

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 3960/MUM/2023 (A.Y: 2011-12)

Manish Rajnarain Goswami Metropolitan CHSL B-6 / B-8, Nargisdas Road Pali Hill, Bandra (W) Mumbai - 400050 PAN: ADDPG7655D	v.	Income Tax Officer – 16(1)(3) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vijay Mehta
Department Represented by	:	Smt Mahita Nair
Date of conclusion of Hearing	:	16.04.2024
Date of Pronouncement	:	19.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal filed by the assessee is preferred against the order dated 23.10.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2011-12.

2. The grievance of the assessee read as under: -

"1. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not accepting the appellant's contention that notice u/s 148 of the Income Tax Act, 1961 is bad in law.

2. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not accepting the appellant's contention that Ld AO is not justified in reopening the case u/s 147 of the Income Tax Act 1961.

3. On the facts and circumstances of the case and in law, the commissioner of Income Tax (Appeals) erred in confirming that addition of income on account of unexplained credit u/s 68 of the Income Tax of Rs. 15,000,000/-.

4. The orders of the Ld CIT (A) and the Ld AO are bad in law and on facts.

5. The Appellant craves leave to add, alter or amend aforesaid grounds of appeal."

3. The first challenge is in respect of reopening of assessment by the issue of notice under section 148 of Income-tax Act, 1961 (in short "Act"). Since this goes to the root of the matter, we decide to adjudicate it first.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of ITAT Rules.

5. Facts on record show that, the assessee electronically filed his return of income on 30.07.2011 declaring a total income of ₹.6,63,100/-.

The return was processed under section 143(1) of the Act.

6. On the basis of the information received from Asst. DIT- (Investigation), Unit – 2(1), Kolkata, the Assessing Officer was informed that large value of cash was deposited into several bank accounts maintained with ICICI Bank which were immediately transferred to other bank accounts.

7. Taking a leaf out of the aforementioned information the Assessing Officer issued notice dated 28.03.2018 under section 148 of the Act.

The said notice read as under: -

"Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

*Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year **2011-12** has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.*

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 25 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the Pr.CIT-16, MUMBAI."

8. The reasons for reopening the assessment read as under: -

"Sub.: providing of Reasons for reopening u/s 148 in your case.

Ref: your letter dated 02/01/2018.

.....

Kindly refer to the above.

Reasons for reopening u/s 148 for A.Y.2011-12 is provided as under.

In this case, information was on record through the Asst. DIT [Inv.], Unit-2(1), Kolkata, vide letter dated 28-02-2018 received on 19.03.2018 that Shri Manish Rajnarain Goswami who is assessed in this charge has entered into a financial transaction during F.Y. 2010-11. As per letter of Asst. DIT [Inv.], Unit-2(1), Mumbai the Department has received information from credible source that "Large value of cash" was deposited into the several bank accounts maintained with ICICI bank following by immediate transfer to other bank accounts.

2.1. During the course of investigation, it is seen that there were several bank accounts maintained with ICICI bank in which high value of cash were deposited regularly [just below Rs. 10,00,000] followed by transfer to other bank accounts through RTGS/TRF. While Investigation, the Asstt. DIT also observed several additional bank accounts in different banks where large value of cash were also deposited regularly and from which the funds were coming from the accounts held in ICICI bank. The Asst. DIT [Inv.], Unit-2(1), Kolkata has elaborately explained the modus operandi vide his letter dated 28.02.2018 by way of "Layer-I accounts', Layer-II Accounts [Part-A, Layer A/1, Layer-A/2, Layer-A/3], Part-B, Layer-B/1, Layer-B/2, Layer-B/3, Layer-B/4. [part C & E, Layer CE/1, Layer CE/2, Layer-CE/3 and Layer-CE/4], [Part-D, Layer-D/1 Layer-D/2, Layer-D/3]. It is further observed that the most of the Companies [in whose name accounts were opened] are in the list of shell Company declared by Government. The bank accounts are used for rotating the funds has been declared as shell company.

2.3 In view of the above facts and circumstances and in the light of detailed modus operandi explained by the Asst. DIT [Inv.], Unit-2(1), Kolkata, it is evident that several beneficiaries brought back unaccounted money into their books of accounts using banking channel after layering the funds through bank accounts of inexistence entity and shell company. The bank statements of the company mentioned I the report has been analysed and a "cash trail / money trail" tracing out several beneficiary has been prepared, wherein it is found that one beneficiary namely Shri

Manish Rajnarain Goswami has also received alleged funds. The details of alleged funds received by the assessee are as given below: -

<i>No.</i>	<i>Transferee company / Shell Company</i>	<i>F.Y.</i>	<i>Amount</i>
<i>1</i>	<i>Wheelers Developers Pvt., Ltd.,</i>	<i>2010-11</i>	<i>1,50,00,000</i>

4. In view thereof there is basis of reasons to believe that there is an escapement of income of Rs.1,50,00,000/-. Therefore, this is a fit case for reopening under section 147 of the I.T. Act, 1961.

5. In this case a return of income was filed for the year under consideration but no scrutiny assessment under section 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings under section 147 of the Act to believe which has been recorded in para 2 above.

6. It is pertinent to mention here that the assessee has filed return of income for the year under consideration but as stipulated under section 2[40] of the Act was made and the return of income was processed under section 143(1) of the I.T. Act. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

7. In this case more than four years has lapsed from the end of assessment year under consideration, hence necessary sanction to issue the notice under section 148 has been obtained separately from Pr. Commissioner of Income Tax as per the provisions of section 151 of the Act.

8. Notice u/s 148 was issued with prior approval of Pr.Commissioner of Income Tax-16, Mumbai."

9. The information which was received from ADIT (Investigation), Kolkata is placed at Page Nos. 11 to 18 of the Paper Book. We have carefully perused the said report of the investigation wing. We find that there is a reference of 18 parties having bank accounts in ICICI bank

wherein substantial cash was found to be deposited. There is no mention of any transaction of the assessee. The report further says that the cash which was deposited by the 18 parties in their respective bank accounts with ICICI bank was transferred to five parties. We do not find any mention of the assessee in this list of five parties. Thereafter the report mentions the transfer of funds from the bank accounts of the five parties to the bank accounts of other parties again the name of the assessee is nowhere in the list. Then the list of parties who are the beneficiaries of the transfer of funds is given but the name of the assessee is nowhere in the entire list of beneficiaries. There is a general remark "other beneficiaries as per Annexure A". The Assessing Officer has presumed that under the head "Other Beneficiaries" the name of the assessee must have been mentioned. It is pertinent to mention here that the assessee has shown advance against property from Wheelers Developers Pvt Ltd., at ₹.1.50 crores which is the bone of contention for the reopening of the assessment.

10. We have given a thoughtful consideration to the observations / findings of the Assessing Officer / Ld. CIT(A). We are of the considered opinion that the entire reopening is based on the assumption that assessee has been benefited by the impugned / alleged colorable

transactions but without any backing of any demonstrative evidences to show that the assessee has purchased cheque from Wheelers Developers Pvt Ltd., by paying cash to it. We find that the entire process of reopening is based upon only and only the investigation report from ADIT (Investigation), Kolkata. We are of the considered view that the Assessing Officer has not applied his mind before issuing notice under section 148 of the Act. Assuming, yet not accepting, that the assessee is a beneficiary, then we are unable to understand how a loan amount can be a matter of escapement of income under section 148 of the Act for the simple reason that loan amount is a capital receipt and the only liability cast upon the assessee is to discharge the onus cast upon it by the provisions of section 68 of the Act. We find that the conclusions of the Assessing Officer are at best the reproduction of the conclusions in the investigations report and indeed it is a "borrowed satisfaction".

11. The Hon'ble Delhi High Court in the case of Meenakshi Overseas Pvt Ltd., [395 ITR 677] 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."

12. The Hon'ble Delhi High Court in another case of PCIT v. RMG [396 ITR 5] dealt with identical issue and held as under: -

"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".

13. Incidentally it would be apt to refer to the enquiry made by the Assessing Officer after reopening the assessment in the light of the aforementioned observations of the Hon'ble Delhi High Court. Interestingly, the Assessing Officer issued notice under section 133(6) of the Act to Wheelers Developers Pvt Ltd., and the reply given by Wheelers Developers Pvt Ltd., read as under: -

"This has reference to your letter NO ITO-16(1)(3)/reopen/2018-19 dated 18.06.2018 in the case of Shri Manish Rajnarain Goswami and our reply stand as under.

1. *We are enclosing herewith a confirmation with Shri Manish Rajnaraian Goswamy for the period from 30.03.2011 to 11.06.2014 duly signed.*
2. *Bank statement reflecting the transaction made with Shri Manish Rajnaraian Goswamy.*
3. *As stated by you that we have deposited cash in bank to make the above transaction of Rs. 1,50,00,000.00 (One Crore Fifty lakhs) is incorrect. This can be easily verified with the bank statement enclosed herewith for that date. You will observe that we have received payment from Korp Securities Limited against sale of Shares and the said amount was paid to Shri Manish Rajnaraian Goswamy.*
4. *Copies of PL A/c and Balance sheet for the year ending 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014 & 31.03.2015 is enclosed herewith alongwith the ITR Acknowledgement."*

14. The aforesaid reply of the party in itself proves that the information received by the Assessing Officer is factually incorrect. Therefore, the same cannot be any basis for a valid reopening.

15. Let us examine the validity of reopening from another angle, the assessee raised objections to reopening and the objections of the assessee read as under: -

"I am in receipt of your notice u/s. 148 of the Income Tax Act 1961, dated 18/6/2018 along with reasons recorded for reopening for the A.y. 2011-12. I submit as under:

1. *I request Your Honor to kindly provide me the copy of sanction given by Pr. Commissioner of Income Tax after being satisfied of the reason recorded by your goodself that my case is fit for issue of notice u/s. 148 of the Act for reopening the case*
2. *I understand from the reasons provided by your goodself that you have received information from Asstt DIT (inv), unit*

2(17) Kolkata that Wheelers developers pvt ltd has deposited large value of cash into several bank accounts maintained with ICICI bank followed by transfer to other accounts.

You are requested to provide me copy of all such bank statements.

I am Informed by Wheelers developers pvt ltd that company has not deposited any cash before transfer of amount to me. Money was deposited from Korp Securities Limited against sale of securities, I enclose copies of the bank statement and letter dated 16th july, 2018 for your kind perusal.

I object to the said reassessment since there does not appear to be any independent finding of escapement by your goodseif and there is merely a reliance on the directions of the Asst. DIT (Inv), Unit -2 (1), Kolkata. The law on reassessment is clear to the effect that an assessment can be reopened only if the Assessing Officer has reasons to believe that income of the assessee has escaped assessment. The formation of this belief is a jurisdictional condition and its absence can vitiate the re-assessment proceedings.

without prejudice to above I further submit that case is reopened beyond the limitation period of four years I have disclosed all the facts while filing income tax return.

3. I object to the said reassessment proceedings and request you to kindly provide us with copy of all the evidences that is to used against me. Treat these as my objections to the reassessment and kindly deal with these before proceeding with the said assessment.

4. I also request you to give us opportunity to file further objections based on material provided by you. In case your goodself is going to rely on the evidences provided by Asst. DIT(Inv) Kolkata collected on Wheelers Developers Pvt Ltd, you are requested to kindly provide me all such evidences and statements taken during search /survey and also provide us an opportunity to cross examine concerned persons.

In view of the above I request Your Honor to drop the reassessment proceedings and oblige."

16. Order disposing the objections raised by the assessee read as under: -

**"ORDER DISPOSING OFF THE OBJECTIONS RAISED ON
THE RE-OPENING OF THE ASSESSMENT U/S. 148 OF
THE I.T. ACT**

Kindly refer to the above wherein you have been submitted reply to this office letter dated 18/06/2018.

2. In your submission, you have stated that you are required the documents which are the basis of reopening of your assessment for the year under consideration and without that the objection cannot be filed without' proper examination of the same.

2.1 In this respect, this is to submit that your case has been reopened after due approval of the Pr. CIT-16, Mumbai as per the provisions of section 151(1) of the I.T. Act, 1961 and after satisfying the reasons recorded by the Assessing officer. As required by you, copy of which is also enclosed herewith.

2.2. In respect of copies of documentary evidences/statements recorded or any other information found/recorded in search on which reliance is placed for reopening of your assessment is concern, this is to inform you that 'at the initiation stage, what is required to the Assessing Officer for reopening the case is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on record which a reasonable person could have formed a requisite belief. This fact was also confirmed by the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers P. Ltd. [291 ITR 500].

2.3 Further, in the case of Raymond Woollen Mills Ltd reported in 236 ITR 34, the Hon'ble Supreme Court has also held that at the stage of initiation of reassessment, the only thing required to be seen by the Assessing officer is that whether there is any prima facie material on the basis of which

a case can be reopened. It is further held that the sufficiency or correctness of material is not a thing to be considered at this stage.

2.4 In respect of the bank statement and copy of letter from wheelers developers Pvt Limited, it is to submit that during the course of assessment proceedings, you will be afforded adequate opportunity to explain your case and the resultant order will be passed on an objective appraisal of the evidence available and details/evidences submitted thereon by you.

3. In view of the above discussion, objections raised by the assessee for reopening of the case u/s.147 are hereby disposed of. You are accordingly required to submit details as per notice u/s.143(2) & 142(1) enclosed."

17. It can be seen from the above that the objections raised by the assessee has not been fully disposed by the Assessing Officer. The Hon'ble Jurisdictional Bombay High Court in the case of KSS Petron Private Ltd. v. ACIT in Income Tax Appeal No. 224 of 2014 dated 03.10.2016, had an occasion to consider the following substantial question of law: -

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in restoring the issue to the Assessing Officer after having quashed/ set aside the order dated 14th December, 2009 passed by the Assessing Officer without having disposed of the objections filed by the appellant to the reasons recorded in support of the re-opening Notice dated 28th March, 2008.?"

18. The Hon'ble High Court answered as under: -

"8. We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by

the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on re-opening notice, without jurisdiction? (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the assessee by reviving stale/ old matters.

9. *In fact, to ensure that re-opening notices are disposed of, expeditiously the parliament itself has provided in Section 153(2) of the Act a period of limitation within which the Assessing Officer must pass an order on the notice of re-opening within one year from the end of the financial year in which the notice was issued. In fact, Section 153 (2A) of the Act as in force at the relevant time itself provides that an order of fresh Assessment, consequent to the order of Tribunal under Section 254 of the Act, would have to be passed within one year from the end of the financial year in which the order under Section 254 of the Act, was passed by the Tribunal and received by the Commissioner of Income Tax.*

10. *The Director of the appellant has filed an affidavit dated 19th September, 2006. In the affidavit, it is stated that consequent to the impugned order of the Tribunal dated 14th August, 2013, the Assessing Officer has not passed any order of re-assessment. Time was granted on the last occasion to enable the Respondent to respond to the affidavit dated 19th September, 2006 of the Director of the Appellant-Company. The Respondent is unable to dispute the facts stated in the affidavit dated 19th September, 2016 filed by the Director of the Appellant-Company. The time to pass a order on the notice dated 28th March, 2008, even consequent to the impugned order of the Tribunal, has lapsed.*

11. *Therefore, on the above facts and law, the substantial question of law is answered in the negative i.e; in favour of the Appellant-Assessee and against the Respondent-Revenue."*

19. Considering the reopening from all possible angles, we are of the considered view that the impugned notice issued under section 148 of the Act is bad in law and accordingly, we set-aside assessment order framed pursuant to the said notice is quashed. The appeal of the assessee is allowed Qua Ground No. 1 and since the assessment order has been quashed we do not find it necessary to dwell into the merits of the case.

20. Before parting, the Ld. DR has placed strong reliance on the decision of the Hon'ble Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd., [261 ITR 500]. We are of the considered view that the facts of the case in hand are entirely different from the facts considered by the Hon'ble Supreme Court. Therefore, the said decision of the Hon'ble Supreme Court would do no good to the revenue.

21. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 19th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 19.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum