IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4958/Mum./2018
(Assessment Year : 2009–10)

Nakoda Metal Industries
Room no.101, 1st Floor
Lakdawala Saphire Centre ……. Appellant
4th Kumbharwada Lane, Mumbai 400 004
PAN – AAKFM0723C

v/s

Income Tax Officer
Ward–19(2)(4), Mumbai ……. Respondent

Assessee by : None
Revenue by : Shri Prashant Barate

Date of Hearing – 10/08/2023	Date of Order – 14/08/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the order dated 05/02/2018, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)–30, Mumbai, ["*learned CIT(A)"*], for the assessment year 2009-10.

2. The present appeal has been listed for hearing before us pursuant to the order dated 28/01/2021, passed by the coordinate bench of the Tribunal in M/s. Nakoda Metal Industries vs ITO, M.A. no. 155/Mum./2020 (in ITA no. 4958/Mum./2018, for the assessment year 2009-10), whereby, the earlier

order dated 28/11/2019, passed under section 254(1) of the Act was recalled limited to the adjudication of the issue of reopening raised in assessee's appeal.

3. When the present appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. From the perusal of the record, we find that after the recall of the aforesaid order passed under section 254(1) of the Act, the present appeal was listed for hearing on various occasions. However, no one has appeared for/on behalf of the assessee. We also find that several notices issued through Registered Post A/D were also returned unserved by the postal authorities with the remark '*not known*'. We find from the record that vide letter filed on 16/11/2022, the assessee has submitted that it has filed a writ petition before the Hon'ble High Court against the original order dated 28/11/2019, and order dated 28/01/2021, passed under section 254(2) of the Act. Vide aforesaid letter, the assessee requested to keep the matter pending till the order and disposal of the writ petition by the Hon'ble Bombay High Court. From the status report on the writ petition, filed by the learned DR vide letter dated 14/02/2023, we find that the aforesaid writ petition is at the pre-admission stage. No further details regarding the current status of the writ petition have been placed on record by the assessee. We find that vide order dated 28/11/2019, passed under section 254(1) of the Act, the coordinate bench upheld the findings of the learned CIT(A) on merits. As noted above, vide order dated 28/01/2021, passed under section 254(2) of the Act the coordinate bench recalled the matter only limited to the issue of reopening challenged by the assessee in its appeal. Further, the

coordinate bench rejected the prayer of the assessee seeking recall of the order passed on merits. Therefore, we are of the considered view that the pendency of the writ petition before the Hon'ble Bombay High Court against the aforesaid orders dated 28/11/2019 and 28/01/2021, will not have any bearing on the adjudication of the issue on reopening since after the aforesaid orders only findings of the coordinate bench on merits is sustaining till date. Accordingly, we proceed to decide the issue of reopening, as restored by the coordinate bench vide order dated 28/01/2021, passed under section 254(2) of the Act.

4. The brief facts of the case are that the assessee is a firm and for the year under consideration, filed its return of income on 25/08/2009 declaring a total income of Rs.4,51,770. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from DGIT (Investigation) Wing, Mumbai about having received vital information from the Sales Tax Department of Maharashtra about some of the dealers indulged in the practice of providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing accommodation entries only and the assessee being one of the beneficiaries of such bogus bills, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 08/03/2014. In response to the aforesaid notice, the assessee vide letter dated 15/07/2014, requested to treat the return originally filed as a return filed in response to the notice issued under section 148 of the Act. As per the

aforesaid information, it was noticed that the assessee has availed following accommodation entries for the period under consideration:-

Sr. No.	*Name of Hawala Parties*	*Amount (Rs.)*
1.	*Mumbai Metal Corporation*	*23,46,271*
2.	*Veer Industries*	*8,15,776*
3.	*Kamleshwar Trading P Ltd.*	*9,84,646*
4.	*Prakash Steel India*	*13,86,736*
5.	*Premier Enterprises*	*2,88,548*
6.	*Key Stone Tubes P Ltd.*	*2,62,436*
7.	*Satyanarayan Steel & Engg. P Ltd.*	*12,22,060*
8.	*Nimesh Steels P Ltd.*	*3,35,556*
9.	*Red Rose Steels P Ltd.*	*12,54,240*
10.	*Mercury Metal Corporation*	*4,64,100*
11.	*Bohra Metal Industries*	*38,92,762*
12.	*Nayan Steel Centre*	*2,39,096*
13.	*Gravity Metal & Alloys*	*4,06,848*
14.	*Viraj Metal Corporation*	*6,79,848*
15.	*Alliance Steel Industries*	*8,64,032*
16.	*Alliance Steel Industries*	*8,69,024*
17.	*Shree Keshar Impex*	*9,30,280*
18.	*Trichipuram Trading P Ltd.*	*13,27,924*
19.	*Shree Kehar Impex Metals*	*19,81,252*
20.	*Rajendra Impex India*	*31,31,027*
	Total	*2,36,82,462*

5. Thus it was noticed that the assessee has taken accommodation entries from twenty parties to the tune of Rs.2,36,82,462. The Assessing Officer after recording detailed findings on merits, vide order dated 05/03/2015, passed under section 143(3) read with section 147 of the Act, determined the total income of the assessee at Rs.34,12,080, after making an addition of Rs.29,60,308, being 12.5% of the total non-genuine purchases of Rs.2,36,82,482.

6. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee challenging the reassessment proceedings under section 147 of the Act, by observing as under:-

> *"6. Ground No. 1 to 3 relate to the re-opening of the assessment. It is stated that order passed is against the rules of natural justice. Addition is made on the basis of borrowed information of Sales Tax Department. It is stated that contradictory finding are recorded which is prejudicial, vindictive and based on conjecture and surmises. In this respect, it is settled legal position that in a case where there was no assessment or re-assessment prior to reopening of assessment, even if all the material facts are disclosed in the return of income already filed, reopening can be initiated, if the Assessing Officer has 'reason to believe that the income has escaped assessment. The assessee in such cases cannot assail the reopening on the ground that the facts were already placed on record and that the Assessing Officer ought to have considered the facts. Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (291 ITR 500 observed that the word 'reason' in the expression 'reason to believe' would mean cause or justification and if the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reasons to believe that income had escaped assessment. It is further observed by the Supreme Court that the expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. 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 that income has escaped assessment. In the present case, it is evident from the reasons recorded as reproduced in the statement of facts by the appellant that the AO has received specific and credible information from the DGIT (Inv.); Mumbai that the assessee was involved in making bogus purchases through hawala dealers to the extent of Rs. 2,36,82,462/-. The information prima facie revealed that the appellant has claimed purchases for the A.Y. 2009-10 in their books. Based on this precise information, the AO issued notice u/s. 148 of the I.T: Act as he had prima- facie reasons to believe that income chargeable to tax had escaped assessment within the meaning of sec. 147 of the I.T. Act. Thus, there was cause or justification for the AO to invoke provisions of sec. 147 and issue notice u/s. 148. As already mentioned, at the initiation stage, what is required to be seen is whether there are prima-facie 'reasons to believe' but not the established fact of escapement of income. The AO also recorded proper reasons for formation of the belief that income has escaped assessment. It is also important to note that the information relating to Hawala operators was also made available in public domain i.e. in the official website of the Maharashtra Sales Tax Department and therefore the reasons for reopening the assessment are not based on mere suspicion. Thus, all the conditions necessary for reopening of the assessment under the provisions of sec. 147 and for issue of notice u/s. 148 are satisfied in the case of the appellant for the year under appeal. For the foregoing reasons, it is held that reopening of the assessment under section 147 of the Act was done properly following the due procedures laid down by the law and there is no infirmity or illegality in reopening the*

assessment and the notice issued u/s. 148 for the year under consideration is perfectly legal and valid. Resultantly, part of the ground relating to the reopening is 'Dismissed'. With regard to the claim of the appellant that the AO not provided the details and statements on the basis of which he treated the purchases as non-genuine leading to violation of principles of natural justice. In support of the ground, the appellant's AR has not furnished any documentary evidences whether any request was made to the AO seeking such material. In view of the same I am not in a position to sustain the ground and accordingly the ground is treated as dismissed. Accordingly, Ground No, 1 to 3 are treated as 'Dismissed'.

7. We have considered the submissions of learned DR and perused the material available on record. It is evident from the record that the Assessing Officer received the information from DGIT (Investigation) Wing, Mumbai about having vital information initially received from the Sales Tax Department of Maharashtra indicating that the assessee is a beneficiary of accommodation entries by way of bogus sales/purchase bills. On the basis of the aforesaid information, the Assessing Officer initiated proceedings under section 147 of the Act and issued a notice under section 148 of the Act. In ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court observed as under:

"16. 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. ITO [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 ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)."*

8. Therefore, if there is relevant material on the basis of which a reasonable person can form a requisite belief that income chargeable to tax has escaped assessment, then proceedings under section 147 of the Act can be validly initiated. In the present case, as noted above, on the basis of information received from the investigation wing, reassessment proceedings in the case of the assessee were initiated. Further, it is also well settled that sufficiency or correctness of the material is not a thing to be considered at the stage of recording of reasons. As a result, we find no infirmity in the reassessment proceedings initiated by the AO under section 147 of the Act and upheld by the learned CIT(A). Thus, the grounds raised by the assessee challenging the reopening of the assessment are dismissed.

9. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 14/08/2023

Sd/-	**Sd/-**
B.R. BASKARAN	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 14/08/2023

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai