

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, AM & SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.3395/Mum/2023

(निर्धारण वर्ष / Assessment Years: 2008-09)

Tarun Tolaram Kapoor 4/9, Vivekanand Society, TH Kataria Marg, Mahim (W), Mumbai – 400016.	बनाम/ Vs.	ACIT (OSC) Room No. 609, 6 th Floor, Kamaladevi Mittal Ayurvedic Hospital Bldg, Charni Road (W), Mumbai – 400 002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPK3828M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Siddhesh Chaugule
Revenue by:	Shri P.D Chougule (Addl. CIT), Sr. DR

सुनवाई की तारीख / Date of Hearing: 07/02/2024

घोषणा की तारीख /Date of Pronouncement: 14/02/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) -57, Mumbai, dated 28.07.2023 for AY. 2011-12.

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

3. Facts in brief are that the return of income was filed by the assessee on 31st July, 2008 declaring total income of Rs.1,84,28,580/-. Later the case of the assessee was re-opened u/s 147 of the Act by issuance of notice u/s 148 of the Act dated 10.01.2023; and thereafter the AO noticed that the assessee had shown to have four (04) properties and has calculated the deemed rent as per the Municipal Ratable Value by which the assessee has claimed loss of Rs.



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17,54,864/-, which was not acceptable by the AO and instead he computed the fair rent on the basis of annual income yielding capacity of the properties, and thus he disallowed Rs. 14,08,400/- out of the loss claimed by assessee at Rs. 17,54,864/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee. Aggrieved by the impugned action of the Ld. CIT(A), the assessee is before us.

4. We have heard both the parties and perused the records. Since the assessee has challenged the jurisdiction of AO to have reopened the assessment, the *reasons recorded* by AO need to be examined to see whether he had satisfied the conditions precedent necessary for reopening the assessment u/s Section 147 of the Act i.e. Firstly whether AO has recorded the reasons before reopening the assessment. And if so, whether the reasons recorded fulfil the requirement of law or not. The fundamental requirement of law as stipulated u/s 147 of the Act is that before reopening an assessment the AO has to record the reasons wherein he has to spell out the “*Reasons to believe, escapement of income*”. It is well settled that “*Reasons to believe*” postulate foundation based on information and belief based on reason. After a foundation based on information is made, there still must be some reason which should warrant the holding of a belief that income chargeable to tax has escaped assessment. In addition, one should bear in mind the fine distinction between “*Reason to Suspect*” and “*Reason to believe*”. Information adverse may trigger “*Reason to Suspect*” which is not sufficient to reopen an assessment because as per section



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147 of the Act, AO should have “*Reasons to believe*”, *escapement of income*” and not Reasons to suspect escapement of income. Therefore, when AO receives adverse information against an assessee, he should make preliminary inquiry and collect material, which would make him form a belief, that there is in fact an escapement of income. Then only AO should record the “*reason to believe escapement of income*” and thereafter only, he should issue the notice u/s 148 of the Act. Once the AO satisfies the aforesaid requirement of law, then only invocation of jurisdiction of reopening assessment be held to be valid in the eyes of law. Further, we have to bear in mind that, when the validity of re-opening of an assessment is tested, the reasons recorded by AO for re-opening the assessment needs to be tested on a *standalone* basis. Nothing can be added nor anything be deleted from the reasons so recorded by AO. No inference can be allowed to be drawn on the basis of reasons not recorded by him. AO has to speak through the reasons so recorded by him. The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide the link between conclusion and evidence. So the reasons recorded by the AO before re-opening as it is, it should be examined to see whether AO had met in the “reasons recorded”, the essential condition precedent to do so i.e. “*Reason to believe, escapement of income*”. So in this backdrop let us look at the reasons recorded in this case by AO to re-open the assessee’s assessment for AY 2008-09, which is reproduced as under:-



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The assessee has shown four house properties as deemed to be let out properties.

1. Bangalore Property: Annual Value Rs.2,40,000/-

After claiming deduction u/s.24 income comes to Rs.1,68,000/- against that assessee has claimed set of interest and claimed loss of Rs.6,18,139/-

2. Mahim property (Veer Savarkar Marg): Annual Value Rs.36,000/-

This flat falls in the city area of Mumbai. Therefore the annual value appears to be to low. Although the assessee has offered the income of Rs.25,200/- for taxation.

3. Mahim Property: Annual Value Rs.40,000/-

This falt falls in the city area of Mumbai. Therefore the annual value appears to be low. The assessee has shown the income of Rs.28,000/- after claiming the deduction u/s.24. Against this property assessee is claiming loss of Rs. 13,29,923/.

4. Mahim Property (Vivekanand Society); Annual Value 2,40,000:

After claiming deduction u/s.24 the net income from this property is of Rs.1,68,000/-.

Therefore, I have reason to believe that the income of Rupees one lakhs and above has escaped assessment. To bring this escaped income to tax, the case is requires to be re-opened u/s.147 of the income Tax Act, 1961 and statutory notice u/s.148 of the Act, is required to be issued.

Issue notice u/s. 148 of the Income Tax Act, 1961.

5. From a bare perusal of the “reasons recorded” (supra) by the AO dated 10.01.2013, it is noted that the AO accepts that the assessee has shown four (04) house properties as deemed to be let out properties, and thereafter, he noticed the amount shown by the assessee against



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each of the four properties in the return of income filed by the assessee and deduction claimed u/s 24 of the Act. Thereafter, AO abruptly concludes that he has reason to believe that income of Rs. 1,00,000/- and above has escaped assessment. And, he issued notice of reopening u/s 148 of the Act.

6. Assailing the action of AO, the Ld. AR submitted that AO had no material to form the belief that there was escapement of income. According to him, all the adverse information (*about four properties*) were culled out from the ITR filed by the assessee and invited our attention to page No. 14 of the paper book, wherein, copy of the computation of income from house property for the period under consideration has been given, which forms part of the ITR filed by assessee. A perusal of the contents of page no. 14 PB, when compared with the facts stated in that of the reason recorded by AO, reveals that the facts stated therein at page 14 PB has been copied as such in the “reasons recorded” by AO for reopening of the assessment. Thus, it is noted that there is neither any material to suggest that the income of the assessee has escaped assessment, nor information based on which AO has formed his reason to believe escapement of income; and moreover, *recorded reasons* does not reveal the essential element of AO’s belief (of escapement of income) was based on reason, which is not discernable from the reason recorded, therefore, the condition precedent to validly reopen the assessment has not been fulfilled. Consequently, the impugned exercise of AO to reopen the assessment in the foregoing facts discussed, tantamount to AO reviewing his own action [of accepting the original return filed by the assessee], which



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power AO does not enjoy. In such an event, we hold the action of the AO to reopening the assessment was without foundation. Therefore, the issue of notice of the AO u/s 148 of the Act dated 10.01.2013 is without jurisdiction and *void-ab-intio*. Therefore, we quash the notice dated 10.01.2013 and consequently, reassessment framed is null in the eyes of law.

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

Order pronounced in the open court on this 14/02/2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14/02/2024.
KRK, (PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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