

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 4491 & 4492/Del/2019
(Assessment Year: 2009-10)**

ACIT, Circle-65(1), New Delhi (Appellant)	Vs. Sanjay Pratap Singh, D-2/359, Chanakya Puri, Vinay Marg, New Delhi (Respondent)
PAN: AAOPS3073R	

Assessee by :	Shri R. K. Singhal, CA
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	01/04/2024
Date of pronouncement	04/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These are the appeals filed by the revenue in ITA Nos.4491/Del/2019 and 4492/Del/2019 for 2009-10, arise out of the orders of the Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 25.03.2019 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.06.2017 and order dated 18.03.2019 against the order of assessment passed u/s 143(3) dated 29.12.2016 by the Id ACIT, Circle-65(1), New Delhi (hereinafter referred to as 'Id. AO').

2. Let us take up the quantum appeal first in ITA No. 4491/Del/2019 for AY 2009-10. The revenue has raised the following grounds of appeal:-

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in allowing the appeal of the assessee and in quashing the assessment u/s 147 r.w.s.143(3) by holding that the notice u/s 148 of the Act is invalid without going into the merits of the case.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in quashing the assessment proceedings u/s 147 r.w.s. 143(3) by holding that the Assessing Officer was not having any information/ material in his possession on the basis of which a belief about escapement of income could be formed.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in holding that the information / material on the basis of which the Assessing Officer has formed a belief about escapement of income of Rs.4,28,880/- was already available in the assessment records as there was no assessment in the case of the assessee within the meaning of Section 2(8) of the Income-tax Act, 1961 and there was no application of mind as the return filed by the assessee for A.Y.2009-10 on 25.07.2009 was only processed u/s 143(1) of the Income-tax Act, 1961.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in holding that the Assessing Officer did not have any tangible material in his possession for the purpose of initiating reassessment proceedings u/s 147.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred, in deleting all the additions made by the Assessing Officer in the assessment order by quashing the reassessment proceedings u/s 147."*

3. We have heard the rival submissions and perused the material available on record. We find that the return of income for AY 2009-10 was filed by the assessee on 25.07.2009 declaring taxable income of Rs. 10,92,498/-. This assessment was sought to be reopened by issuance of notice u/s 148 of the Act on 28.03.2016. The reasons recorded for reopening of assessment are as under:-

"As per the Individual transaction statement (26AS) for FY 2008-09 (AY 2009-10) the assessee Sh. Sanjay Pratap Singh [PAN: AAOPS3073R] has earned interest income of Rs.1.82,446/- and salary income of Rs.14,38,932/- in AY 2009-10. However, assessee has shown salary income of Rs.9,92,492/- and income from other sources of Rs.2,02,706/- in his Income Tax Return filed on 25- 07-2009 for assessment year 2009-10. Hence the salary income of Rs. 4,28,880/- has not been shown in the said AY 2009-10 hence I have reason to believe that Rs 4,28,880/- has escaped assessment within the meaning of section 147 of IT Act in the said AY 2009-10.

4. The assessment was completed by the Id AO determining total income of Rs. 1,80,16,358/- u/s 143(3) read with section 147 of the Act on 29.12.2016. Before the Id CIT(A), the assessee challenged the validity of

reopening of assessment as well as the additions made by the Id AO on merits. The Id CIT(A) quashed the reassessment proceedings stating that the Id AO did not have any tangible material with him which would enable him to form a belief that income of the assessee has escaped assessment. The categorical findings recorded by the Id CIT(A) in this regard are reflected at para 4.5 and 4.6 of his order which is reproduced herein for the sake of convenience:-

4.5 From the above, it is clear that the AO was not having any tangible material in his possession for the purpose of initiating the reassessment proceedings in the case of appellant. Whatever belief has been formed by him for recording the satisfaction, is based on the Information available in the return of income or provided by the employer in 26AS. But, there is nothing doubtful or suspicious which could indicate that there is escapement of income on the part of the appellant. The AO has merely taken that information into consideration, quantified the difference and arrived at conclusion that the appellant has escaped the assessment of income. He even failed to verify the reasons for difference which is the main basis of reopening the assessment. This shows that the conduct of AO has been very casual and arbitrary. As held by Hon'ble Jurisdictional High court in the case Pr. CIT vs Meenakshi Overseas Pvt. Ltd 395 ITR 677, the reopening of assessment u/s 147 of IT Act is a potent power not to be lightly exercised. It cannot be evoked casually or mechanically. The reasons recorded have to be based on some tangible material and that should be evident from a reading of the observations and the reasons must be self evident and must speak for themselves and the reasons to belief must demonstrate the link between the tangible material and the formation of the belief or the reason to believe that Income escaped assessment. It has been further held by Hon'ble Court that the AO, being a quasi-judicial authority, is expected to arrive at a subjective satisfaction independently on objective criteria for recording the reasons to assume the jurisdiction u/s 147 of IT Act.

4.6 In view of the above, it is held that neither the AO was having any tangible material in his possession nor could he establish any live link between the said material and formation of belief in the case of appellant. He has merely verified and reviewed the information already available in records and formed a belief that the income has escaped assessment on the case of the appellant. In such situation, the initiation of assessment proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act are not valid in the case of appellant. Consequently, the reassessment proceedings in the said section are also held invalid. It is, therefore, held that reopening of assessment proceedings and subsequent assessment proceedings in the case of the appellant are bad in law and without jurisdiction and deserve to be quashed. I, therefore, quash the reassessment proceedings and allow the grounds taken by the appellant.

5. From the above findings, it could be seen that the Id CIT(A) had categorically recorded an observation that the entire reopening was triggered

by the Id AO only on perusal of the Form 26AS which is already on record before the Id AO. Hence, there is absolutely no tangible material or fresh material providing tangible information to the Id AO to form a reasonable belief that income of the assessee had escaped assessment.

6. The Id DR merely argued before us that original return was processed u/s 143(1) of the Act and that there was no need for any tangible material for the Id AO to reopen the proceedings u/s 147 of the Act when the assessment was completed originally u/s 143(1) of the Act. We are unable to comprehend ourselves to accept this proposition of the Id DR. In our considered opinion, the existence of tangible material is prerequisite for reopening of an assessment and that tangible material should have live link or nexus with formation of belief for the Id AO to conclude that income of the assessee had escaped assessment. Under these circumstances alone, the assessment could be reopened by the Id AO. This view of ours is fortified by the decision of the Hon'ble Supreme Court in the case of Kelvinator of India Ltd reported in 320 ITR 561 (SC). Admittedly, in the instant case, the reopening has been triggered only on reappraisal and re-verification of Form 26AS of the assessee which was very much available before the Id AO during the course of original assessment proceedings itself and there was absolutely no fresh information or tangible material that had come into the possession of the Id AO subsequent to conclusion of original assessment u/s 143(1) of the Act. We hold that the Id CIT(A) had rightly quashed the reassessment proceedings on which we do not deem it fit to interfere. Accordingly, grounds raised by the revenue are dismissed.

7. In the result, the appeal of the revenue in ITA No. 4491/Del/2019 is dismissed.

8. Since, the entire reassessment proceeding is quashed, the concealment penalty levied u/s 271(1)(c) of the Act on such quashed reassessment proceedings would have no legs to stand.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 04/04/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/04/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi