

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. G.S. PANNU, VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.331/Del/2020
Assessment Year: 2011-12

Rajesh Goyal FF, Plot No.32, Road No.43, West Punjabi Bagh, New Delhi PAN No.AALPG2490F	Vs.	DCIT CC-14 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Salil Aggarwal, Sr. Advocate Sh. Shailesh Gupta, Advocate Sh. Madhur Aggarwal, Advocate
Respondent by	Ms. Sapna Bhatia, CIT DR

Date of hearing:	26/03/2024
Date of Pronouncement:	28/05/2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has filed the present appeal against the order dated 18.11.2019 under Section 250 of the Income Tax Act, 1961 (hereinafter referred as the "Act") passed by Commissioner of Income Tax (Appeals)-26, New Delhi (here in after referred as 'CIT(A)') arising out of Assessment order passed by the DCIT-1, CC-14, New

Delhi (hereinafter referred as the "AO") under Section 143 (3)/147 dated 24.12.2018.

2. The facts in brief are that assessee had filed return of income declaring total income of Rs.1765140/- on 29.07.2011 as an individual earning income from house property, capital gain and income from other sources. The assessment under Section 143 (3) of the Act was completed on 26.02.2014 at returned income. Subsequently Information was received from the ADIT, Unit-4 (3), New Delhi vide F.No. ADIT (Inv.) / Unit-4 (3)/2017-18/59 dated 12.03.2018 that the assessee Sh. Rajesh Goyal had taken the benefit of Long Term Capital Gain (exempted income) of Rs.14,97,39,733/- on account of sale of equity shares of M/s. Shree Securities Limited. As per the Kolkata Wing of Investigation, the Shree Securities Limited was an accommodation entry provider company. Considering all these material/ information in totality as was enough credible material on record the AO record 'reason to believe' u/s 148 of the Act, that at least an amount of Rs.14,97,38,733/- was not disclosed in his income by the assessee during the F.Y. 2010-11 relevant to A.Y.2011-12. Hence, it was found to be fit case for initiating proceeding u/s. 147/148 of the Act.

3. During the re-assessment, examining the *modus operandi* of the sham transactions involving sale of equity shares of M/s. Shree Securities Limited, as done by Investigation Wing at Kolkata

assessee was show caused for which the assessee had filed response as under :-

“In this regard we would like to submit that the assessee has earned and claimed exempt income of Rs. 14,97,39,733/-in his return of income filed for the assessment year under consideration. Copy of relevant portion of income tax return showing the details of exempt income earned has already been submitted vide objection filed on 10/12/2018. Details of exempt income are as follows-

<i>S.No.</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Long Term gain on sale of shares</i>	<i>14,96,76,885/-</i>
<i>2</i>	<i>Dividend income</i>	<i>38,934/-</i>
<i>3</i>	<i>PPF Interest</i>	<i>23,914/-</i>
	<i>Total</i>	<i>14,97,39,733/-</i>

From the above table it is quite evident that the assessee has earned and claimed long term capital gain of Rs. 1436,76,8853/- as exempt income instead of Re 14,97,39,733/- as alleged by your good self. Copy of PPF passbook showing the amount of interest earned on PPF and copy of relevant portion of bank statement highlighting the amount of dividend received has already been submitted vide objection fled on 19/12/2018. It is further

submitted that out of total amount of long term capital gain of Rs. Rs. 14,96,76,885/- claimed as exempt, an amount of Rs. 14,84,00,000/- was earned on sale of shares of Shree Securities Limited and balance amount of capital gain of Rs. 12,76,885/- was earned on sale of shares of Axis Bank, HDFC Bank, ICICI Bank, Punjab National Bank and State Bank of India.

