

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1411/Del/2022

निर्धारणवर्ष/Assessment Year: 2010-11

<b>Parminder Singh H.NO.2748, Urban Estate, Jind, Haryana.</b>	<b>बनाम Vs.</b>	<b>ITO Ward-2, Bhiwani.</b>
<b>PAN No.BCKPS3874B</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	<b>Shri Manpreet Singh Kapoor, CA</b>
राजस्वकीओरसे /Revenue by	<b>Shri Om Prakash, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	<b>04.08.2023</b>
उद्घोषणाकीतारीख/Pronouncement on	<b>16.10.2023</b>

**आदेश /O R D E R**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 20.06.2019 for the AY 2010-11. The assessee raised several grounds on merits in sustaining the addition of Rs.10 lakhs made on account of cash deposit and further an application for admission of additional ground was made in which the assessee challenged the reopening of the assessment by the Assessing Officer and the additional grounds read as under: -

8. *“Ld.CIT(A) is erred in law by confirming the reopening proceeding u/s 147, which the AO has initiated without conducting proper enquiry and*

*collecting material information, which is bad in law and liable to be deleted.*

9. *Ld.AO & CIT(A) is erred in law by reopening the proceedings u/s 147, passed upon borrowed satisfaction from AIR Information, which is bad in law and liable to be deleted.*
10. *That based on the facts and circumstances of the case and in law, the approval granted u/s 151 of the Income Tax Act, 1961 was not in accordance with law as it was accorded in a mechanical manner, hence reassessment proceedings initiated u/s 147 is bad in law and liable to be quashed.*
11. *On the facts and in the circumstances of the case and in law, the Ld.AO and Ld.CIT(A) erred in rejecting the explanation and evidences brought on record by the assessee to prove the identity, creditworthiness and genuineness of the transaction disallowed u/s 68 of the Act.*
12. *Ld.AO & CIT(A) is erred in law to reassess issue other than the issue in respect of which proceedings u/s 147 are initiated, which is bad in law and liable to be deleted.*
13. *Ld.AO is erred in law by not specifying section under which the addition has been made, which is bad in law and liable to be deleted.”*

2. The Ld. Counsel for the assessee submits that the additional grounds raised are purely legal grounds which are going to the very jurisdiction of reopening of the assessment by the Assessing Officer and, therefore, they may be admitted and adjudicated. Reliance was placed on the ruling of the Apex Court in the case of National Thermal Power Company Ltd. Vs. CIT (229 ITR 383).

3. On hearing both the sides and going through the additional grounds of appeal the same are admitted as these grounds are purely legal grounds following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT (supra).

4. Briefly stated the facts are that the assessee filed his return of income declaring income of Rs.1,68,680/- under income from business and as agricultural income of Rs.46,000/-. The assessment was reopened by issue of notice u/s 148 as there were cash deposits of Rs.17,30,110/- in the bank account of the assessee. The reassessment was completed u/s 143(3) read with section 147 of the Act making an addition of Rs.10 lakhs representing the gifts received by the assessee from his father in law and mother in law which addition was sustained by the Ld.CIT(Appeals).

5. The Ld. Counsel for the assessee arguing ground nos. 8 & 9 i.e. the Assessing Officer reopening the assessment u/s 147 of the Act without conducting proper enquiry and reopening of assessment based on AIR Information is bad in law, submits that the AO has initiated the proceeding u/s 147 based upon AIR Information generated from IT Department application, which showed that the assessee has deposited Rs.17,30,110/- in cash in ICICI Bank. The AO

generate “reason to suspect” in his mind without going into the fact of the case that the assessee had declared a total turnover of Rs.16,62,200/- from his business. The assessee was engaged in the business of sale & purchase of old mobile and distribution of milk supply in his locality, such business is mostly deals in cash. The AO re-opened the assessment without considering sale declared by assessee in its Income Tax return, filed on 10.08.2010, with business income of Rs.1,68,680/- out of such total turnover of Rs.16,62,200/- is bad in law. The assessee has also declared agricultural income of Rs.46,000/- in AY in question.

6. Ld. Counsel further submits that notice was issued by AO u/s 133(6) to ICICI Bank Ltd. on 17.04.2017, i.e. one month after issue of notice u/s 148 and ICICI Bank furnished the requisite information on 24.05.2017 to AO, which clearly reveals that no enquiry has been made before initiation of proceeding u/s 147 as the relevant documents from bank has been received after two months from issue of notice u/s 148. The copy of notice u/s 133(6) PB2 Pg no.5 and reply of ICICI Bank PB 2 Pg no.7 is enclosed for reference in the paper book.

7. Ld. Counsel is relying on the decision of the Hon’ble Supreme Court in Sheo Nath Singh Vs. AAC [1971] 82 ITR 147 (SC) has held

that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumor. In the present case the report based on a statement has no evidentiary value. The Ld. AO has not based his 'reason to believe' on any direct or circumstantial evidence. Hence the same is bad in law.

8. The Ld. Counsel for the assessee further submits that the AO re-opened the case based on Annual Information Report (AIR) received from AIR ITD Portal, which is bad in law. The AO has not conducted any enquiry with respect to source of such cash deposited and merely raised a suspicion about income escaped from assessment of Assessee. The Assessee has furnished ITR and declared gross turnover of Rs.16,62,200/-. The Assessee has also withdrawn cash from said bank accounts of Rs.20,22,324/- during AY in consideration. The AO did not apply his judicial mind and reopened the proceedings based upon such AIR which is bad in law. The AO has a reason to suspect at the time of reopening of the case. This fact is also confirmed from the information received from ICICI Bank Ltd. after 2 months from the date of issue of notice u/s 148. Therefore, the proceeding u/s 147 is invalid and solely on

the basis of suspicious. Hence the AO invoked the provision of section 148 on the basis of reason of suspect rather than on the basis of reason to believe which make the assessment proceeding null and void and liable to be deleted. The Ld.AO has erred in law without having reason to believe that any income has escaped assessment as the same was issued solely on the basis of AIR Information received from IT Department. The assessee relied on the judgment of ITAT Delhi Bench in the case of UDESH SHARMA VS. ITO, 2022 (4) TMI 229-ITAT DELHI No.-ITA No. 7579/Del/2017 Dt. 29.03.2022.

9. On the other hand, the Ld. DR submits that the assessment was reopened on the basis of AIR information which stated that the assessee had huge cash deposits into his bank account and, therefore, the Assessing Officer had reasoned to believe that the income had escaped assessment and the reopening is rightly made by the Assessing Officer.

10. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. In this case the Assessing Officer reopened the assessment by issue of notice u/s 148 dated 18.03.2017 and the reasons for reopened the assessment are as under:

*“Return of income in this case for the AY 2010-11 was filed by the assessee on 10.08.2010 declaring an income of Rs.1,68,680/- which was processed as such u/s 143(1) of the Income Tax Act, 1961. Later on, as per AIR information, generated from ITD Application, it has come to my notice that Sh. Parminder Singh S/o Bhim Singh H.No. 2748, Urban Estate, Jind has deposited Rs.17,30,110/- in ICICI Bank Ltd. in his saving joint bank accounts during the financial year 2009-10 relevant to the assessment year 2010-11. The assessee was asked to explain the source the same. But, the assessee has failed to explain the source of the above said investment. Therefore, I believe that the assessee has invested the aforesaid amounts from the sources not disclosed to the Income Tax Department; hence the same is deemed to be his income from undisclosed sources.*

*Keeping in view the facts stated above, I have, therefore, reasons to believe that income to the extent of Rs.17,30,110/- chargeable to tax for the AY 2010-11 has escaped assessment in view of Section 147 of the Income Tax Act, 1961.”*

11. These reasons are recorded on 03.03.2017 before issue of notice u/s 148 of the Act. As could be seen from the reasons for reopening the assessment it is the AIR Information generated from the ITD application that the Assessing Officer came to know that there were cash deposits of Rs.17,30,110/- in ICICI Bank Limited belonging to the Assessee. The Assessing Officer in the reasons stated that the assessee was asked to explain the source and as the assessee failed to explain and, therefore, he believed that the assessee has invested the amounts from the sources not disclosed to

the Department and the same is deemed to be the income from undisclosed sources. As could be observed from the reasons the Assessing Officer at the time of recording of reasons of reopening he was not in possession of any tangible materials with him suggesting that the income had escaped assessment except the AIR Information. The Assessing Officer did not make any proper enquiry to form a reason to believe that the income had escaped assessment. It is evident from the record that after recording the reasons for reopening the Assessing Officer issued notice u/s 133(6) to ICICI Bank on 17.04.2017 calling for bank statement and the bank statement of the assessee was provided by ICICI bank to the Assessing Officer on 24.05.2017 which clearly shows that there was no enquiry whatsoever made by the Assessing Officer before initiation of proceedings u/s 147 of the Act. The Assessing Officer did not have any relevant documents with him to correlate with the cash deposits made by the assessee so as to form a belief that the income had escaped assessment. The Assessing Officer also did not scrutinize the return of income of the assessee, wherein the assessee has declared a turnover of Rs.16,62,200/- on account of business of sale and purchase of old mobiles and distribution of milk supply who declared income of Rs.1,68,680/-. The reasons

recorded by the Assessing Officer for reopening the assessment are also vague. Further the Assessing Officer did not refer to what sought of details he has called for from the assessee and the assessee failed to furnish the details before recording the reasons for reopening the assessment.

