

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

[THROUGH VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.381/PUN./2024 [E-APPEAL]

Assessment Year 2010-2011

Mr. Shankar Nagappa Jadagouda, Door No.127, Kalamba Road, HUDCO Colony, Kolhapur-416 012. Maharashtra. PAN AELPJ7163G	vs.	The National Faceless Appeal Centre ["NFAC"]. Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Nikhil Pathak
For Revenue :	Shri Manish Mehta

Date of Hearing :	22.03.2024
Date of Pronouncement :	17.04.2024

ORDER

This assessee's appeal for assessment year 2010-11, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1059127891(1), dated 28.12.2023, involving proceedings u/s.147 r.w.s.254 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. It emerges at the outset with the able assistance coming from both the parties that the first and foremost issue which arise for the tribunal's apt adjudication is that of validity of the impugned reopening/re-assessment itself. This is for the precise reason that the Assessing Officer had recorded his reasons to believe that the assessee's taxable income, representing cash deposits of Rs.12,81,150/- made in the State Bank of India, Laxmipuri Branch,

Kolhapur; had escaped assessment. This clinching fact duly emerges from the Assessing Officer's questionnaire dated 31.07.2017 along with sec.148 notice of the same date [pages 14, 15 and 63 of the paper book record.

3. It is in this factual backdrop that the Revenue could hardly dispute that both the learned lower authorities have assessed the assessee's cash deposits of Rs.38,27,878/- in his bank account with M/s. Vijay Share Cooperative Bank. Meaning thereby that they have not made any addition qua the foregoing sole reason recorded in the reopening reasons (supra). Faced with this situation, I quote hon'ble jurisdictional high court's landmark decision in CIT vs. Jet Airways (I) Ltd., [2011] 331 ITR 236 (Bom.) having settling the issue in assessee's favour as under :

“5. The condition precedent to the exercise of the jurisdiction under section 147 is the formation of a reason to believe by the Assessing Officer that any income chargeable to tax has escaped assessment. Upon the formation or a reason to believe, the Assessing Officer, before making the assessment, reassessment or recomputation under section 147 has to serve on the assessee a notice requiring him to furnish a return of his income. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the Assessing Officer is empowered to 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 section 147.

6. *The effect of Explanation 3 which was inserted by the Finance (No. 2) Act of 2009 is that even though the notice that has been issued under section 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. The reasons for the insertion of Explanation 3 are to be found in the Memorandum explaining the provisions of Finance (No. 2) Bill of 2009. The Memorandum treats the amendment to be clarificatory and contains the following Explanation :*

"Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148."

7. *In order to appreciate the reasons for the amendment inserting Explanation 3, it would be necessary to advert to some of the judgments of the High Courts, prior to the amendment.*

The Punjab and Haryana High Court, in its decision, in [Vipan Khanna v. Asstt. CIT \[2002\] 255 ITR 220](#) dealt with the question as to whether, after initiating proceedings under section 147 on the ground that the petitioner had claimed depreciation at a higher rate, the Assessing Officer would be justified in launching an inquiry into issues which were not connected with the claim of depreciation. This question was answered in the negative.

A Division Bench of the Kerala High Court held in [Travancore Cements Ltd. v. CIT \[2008\] 305 ITR 170¹](#), that upon the issuance of a notice under section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment, or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated and which came to his knowledge during the course of the proceedings. The Division Bench held that in respect of an issue which is totally unconnected to the basis on which the Assessing Officer formed a reason to believe that income escaped assessment and issued a notice under section 148, it was open to him to issue a fresh notice by following sub-section (2) of section 148 with regard to the escaped

income which came to his knowledge during the course of the proceedings. The Kerala High Court held as follows :

". . .The Assessing Officer gets jurisdiction under section 148 to assess or reassess the income which has escaped assessment only after sub-section (2) of section 148 is complied with. The question is whether sub-section (2) of section 148 has to be complied with if any other income chargeable to tax has escaped assessment, or which comes to his knowledge subsequently in the course of the proceedings. In other words, when proceedings are already on in respect of one item in respect of the income for which he had already recorded reasons is it necessary that he should record reasons for assessing or reassessing any of the items which are totally unconnected with the proceedings already initiated. Suppose under two heads, income has escaped assessment and those two heads are inter-linked and connected, the proceedings initiated or notice already issued under sub-section (2) of section 148 would be sufficient if the escaped income on the second head comes to the knowledge of the officer in the course of the proceedings. But if both the items are unconnected and totally alien then the assessing authority has to follow sub-section (2) of section 148 with regard to the escaped income which comes to his knowledge during the course of the proceedings."

Hence, the view of the Punjab and Haryana High Court and the Kerala High Court was that, once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment and

proceeds to issue a notice under section 148, it is not open to him to assess or, as the case may be, reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

8. *Parliament stepped in to correct what it regarded as an incorrect interpretation of the provisions of section 147. The Memorandum explain-ing the provisions of Finance (No. 2) Bill of 2009 states in this background that some courts had held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which reasons have been recorded for reopening the assessment and that it was not open to him to touch upon any other issue for which no reasons have been recorded. This interpretation was regarded by Parliament as being contrary to legislative intent. Hence, Explanation 3 came to be inserted to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2).*

9. *The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section*

148; (iii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.

10. Now the submission of the learned counsel appearing on behalf of the assessee in the present case is that the words "and also" in section 147 postulate that the Assessing Officer may assess or reassess the income which he has reason to believe has escaped assessment together with any other income chargeable to tax which has escaped assessment and which comes to his notice during the course of the proceedings. In other words, unless the Assessing Officer assesses the income with reference to which he had formed a reason to believe within the meaning of section 147, it would not be open to him to assess or reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. On the other hand, it has been urged on behalf of the revenue that even if, during the course of assessment or, as the case may be reassessment, the Assessing Officer does not assess or reassess the income which he

has reason to believe has escaped assessment and which formed the subject-matter of a notice under section 148(2), it is nonetheless open to him to assess any other income which, during the course of the proceedings is brought to his notice as having escaped assessment.

11. *The rival submissions which have been urged on behalf of the revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and", as well as "also" have been used together and in conjunction.*

The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or

reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.

12. In *CIT v. Sun Engg. Works (P.) Ltd.* [1992] 198 ITR 297¹, the Supreme Court dealt with the following question of law in the course of its judgment:—

"Where an item unconnected with the escapement of income has been concluded finally against the assessee, how far in reassessment on an escaped item of income is it open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income?"

The issue which arose before the Supreme Court was whether, in the course of a reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of section 147, as they stood prior to the amendment on 1-4-1989. The Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under assessment". Income is said to have escaped assessment within the

meaning of the section when it has not been charged in the hands of an assessee during the relevant assessment year. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of section 147. The expression "reassess" refers to a situation where an assessment has already been made but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds contemplated by Explanation 1 to section 147. The Supreme Court adverted to the Judgment in *V. Jaganmohan Rao v. CIT [1970] 75 ITR 373* , which held that once an assessment is validly reopened, the previous under assessment is set aside and the Income-tax Officer has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. The Court held that the object of section 147 enures to the benefit of the revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

The judgment in *V. Jaganmohan Rao's case (supra)* dealt with the language of sections 22(2) and 34 of the Act of 1922 while the judgment in *Sun Engg. Works (P.) Ltd.'s case (supra)* interprets the provisions of section 147 as they stood prior to the amendment on 1-4-1989.

13. *The effect of the amended provisions came to be considered in two distinct lines of precedent on the subject. The first line of authority, to which a reference has already been made earlier, adopted the principle that where the Assessing Officer has formed a reason to believe that income has escaped assessment and has issued a notice under section 148 on certain specific issues, it was not open to him during the course of the proceedings for assessment or reassessment to assess or reassess any other income, which may have escaped assessment but which did not form the subject-matter of the notice under section 148. This view was adopted in the Judgment of the Punjab and Haryana High Court in Vipin Khanna's case (supra) and in the judgment of the Kerala High Court in Travancore Cements Ltd.'s case (supra). This line of authority, would now cease to reflect the correct position in law, by virtue of the amendment which has been brought in by the insertion of Explanation 3 to section 147 by Finance (No. 2) Act of 2009. The effect of the Explanation is that once an Assessing Officer has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice under section 148, it is open to him to assess or reassess income in respect of any other issue though the reasons for such issue had not been included in the reasons recorded under section 148(2).*

14. *The second line of precedent is reflected in a judgment of the Rajasthan High Court in CIT v. Shri Ram Singh [2008] 306 ITR 343 . The Rajasthan High Court construed the words used by Parliament*

in section 147 particularly the words that the Assessing Officer 'may 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 section 147. The Rajasthan High Court held as follows :

". . . if is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then, only in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

15. *Parliament, when it enacted the Explanation (3) to section 147 by the Finance (No. 2) Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Explanation 3 to section 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by "Parliament in the form of Explanation 3 consequently provides that the Assessing Officer may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under section 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd.'s case (supra) and of the Punjab & Haryana High Court in Vipin Khanna's case (supra) would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh's case (supra), Explanation 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana High Court in CIT v. Atlas Cycle Industries [1989] 180 ITR 319¹. The decision in Atlas Cycle Industries' case (supra) held that*

the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under section 148 were incorrect or non-existent. The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries' case (supra) and of the Rajasthan High Court in Shri Ram Singh's case (supra) would not be affected by the amendment brought in by the insertion of Explanation 3 to section 147.-

16. *Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the*

formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

17. *We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being*

aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field.

18. *In that view of the matter and for the reasons that we have indicated, we do not regard the decision of the Tribunal in the present case as being in error. The question of law shall, accordingly, stand answered against the revenue and in favour of the assessee. The appeal is, accordingly, dismissed. There shall be no order as to costs."*

4. I adopt their lordship's above detailed discussion *mutatis mutandis* to quash the impugned reopening itself.

All other pleadings on merits stand rendered academic.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 17.04.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 17th April, 2024

VBP/-

Copy to

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

//By Order//

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