

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "SMC" BENCH : PUNE [VIRTUAL HEARING]
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

आयकर अपील सं. /ITA No.79/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

Sagar Babanrao Awatade, A-13, RH-IV, Sector-9, Belapur, Navi Mumbai- 400 614 Maharashtra PAN : AJXPA8812C	vs.	Income Tax Officer, Ward-1, Panvel
(Appellant)		(Respondent)

For Assessee :	Shri Harsh Goyal & Shri Shashikant Goyal
For Revenue :	Smt. Neha Deshpande

Date of Hearing :	13.03.2024
Date of Pronouncement :	27.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2014-15, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2023-24/1058718854(1), dated 13.12.2023, involving proceedings u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. It transpires during the course of hearing that the first and foremost issue which requires the tribunal's apt adjudication is that of the correctness of the impugned reopening itself. It is made clear that the assessee's paper book compilation herein contains the Assessing Officer's reopening reasons dated

25.09.2017 to the clinching effect “the source of investment made in immovable property requires to be verified”.

3. The Revenue could hardly rebut this factual position during the course of hearing that the Assessing Officer had not recorded the assessee’s taxable income liable to have escaped assessment once he sought to verify the same. That being the case, I quote judgment of Hon’ble Jharkhand High Court in the case of *Pr.CIT Vs. Maheshwari Devi (2023) 455 ITR 755 (Jhar)* wherein it was held that such a reopening is not sustainable in law as under :

“7. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein, it appears that the Assessing Officer had reopened the assessment of the respondent-assessee and issued notice under section 148 of the Income-tax Act, 1961 for the assessment of income concerning the assessment year 2010-11. However, the respondent chose not to file any return. In the meantime, the Assessing Officer had received information that the Central Bureau of Investigation, ACB, Dhanbad had lodged a first information report regarding the land scam. In the said first information report, the son and the husband of the respondent-assessee including herself were accused of criminal conspiracy, abetment and fraud.

Finally, after analyzing the facts and records, the Assessing Officer passed the reassessment order, dated November 20, 2017, under section 144 read with section 147 of the Income-tax Act, 1961. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals). However being unsuccessful, the assessee again preferred an appeal before learned Income-tax Appellate Tribunal who allowed the appeal preferred by the assessee, hence the Revenue is before us.

8. To decide the issue in hand it is necessary to deal with sections 147 and 148 of the Act which is quoted hereinbelow :

”147. Income escaping assessment.—If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or

document received from the prescribed Income-tax authority, under sub-section of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under subsection (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

148. issue of notice where income has escaped assessment.—(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed ; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :

Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the

proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice :

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

9. By going through the aforesaid definition it is abundantly clear that before opening any reassessment proceedings the Assessing Officer has to record reason to believe that any income chargeable to tax has escaped assessment for the relevant assessment year. Now coming back to the case we have to analyze as to whether the Assessing Officer was having any reason to believe that the assessee had escaped assessment. For brevity, reasons recorded by the Assessing Officer is extracted hereinbelow :

"3-3-2016.

Information is received from the Deputy Director of Income-tax (Inv), Dhanbad, vide F. No. DDIT (Inv)/DHN/T392X/2015-16/1318 dated March 28, 2016 that Smt. Maheshwari Devi, W/o Shri Deo Narayan Parihast, Dhanukdtola, Deoghar has sold 35 acres of land amounting to Rs, one crore but Income-tax return has not been filed for the assessment year 2009-10.

He has invested huge amount in land during the year. Some of these land properties have also been sold during the year and earning lakhs of rupees from these sale transaction which need to be verified.

In view of the above facts, I have reason to believe that the income from sale of land have escaped from assessment. Therefore, it is necessary to issue notice under section 148 of the Income-tax Act, 1961 to assess the income of the assessee for the assessment year 2009-10.

Since more than four years have been passed from the end of the relevant assessment year and tax effect on income escaping assessment is more than one lakh. Hence, the approval of Principal Commissioner of Income-tax is necessary. Therefore, the proposal is being sent to the Principal Commissioner of Income-tax, Dhanbad for his kind perusal and approval."

10. By going through the aforesaid reason mentioned at annexure 1, it appears that the Assessing Officer himself made it clear that the issue of the corresponding sale transaction required to be verified. Now the law is no more res integra, inasmuch as, the Assessing Officer cannot take recourse to reassessment proceeding just for the

purpose of verification. There is a difference between reason to believe and reason to suspect

In the case of ITO v. Lakhmani Mewal Das reported in [1976] 103 ITR ([1976] 103 ITR 0437) 437 ([1976] 103 ITR 0437) (SC) it has been succinctly defined that the reason for the formation of the belief must be held in good faith and should not be a mere pretence, the powers of the income-tax Officer to reopen assessment, though wide, are not plenary the words of statute are "reason to believe" and not "reason to suspect". It is therefore essential that before such action is taken the requirement of law should be satisfied.

Further, this court in the case of Naveen Kumar Jaiswal v. Income-tax Department reported in [2023] 455 ITR 539 ([2023] 455 ITR 0539) (Jharkhand) ; 2022 SCC Online Jhar 189 W.P. (T) No. 675 of 2022 (Ranchi), has held at paragraphs 11 and 12 has held as under (page 543 of 455 ITR):

"It is well settled principles with regard to reassessment. A reassessment proceeding is to be adjudged on the basis of 'reason to believe' disclosed to the assesses and the said reasons cannot be supplemented by the Revenue as the reasons have to speak for themselves.

The law is now no more res integra that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the court, on the strength of affidavit or oral submissions advanced. Admittedly, in the instant case the Assessing Officer has referred that the assessee had purchased immovable property valued of Rs. 1,80,60,000 on March 9, 2017 ; whereas the fact is divergent. As such, the notice issued for initiation of reassessment proceeding does not have any legs to stand in the eye of law."

In the instant case, by going through the recorded reasons of the Assessing Officer it clearly transpires that the Assessing Officer has himself held that "these sale transaction need to be verified". This observation of the Assessing Officer itself makes the reason to believe as reason to suspect. There cannot be a fishing and itinerant enquiry under section 147/148 of the Act.

In the case of Pr. CIT v. Manzil Dineshkumar Shah [2018] 406 ITR ([2018] 406 ITR 0326) 326 ([2018] 406 ITR 0326) (Guj) ; [2018] 95 taxmann.com 46 (Guj), the hon'ble court has held at paragraph 7 as under (page 329 of 406 ITR):

"It is equally well settled that the notice of reopening can be supported on the basis of reasons recorded by the Assessing Officer. He cannot supplement such reasons. The third principle of law which is equally well settled and which would apply in the present case is that reopening of the assessment would not

be permitted for a fishing or a roving inquiry. This can as well be seen as part of the first requirement of the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment. In other words, notice of reopening which is issued barely for making fishing inquiry, would not satisfy this requirement."

Recently, in the case of Pr. CIT v. Sheetal Dushyant Chaturvedi [2022] 443 ITR (St.) 8; [2022] 134 taxmann.com 328 (SC) appeal filed by the Department was dismissed against the order of the High Court who held that where reasons supplied by the Assessing Officer for reopening the assessee's assessment only referred to a need, to verify documents and reasons supplied by the Assessing Officer did not show that income has escaped assessment.

11. At the cost of repetition, there cannot be any reassessment for a reason to suspect and reassessment is only to be done if the Assessing Officer has reasons to believe that the assessee has escaped assessment. Without going into the other argument of the petitioner and merits of the case, the instant appeal requires to be dismissed on the sole ground that the Assessing Officer was not having any reason to believe for initiating reassessment which is clear from the recorded reason to believe (annexure 1) itself.

The learned Tribunal has not committed any error in applying the judgment passed in the case of Dinesh Kurmar Sah (supra). Consequently, the question of law framed in this case is answered against the Department."

4. I adopt the foregoing detailed reasoning *mutatis mutandis* to quash the impugned reopening in very terms. Ordered accordingly.

All other pleadings on merits stand rendered academic.

5. This assessee's appeal is allowed.

Order pronounced in the open Court on 27th March, 2024.

Sd/-

[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated : 27th March, 2024
Satish

Copy to :

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//True Copy //

//By Order //

Sr. Private Secretary, ITAT,
Pune Benches, Pune.