12. Almost an identical issue came up before the Tribunal in the case of Udesh Sharma Vs. ITO in ITA No.7579/2017 dated 29.03.2022, wherein the Tribunal held as under:

*“6.6 The jurisdictional High Court again in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., 395 ITR 677 dealt identical with the issue has held as under:*

*“In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is 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 conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

*For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.”*

6.7 *The Hon'ble High Court in the referred cases clearly held that it is established principle of law that if a particular authority has been designated to record his/her satisfaction on a particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or 'dictated' satisfaction.*

6.8 *From the judgments referred above, inference can also be drawn that demonstration of link between the tangible material and the formation of the reasons to believe that income had escaped assessment is necessary for reopening the case u/s 147/148 of the Act and the information received from the Investigation Wing or AIR cannot be said to be a tangible material per se without further inquiry being undertaken by the AO. The conclusion of the AO, based on the Investigation Report or AIR information indeed is a borrowed satisfaction.*

6.9 *Admittedly in this case, the AO while recording reasons for selection of the case on the basis of AIR information observed that the Assessee has deposited cash of Rs. 44,00,500/- in his S.B. Account during the F.Y. 2008-09 and therefore issued a verification letter dated 30.10.2015 to the Assessee who failed to respond the same, therefore inference was drawn by the AO that the source of deposit in saving bank account remained unexplained as the Assessee has not filed return of income for the A.Y. 2009-10.*

6.10 *We may observe that it was the bounden duty of the Assessee to comply with verification letter issued by the AO, which the Assessee deliberately disregarded and therefore in the absence of return of income, the AO had rightly drawn the inference that source of deposit in saving bank account remained unexplained and this fact goes against the Assessee, however considering the peculiar facts and circumstances of the case, as the AO except issuing verification letter to the Assessee, has not made proper efforts to find out the veracity and authenticity of information and any corroborative*

*evidence/material thereto and without connecting tangible material and the formation of the reasons to believe for escapement of income but only acted on the information while forming belief qua escapement of the income and initiation of proceedings u/s 147/148 of the Act, we are of the considered opinion that the reasons recorded in the instant case are insufficient, vague and based on un-substantive reasoning, uncorroborated material and lack of evidence and hence tantamount to be based on borrowed satisfaction and accordingly does not sound valid reasons in the eyes of law, for reopening of the case.*

*6.11 On the aforesaid discussions, the re-opening of the assessment proceedings u/s 147 of the Act by the AO and affirmation by the Ld. Commissioner was totally unjustified and therefore deserve quashing, hence ordered accordingly.”*

13. The Hon’ble Delhi High Court in the case of Pr. CIT Vs. RMG Polyvinyl (I) Ltd. (396 ITR 5) held as under:

*“Held, dismissing the appeal, that no link between the tangible material and the formation of the reasons to believe that income had escaped assessment, could be discerned. The information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the Assessing Officer, who had deprived himself of that opportunity by proceeding on the erroneous premise that the assessee had not filed a return for the AY 2004-05, when in fact it had. In his assessment order, the Assessing Officer had, instead of adding a sum of Rs.78 lakhs, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crores and the basis for such addition had not been explained. No error was committed by the Appellate Tribunal in holding that reopening of the assessment u/s 147 was bad in law.*

12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court

*discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

13. *As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.*

14. *To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.*

15. *For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."*

14. Ratios of the above decision applies to the facts of the assessee's case as the reasons recorded for reopening of the

assessee's case are insufficient, vague, un-corroborative to form a belief that the income had escaped assessment as there was no link between the tangible materials and the formation of belief of the Assessing Officer that the income had escaped assessment. Thus, the reassessment made u/s 143(3) read with section 147 of the Act based on such reasons is bad in law and accordingly, the reassessment is quashed.

15. Even on merits it is observed that the Assessing Officer even though reopened the assessment on the ground that the assessee had cash deposits of Rs.17,30,110/- into his account, ultimately addition was made only to the extent of Rs.10 lakhs disbelieving the gifts received by the assessee from his father in law and mother in law which was utilized for depositing the same into his bank account. It is observed that in the course of reassessment proceedings the Assessing Officer recorded statement of both father in law and mother in law who have also confirmed the gifts given to the assessee who is the husband of their only daughter. However, this was disbelieved by the Assessing Officer as there were some discrepancies in the gift deeds for which the assessee filed affidavits from the donors before the Ld.CIT(A) which were totally ignored by him. The Assessing Officer never denied that the father

in law and mother in law of the assessee were not in possession of agricultural land of 6.5 acres. Therefore, since the donors of the gifts are closely related to the assessee being father in law and mother in law and the sources were also explained the gifts cannot be disbelieved.

16. In view of what is discussed above, we allow the appeal of the assessee.

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 16/10/2023

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 16.10.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi