

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य

एवं

श्री संजय शर्मा, न्यायिक सदस्य

के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

&

SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 1657/KOL/2019

Assessment Year: 2010-11

ITO, Ward-6(1), Kolkata.....Appellant

Vs.

M/s. Variya Denim Pvt. Ltd.....Respondent
[PAN: AADCB 1371 M]

Appearances by:

Sh. B.K. Singh, JCIT, Sr. DR, appeared on behalf of the Revenue.

Sh. Sunil Surana, A/R, appeared on behalf of the Assessee.

Date of concluding the hearing : July 21st, 2023

Date of pronouncing the order : August 22nd, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the Revenue is against the order passed by Learned Commissioner of Income-tax (Appeals)-2, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] dated 09.04.2019 for the Assessment Year (in short 'AY') 2010-11.

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) quashing the re-opening of assessment u/s 147 of the Act whereas The Assessing Officer (in short ld. 'AO') had sufficient reasons to believe to re-open the assessment.

3. The facts in brief are that the case of the assessee was re-opened u/s 147 of the Act by issuing notice u/s 148 of the Act on 30.03.2017. There was no compliance on the part of the assessee to the said notice and finally the assessment was framed on the basis of the information available with Ld. AO. Ld. AO noted that the assessee has received an amount of Rs. 1.75 Cr from Iberia Management Services Pvt. Ltd. and Rs. 40 lakh from Bholanath Vanijya Pvt. Ltd. and due to non-compliance made by the assessee, the said loans taken by the assessee were treated as unexplained cash credit and an addition of Rs. 2.15 Cr was made in the assessment framed u/s 144/147 of the Act dated 30.10.2017.

4. In the appellate proceedings Ld. CIT(A) allowed the appeal of the assessee on legal issue by quashing the re-opening of assessment. Ld. CIT(A) observed that the reasons recorded u/s 148(2) of the Act were on the basis of information available in the records which has been stated in the very first para of the reasons recorded. Ld. CIT(A) also noticed that in the reasons recorded, Ld. AO stated that the deposits were made in the accounts of several paper companies/individuals, however, the AO has not stated any name of any individual or company. Accordingly, Ld. CIT(A) held that the reasons have been recorded without application of mind and in a mechanical manner which are full of infirmities and vagueness and there is no satisfaction recorded by Ld. AO. Ld.

CIT(A) also observed that while recording the reasons, Ld. AO has to record the independent satisfaction and there has to be independent application of mind to the information received by the AO. Finally, Ld. CIT(A) by relying on the decisions of Hon'ble Delhi High Court in the case of *ACIT vs Meenakshi Overseas Pvt. Ltd.* [2017] 82 taxmann.com 300 (Del), Hon'ble Kolkata ITAT in the case of *DCIT vs Great Wall Marketing Pvt. Ltd.* in ITA No. 660/KOL/2011 for AY 2002-03 order dated 03.02.2016 and various other decisions quashed the re-opening by observing and holding as under:

“After having perused reasons recorded by the AO before reopening and when the validity of the order u/s. 147 of the Act depends upon the AO assuming jurisdiction as contemplated by law to make an order of assessment u/s. 147 of the Act and for that it is necessary that the conditions laid down in the said section viz., AO should record "reason to believe" that 'the income chargeable to tax for that assessment year has escaped assessment If this condition is not satisfied at the first place, then it cannot be said the AO has validly assumed jurisdiction u/s. 147 of the Act. Therefore, the question for consideration is whether on the basis of the reasons recorded by the AO to reopen the assessment it can be said that AO on the basis of whatever material before it, had reasons which he had indicated in his "reasons recorded" which warrant holding a belief that income chargeable to tax has escaped assessment. The reasons recorded by AO to reopen has to be evaluated on a stand-alone basis and no addition/extrapolation can be made or assumed while adjudicating the legal issue of AO's usurpation of jurisdiction u/s. 147 of the Act. From the facts narrated, the AO concluded that he had sufficient reason to believe that the assessment of the assessee's case in the relevant year escaped assessment and, therefore, requires reopening u/s. 147 of the Act. So from the aforesaid facts narrated by the AO based on the information given by the DIT (Inv.). Therefore, the AO has simply gulped the information from DIT (Inv.) to form a conclusion about escapement of income is itself flawed and cannot pass the test of 'reason to believe' as laid by judicial precedents as discussed above. From the aforesaid reasons, it is evident that other than the vague information given by DIT (Inv.) there is no other material the AO collected after preliminary enquiry which could have enabled him at

the time of recording reasons to come to a conscious independent conclusion that "income of the assessee has escaped assessment". The information given by DIT(Inv.) can only be a basis to ignite/trigger "reason to suspect" for which reopening cannot be made for further examination to be carried out by him in order to strengthen the suspicion to an extent which can form the belief in his mind that income chargeable to tax has escaped assessment.

It has to be kept in mind that merely on an allegations levelled by DIT (Inv.) can only raise suspicion in the mind of the AO which is not the sufficient/requirement of law for reopening of assessment The 'reasons to believe' is not synonymous to 'reason to suspect. 'Reason to suspect' based on an information can trigger an enquiry to find out whether there is any substance or material to substantiate that there is merit in the information adduced by the DIT(Inv.) and thereafter the AO has to take an independent decision to re-open or not and the AO should not act on dictate of any other authority like in this case DIT(Inv.) because then it would be borrowed satisfaction. In this case, as discussed above, the AO after referring to the investigation report erroneously concludes that the income has escaped for re-assessment The information given by the DIT (Inv.) which required some exercise from the part of AO which he admittedly did not do and has blindly copied the contents of the DIT(Inv.) report and proceeded to reopen the original assessment completed u/s. 143(3) which action of AO cannot be countenanced. In such a scenario, when the AO was in receipt of the information from the DIT(Inv.) he ought to have made enquiries to unravel the truth. It has to be remembered that information is not "synonymous to truth. The AO failed to quantify the escapement of income in the reasons recorded. As stated earlier, it is noted that AO simply on the basis of the investigation report has formed an erroneous conclusion that there is an escapement of income.

The AO is a quasi-judicial authority empowered to reopen the completed assessment only in a given case wherein there is reason to believe escapement of chargeable income to tax which is the jurisdictional fact and sine qua non to assume jurisdiction to reopen a completed assessment The reasons to believe postulates foundation based on information and belief based on reason. Even if there is foundation based on information there must be some reason warrant holding the belief that income chargeable to tax has escaped assessment The Hon'ble Supreme Court in Ganga Saran & Sons P. Ltd. Vs. ITO (1981) 130 ITR 1 (SC) held that the expression "reason to believe" occurring in sec. 147 "is stronger" than the expression "if

satisfied" and such requirement has to be met by the AO in the reasons recorded before usurping the jurisdiction u/s. 147 of the Act. The information adverse against the assessee may trigger "reason to suspect" then the AO is duty bound to make reasonable enquiry to collect material which would make him believe that there is in fact an escapement of income which requirement of law has not been fulfilled in this case by the AO. The AO simply taking note of the DIT(Inv.) letter has borrowed the satisfaction without independent application of mind to form reason warrant holding a belief that income chargeable to tax has escaped assessment, just because a letter has been received from the DIT(Inv.) the AO cannot reopen the completed assessment u/s. 143(3) of the Act

The reasons recorded by AO does not stand the test as laid by plethora of judicial precedence as discussed above which is necessary to assume jurisdiction u/s 147 of the Act therefore, in the light of the aforesaid facts and circumstances of the case as discussed, I find that the reasons recorded by the AO to justify reopening the assessment u/s. 147 fails and, therefore, the very assumption of jurisdiction to reassess the assessee fails. Since the AO failed to do so as discussed, the assumption of jurisdiction by him to reopen itself is coram non judice and, therefore, all subsequent action is null in the eyes of law and therefore, I quash the reopening and consequent reassessment order framed by him. In view of above, these grounds of appeal are allowed

The relief has been given on legal issue, therefore, the appeal has not been decided on merit as it does not required at this stage.

In the result, the appeal of the appellant is allowed."

5. After hearing rival contentions and perusing the material on record, we find that the re-opening of assessment has been made by Ld. AO by recording reasons u/s 148(2) of the Act by stating that on the basis of information available in the records, there were huge deposits in the various bank accounts operated by paper company/individuals having no business and it was also stated that after deposits, these the amounts were transferred to several beneficiaries. During the year the assessee received 1.75 Cr from

the said companies. We note that on that basis, Ld. AO re-opened the assessment. However, the reasons are reproduced below for the sake of ready reference:

“As per the information available in record huge deposit were made in the various bank accounts maintained by paper companies/individual having no business which were immediately transferred to the bank account of several beneficiaries via several intermediate accounts. Assessee during the FY 2009-10 received Rs. 175.00 lacs and was treated as beneficiary.

Considering the information available on record I have reason to believe that payout of Rs. 175.00 lacs or any other amount involving transaction is nothing but monetary benefit which has escaped assessment within the meaning of provisions contained in the section 147 of I T Act, 1961.”

6. A perusal of the reasons recorded u/s 148(2) of the Act shows that the reasons were recorded on the information available in the records of the assessee and there has been complete non-application/ independent application of mind by Ld. AO. The re-opening of assessment on the basis of such vague reasons cannot be allowed. Ld. CIT(A) has passed a very reasoned and speaking order discussing the issue at length and after relying on various decisions including the decision of Hon'ble Delhi High Court in the case of *Meenakshi Overseas Pvt. Ltd. (supra)* which has been discussed by Ld. CIT(A) at page nos. 9, 10, 11, 12 & 13. In the said decision, Hon'ble Delhi High Court has held that *where the reasons to believe contain not the reasons but the conclusions of the AO one after the other and there was no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment.* The Hon'ble High Court has held that *the conclusions of the AO are at best a*

reproduction of the conclusion in the investigation report. Indeed it is a borrowed satisfaction. We also note that Ld. CIT(A) has also relied on the decision of the Coordinate Bench in the case of *Great Wall Marketing Pvt. Ltd. (supra)* wherein the issue was decided in favour of the assessee. So, having considered these facts and the ratio laid down by the judicial forums, we do not find any infirmity in the order of Ld. CIT(A). Accordingly, we are inclined to uphold the order of Ld. CIT(A) dismissing the appeal of the Revenue.

7. In the result, the appeal filed by the Revenue is dismissed.

Kolkata, the 22nd August, 2023.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 22.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. ITO, Ward-6(1), Kolkata.**
- 2. M/s. Variya Denim Pvt. Ltd., Saket Sadan building, 231A, Roy Bhadur Road, Kolkata-700 034.**
3. CIT(A)-2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata