including interest income). In plethora of cases, as discussed above, this kind of assumption is probable in all human minds. It has to be seen in the background that the assessee/ appellant has **lawful** onus to tender explanation about source of the cash deposit at appropriate stage of reassessment proceedings. The Assessing Officer has followed due procedure of searching of the return of income of the appellant. This search in his database further strengthened his assumption that a non assessee would not be in a position to muster such large cash deposit.

6.5.1 The assessee/ appellant is not remediless because even after issue **of notice Hon'ble** Supreme Court of India in the case of **GKN Driveshafts (India) Ltd.** v. ITO & Ors. (2003) 179 CTR (SC) 11 : (2003) 259 ITR 19 (SC) has categorically held that in the light of objections filed by the assessee, the Assessing Officer would pass a detailed speaking **order.** This safety valve has protected the assessee from frivolous **reassessment** and now if the assumption of Assessing Officer above is held illegal then it **amounts to substituting** the decision of the Assessing Officer in appeal which is not warranted.

7.0 In consideration of the above, I do not find any merits in the Ground of Appeal no. 1 to 5 and hence dismissed.

8.0 **Ground of Appeal no. 6 and 7:** these grounds of appeal are on **merits** of **the case** and the appellant has sought that in the aforesaid transaction of sale of agricultural land **"on money" has** been received. This additional amount along with the amount mentioned in the deed of registration has been the source of deposit of cash in the bank account.

8.1 It is pertinent to mention here that the Assessing Officer in the remand report dated 23 October 2017 mentioned about outcome of the statements of parties to agreement to sell dated 3rd March 2008 and deed of registration dated 2 July 2008. The rival contention of the appellant in the light of written submissions filed on the remand report can be summarised as under;

- **Avtar Singh:** he is signatory as purchaser in agreement to sell dated 3rd March 2008. In the remand report Assessing Officer mentioned that this person in his statement before him accepted that agreement was entered into for purchase of land at Diwana kothi from Sh. Bugar Singh which was subsequently cancelled. This person did not remember the amount of advance.
- **Bhura Ram** : he is signatory as purchaser in agreement to sell dated 3rd **March** 2008. **In** the remand report Assessing Officer mentioned that this person in his statement before him accepted that agreement was entered into for purchase of land at Diwana kothi from Sh. Bugar Singh. **This person did not remember the amount of advance.**
- Sh. Shekh Paramhans: he is signatory as purchaser agreement to sell dated 3rd March 2008. In the remand report Assessing Officer mentioned that this person **in his statement** before him denied that any agreement was entered into for purchase of land **at Diwana** kothi from Sh. Bugar Singh.
- Statement of purchaser as per Registration deed dated 02.07.2008: Before the Assessing Officer all these persons denied on money and stated to have paid only amount mentioned in the deed.
- The Agreement to sell is an unregistered document.

9.0 **I have given careful consideration** to the facts of the case and find that the initial onus was up on the appellant to establish that on money was received on the date of entering into agreement i.e. 3 March 2008 and the balance additional amount was received on 02.07.2008. In this charge to this onus, the appellant provided a photocopy of an agreement which was unregistered. The appellant contends that Hon'ble P&H High court in the case of **Hira** Lai Ram Dayal 002 Taxman 579 (P&H) has held that the fact of sale and the sale proceeds are the real questions which are to be determined by the income tax authorities irrespective of registered document which cannot be a final word on the matter.

9.1 **Photocopy of the Document:** In order to take the benefit of cash received in pursuance of agreement dated 3 March 2008, the appellant was obliged to lead evidence to give credence to its contents. The document was unreliable for the reason that it was a photocopy and **it is** settled position that photocopies of documents cannot be relied upon as evidence unless these are **confirmed on the basis of verification of original documents.** Reference in this regard may be made to the judgment rendered by a bench of three judges of the Hon'ble Supreme Court in the case of **Moosa S. Madha & Azam S. Madha Vs. CIT, 89 ITR 65 (SC)** according to which photocopies have very little evidentiary value. This issue was also examined by the Hon'ble ITAT, Chandigarh Bench in the case **of** Simranpal Singh Gill Vs. DCIT, Circle-VI, Ludhiana in ITA No.l 19/Chandi/2010 for A/Y 2008-09. In this order dated 29th April, 2011, the Hon'ble ITAT observed as under:-

"In the absence of original, a photocopy of the document is not admissible in evidence under the law of evidence. We are aware that the taxing authorities are not bound by the technical rules of the Indian Evidence Act. The Income Tax Act, however, does not prevent them from applying the principles of the Evidence Act in proceedings before them. In Chuharmal Vs. CIT, 172 ITR 250 (SC), it has been held that the taxing authorities are not prevented from invoking the principles of the Evidence Act if they are desirous of invoking them. It is a well-settled principle of law of evidence that copy of a document should not be admitted in evidence in the absence of original. "

Photocopy is not admissible as evidence, as signatures cannot be compared from the photocopy of the agreement because in these days of Advance Technology signatures of a person can be lifted from one document and put on another document by Super Imposition. This was also held in the following cases:

i) Surjit Rai Vs. Prem Kr. Khera & Other Punjab Law Reporter-Vol. Ex-1995(2) PLR P.40 (P&H)
ii) Ms. Arati Bhargava Vs. Kavi Kumar Bhargava 1999 (3) Civil Court Cases -P.377 (Delhi HC).

9.2 **Unregistered Document:** it is not denied by the appellant that the aforesaid agreement to sell is an unregistered document. However, the appellant contends that Hon'ble P&H High court in the case of **Hira Lai Ram Dayal 002 Taxman 579** (P&H) has held that the fact of sale and the sale proceeds are the

real questions which are to be determined by the income tax authorities irrespective of registered. A careful consideration of the decisions on this point clearly points out that reliance can be placed on unregistered document for collateral purposes to establish the real sale consideration. But in order to rely upon such unregistered document, the party which intends to rely upon such document must prove it. If the revenue intends to place reliance upon such unregistered document to bring additional income into tax than the revenue must prove it however if the appellant wants to place reliance upon any unregistered document then it is incumbent upon the appellant to prove the document by cogent and convincing evidence.

In the present case, the appellant did nothing but merely placed the above said document on record. In order to facilitate the appellant to prove its case, the persons mentioned in this agreement were summoned by the Assessing Officer to find out the truth. All these persons have denied having paid the order was an additional amount as contended by the appellant.

The parties to the agreement were not the witness of the department but were summoned **only to** find out the truth as claimed by the appellant, since these were not the **weaknesses** of the department; therefore there is no question of offering of cross-examination **to** the **appellant.**

Further, the position has been changed by the Registration and Other **Related** Laws (Amendment) Act, 2001. Amendments were made to the Transfer of Property Act and Sections 17 and 49 of the Indian Registration Act. Simultaneously, Sections 17 and 49 of the 1908 Act **have been** amended, clarifying that unless the document containing the contract **to transfer for** consideration any immovable property is registered, it shall not have any **effect in** law, **other than being** received as evidence of a contract in a suit for specific performance or as **evidence** of any collateral transaction not required to be effected by a registered instrument. No benefit of the Agreement of sale dated 3rd March 2008 is admissible to the appellant.

10. The appellant has raised another plea on the merits that after entering into **an agreement** on 3 March 2008 as above, there is a deposit of Rs. 6.5 lakhs in the bank account **of the appellant** on the next date i.e 04.03.2008. Out of this amount, the appellant withdrew cash amounting to Rs. 6 lakhs on 12 March 2008 which was available with her finally when she deposited Rs. 26 lakhs in the bank account on 2 July 2008. It is also pleaded that on 2 July 2008 and

other sum of Rs. 14,22,000/- was available with the appellant as a result of execution of final sale deed on 2 **July** 2008 which was a registered document. These two amounts constitute Rs. 20,22,000/- which need to be set off from cash deposit of Rs. 26,00,000/- leaving behind **for the sake of** argument unexplained cash of Rs. 5,78,000/-.

10.1 **I have given careful consideration** to the contention above and it is relevant to note that the Assessing Officer in the remand report dated 24.07.2017 in para-2.2 has accepted that sum of Rs. 14,22,000/- was available with the appellant. Furthermore, this availability **of** cash is also supported by a registered sale deed. I have also considered the contention **of** the appellant in respect of Rs. 6 lakhs withdrawn on the same bank account on 12 March **2008** which was available with her till 2 July 2008. The gap between these two dates is not very substantial and the cash can be available with the assessee on the date as has been contended. In this financial year (the assessment year under consideration), the appellant has not claimed benefit of any opening balance but the bank account of the appellant itself indicates availability **of cash which** has been withdrawn on 12 March 2008. The doubt raised by the Assessing Officer that the explanations of deposit of cash in the bank account of Rs. 6.5 lakhs on 3 March **2008** is not relevant because it pertains to earlier assessment year.

The appellant is entitled to benefit of both the amounts which constitute Rs. 20,22,000/- and would be deducted from cash deposit of Rs. 26,00,000/- leaving behind **unexplained cash** deposit of Rs. 5,78,000/-. There can be no further benefit of opening balance **as on 01.04.2008 because** that continues to remain in the bank account and has been utilised **for small cash** withdrawals which might have been consumed.

In consideration of the discussion above, the addition of Rs.25,45,027/- made by the Assessing Officer is restricted to Rs.5,78,000/-. The ground of appeal number 6 and 7 are partly allowed.

6. The appellant being aggrieved with the decision of CIT(A); Bathinda has filed this appeal before the Hon'ble Bench. The appellant has reiterated the submission made before the Ld. CIT(A) in the grounds and the short synopsis filed through its AR by post. He contended that the learned CIT(A)

erred in upholding the re-opening the assessment on the basis of vague information; that on the facts of the case and in law, the AO has not considered the relevant documents supplied on 23.05.2012. So, the reopening as well as re-assessment is liable to be quashed and on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not following the decisions of the jurisdictional Bench of ITAT on account of judicial discipline. He has filed a brief synopsis reiterating the contention raised before the CIT(A). Accordingly, the re-assessment is liable to be quashed.

7. Per Contra, the Ld. DR vehemently supported the impugned order and contended that the Ld. AR failed to rebut the contention discussed by the Ld. CIT(A) in distinguishing the judgements relied by the appellants duly following the principle of judicial discipline. He pleaded that the impugned order may be sustained.

8. We have heard the Ld. DR at length, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the appellant has not filed return of income for the assessment year under consideration. Admittedly, the AO finds deposit of cash in the bank account of the Appellant assessee and then at that stage per se, he is

not required to prove or arrive at the conclusion that the said cash would necessarily been concealed income of the appellant but it the stage to initiate the reassessment, the process of establishing the concealment begins. In our view, there can be surrounding circumstances which may result in prima facie belief of the AO that income has escaped assessment. The Ld. CIT(A) has rightly relied on the judgement delivered in the case of Hindustan Lever Ltd. (supra) wherein the legal principle laid down that **"Undoubtedly,** at the stage **of recording the reasons for reopening the assessment, all that is** necessary **is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt".** The Assessing Officer when finds deposit of **cash** into bank **account then at that** stage he is not required to prove that the said cash would necessarily be proved as concealed at the stage of reopening of the **assessment.**

9. The Ld. CIT(A) has distinguished the decision of Lakhmani Mewal Das (supra) which was rendered while interpreting the provisions of section 147 of Income Tax Act in the pre-amended period as this section has undergone considerable change w.e.f 01.04.1989. In the earlier set of law,

besides reasons to believe, the AO was also required to prove that **income has escaped** assessment due to failure on the part of the assessee. In the post amendment period there is no such requirement. **The** observation of the AO that all cash deposits in the bank account may not be the **income** of the assessee and therefore any assumption that it has escaped assessment **would be fallacious** has to also at the same time need to be considered from the viewpoint **that if a large cash** has been deposited by a person who has not been subjected to tax, the onus **would** be **up** on such person to establish that the deposited cash is from explained sources. A prima facie assumption exists as has been laid down by Hon'ble court in the case of “ACIT Vs Rajesh Jhaveri Stock Brokers. Pvt. Limited.”, 291 ITR 500 SC. The Ld. CIT(A) has further examined the matter in the light of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. v. ITO & Ors. (Supra) where the safety valve provided to protect the assessee from frivolous reassessment is not applicable to the facts of the present case and now if the assumption of jurisdiction by the AO for reopening the assessment is held illegal would amounts to substituting the decision of the Assessing Officer is unwarranted. In view of that matter, we

are of the considered view that the Ld. CIT(A) was justified in upholding the reopening of the assessment.

10. Considering the factual matrix and legal intricacies of the law, we hold that the appeal of the assessee on the legal issue has been devoid of merit and substance. We find no infirmity in the order of the Ld. CIT(A) in confirming the reopening of the assessee for the reason of unexplained cash deposits in the bank account of the appellant. Therefore, the ground no. 1 to 3 of the assesee are rejected.

11. Next in Ground No. 4 to 8 pertains confirmation of the addition of Rs.5,78,000/- out of the addition of Rs. 25,45,027/- made by the Assessing Officer.

12. After considering to the contention of the Ld. DR, assessee in grounds as above, and the impugned order, we are of the considered view that the Ld. CIT(A) has been generous in granting major relief by restricting the addition of Rs.25,45,027/- made by the Assessing Officer to Rs.5,78,000/- after considering the AO's in the remand report dated 24.07.2017 wherein para-2.2, it was accepted that sum of Rs. 14,22,000/- was available with the appellant being supported by a registered sale deed. Further, the CIT(A) rejected the doubt raised by the AO that the

explanations of deposit of cash in the bank account of Rs. 6.5 lakhs on 3 March 2008 is not relevant under the pretext it pertains to earlier assessment year. The allegation of the appellant regarding enhancement of addition is factually incorrect and thus the question of issue of notice of enhancement to the assessee as per section 251(2) of the Income Tax Act, 1961 is not required under the law. The Ld. CIT(A) has granted entitled benefit of both the amounts totaling to Rs. 20,22,000/- and accordingly reduces from cash deposit of Rs. 26,00,000/- leaving behind unexplained cash deposit of Rs. 5,78,000/-. Thus, the CIT(A) was justified in refusing to grant further benefit of claim of opening balance as on 01.04.2008 because that continues to remain in the bank account as earlier assessment years as well. In our view, the Ld. CIT(A) has been justified in confirming the addition of Rs. 5,78,000/- on account of unexplained cash deposits in the bank account of the appellant. Accordingly, the Ground no. 4 to 8 of the assessee are rejected.

13. In the above view, we find no merits in the ground on quantum appeal. Since, there is no infirmity or perversity in the order of the Ld. CIT(A) to the facts on record and hence, the addition of Rs. 5,78,000/- on account of unexplained cash deposits, confirmed is hereby sustained.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26.07.2023

Sd/-	**Sd/-**
(Anikesh Banerjee)	**(Dr. M. L. Meena)**
Judicial Member	**Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

(1) The Appellant:
(2) The Respondent:
(3) The CIT(Appeals)
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T.

True Copy
By Order