As regards shares of Shree Securities Limited, we would like to submit that the assessee has purchased 14000 shares of M/s Himalaya Trexim Limited during the financial year 2008-09 through proper banking channel. Copy of bill issued by seller of the shares along with relevant portion of bank statement highlighting the amount paid has already been submitted vide objection filed on 10.12.2018. Further, in pursuance of scheme of amalgamation between M/s Himalayan Trexim Limited and other company with M/s Shree Securities Limited, the assessee has received 560000 Equity shares of Shree Securities Limited against 14000 Equity share of M/s Himalaya Trexim Limited Copy of letter of allotment dated 07/03/2009 issued by M/s Shree Securities Limited in favour of assessee alongwith copy of demat transaction statement containing credit of 560000 shares has already been submitted vide objection filed on 10/12/2018 We would further like to submit that assessee has purchased the shares of Axis Bank, HDFC Bank, ICICI Bank, Punjab

National Bank und State Bank of India through proper banking channel during the financial year 2008-09.

It is further submitted that the assessee has sold the said shares on recognized stock exchange through his broker Le. M/s Response Securities Private Limited during the financial year 2010-11 and also paid security transaction tax on sale of M/s. Shree Securities Limited reflecting security transaction tax paid on sale of shares has already been submitted vide objection filed on 10/12/2018.

It is further submitted that the assessment proceedings under section 143(3) of the Income Tax Act, 1961 has been also completed in the case of the assessee for the assessment year under vide order dated 26/02/2014. It is further submitted that the assessee has already submitted above mentioned & other details and documents in respect of sale & purchase of shares during the course of assessment proceedings under section 143(3) of the Income Tax Act 1961 vide reply dated 28/01/2014. Copy of reply filed during the course of assessment proceedings has already been submitted vide objection filed on 10/12/2018.

It is further submitted that the assessment proceedings under section 143(3) of the Income Tax Act, 1961 has been also completed in the case of the assessee for the assessment year under consideration vide order dated 26/02/2014. It is further submitted that the assessee has already submitted above mentioned & other details and documents in respect of sale & purchase of shares during the course of assessment proceedings under section 143(3) of the Income Tax Act, 1961 vide reply dated 28/01/2014. Copy of reply dated 28/01/2014 filed during the course of assessment proceedings under section 143(3) of the Income Tax Act, 1961 has already been submitted vide objection filed on 10/12/2018. Since, the assessee has earned and claimed amount of Rs: 14,97,39,733/- as exempt income as per provisions of the Income Tax Act, 1961 in his return of income filed for the assessment year under consideration, the amount of Rs. 14,97,39,733/- claimed by assessee as exempt income should not be treated as non-genuine.

4. The AO was not satisfied and made the addition of Rs.14,97,39,733/-. The assessee filed appeal before the CIT(A) which was dismissed by sustaining the reasons of the AO for which the assessee is in appeal before us by raising the following grounds :-

“1. That on the facts and in the circumstances of the appellant's case, the Ld. Commissioner of Income Tax (Appeal) (hereinafter referred as "CIT(A)"), erred in facts & law in dismissing the appeal in absence of any details / documents on records being no reasonable opportunity provided to the appellant to present his case by serving notice in a proper manner. Hence, opportunity of being heard should be given to the appellant for the sake of natural justice.

2. That on facts and circumstances of the case, Ld. CIT(A) has erred in law in passing the appellate order without adjudicating the Ground of Appeal Nos. 1 to 11 raised by the appellant by passing the speaking order in the interest of justice.

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in upholding the addition made by AO of Rs.14,97,39,733/- (actually Rs. 14,84,00,000/-) u/s 68 of the Act by relying upon the judicial pronouncements which are distinguishable on the facts of the case.

Without prejudice to ground of appeal No. 1 to 3

4. That on facts and circumstances of the case, Ld. CIT(A) has erred in law in upholding the reopening u/s 147 valid in a arbitrary and mechanical manner without appreciating that

(i) jurisdiction to reopen case is barred by limitation as the case of appellant was already assessed u/s 143(3) and there is no failure on part of appellant to disclose fully and truly all material fact necessary for its assessment.

(ii) reopening of the assessment proceedings is merely on the basis of "change of opinion" on the same subject matter which have already been assessed u/s 143(3)

(iii) reopening of the assessment proceedings is merely on the basis of doubt suspicion conjecture and surmises without there being any cogent and definite material on record

(iv) reopening of the assessment proceedings is merely on the basis of information received from ADIT, Unit-4(3), New Delhi and DDIT (Inv.)-1, Faridabad without making any independent enquiry and judicious application of mind

(v) reopening of the assessment proceedings is made without providing the copies of information relied upon by the Ld. AO for its rebuttal even though specifically requested by the appellant.

5. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in disposing of appeal without giving any decision on the ground that no cross- examination of Shri Ajay Anand Pugalia, alleged entry operator, whose statement relied upon by the Ld. AO, provided to the appellant even though specifically requested by the appellant and the order passed by AO is bad in law and lable to be quashed.

6. That on the facts and circumstances of the case, the Ld. CIT(A) has erred both in law and on facts in upholding the addition made by AO u/s 68 of the Act treating the exemption claimed of long term capital gains of Rs. 14,97,39,733/- (actually Rs. 14,84,00,000/-) u/s 10(38) of the Act as non genuine without appreciating the fact

that all the conditions laid down for claiming exemption of LTCG u/s 10(38) of the Act is duly complied by the appellant.

7. That on the facts and circumstances of the case, the learned CIT(A) has erred in law in upholding the addition made by AO of Rs.14,97,39,733/- (actually Rs. 14,84,00,000/-) u/s 68 of the Act on basis of doubt, suspicion, conjecture and surmises by generalizing the modus operandi based on his own assumption and presumption that appellant has claimed fictitious exemption of LTCG on sale of shares of Shree Securities Limited without bringing any material evidence on record in support of his contention.

8. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in upholding the addition made by AO of Rs. 14,97,39,733/- (actually Rs. 14,84,00,000/-) u/s 68 of the Act merely relying upon the statement of Shri Ajay Anand Pugalia, alleged entry operator recorded u/s 131 ignoring the fact that he nowhere stated that he has provided accommodation entry to appellant in form of fictitious LTCG.”

5. Heard and perused the records. The primary contention of the Ld. Senior Counsel for the appellant is that the notice u/s. 148 suffers from factual inaccuracies and based on fishing and roving enquiry. It was submitted that in the objections filed against reopening all the valid grounds were raised but same were not considered. The Ld. Senior Counsel submitted that the reasons were recorded merely relying Investigation Wing report. It was pointed out that AO has relied statement of Ajay Anand Pugalia alleged entry operator but whose statement was not on record nor

confronted to assessee. It was submitted that there was no tangible material except the letter from Investigation Wing. The Ld. Senior Counsel submitted that approval of PCIT was also mechanical.

5.1 The Ld. Senior Counsel submitted that as the opening was beyond four years the proviso to section 147 was applicable and the reasons should have disclosed as to how assessee had failed to make full and true disclosure of material facts. Ld. Senior Counsel submitted that during the assessment proceedings, which have culminated in the assessment order dated 26.02.2014, the assessee was made to give details of the transactions of capital gains by notice dated 18.09.2012 and by submissions dated 15.01.2014, 28.01.2014 and 26.02.2014 details were furnished to the AO. Thus, there was no failure on the part of the assessee to give a true disclosure of the material facts.

6. The Ld. DR however, relied the findings of Ld. Tax Authority below.

7. Appreciating the material before us and the contentions as raised we initiate the discussion by first taking up ground no. 4 and 5, which question the very exercise of jurisdiction u/s 147 of the Act. As we go through the copy of the reasons recorded for reopening made available at page -240 to 243 of the paper book. It comes up that the AO has merely relied the details collected by the Investigation Wing and made an observations that the long term

capital gain claimed by the assessee “does not seem genuine”. Such a general observations seems to be based not on any tangible material but merely on conjectures.

8. It further can be seen from the reasons recorded that the foundation of the reopening is based on the alleged transactions of the assessee with M/s. Rajesh Projects (India) Pvt. Ltd. without bringing forth as to what specific transactions were made by the assessee. In fact the transaction under scanner of sale of shares has no concern with M/s. Rajesh Projects India Private Limited.

9. The Ld. Senior Counsel has even pointed out that in the reopening Assessing Officer mentions analysis of the bank statements from the payment of Rs.11,95,00,000/-was made to UKG Securities Pvt. Ltd. and Rs.12,62,20,636/- received from M/s. Response Securities Pvt. Ltd. on account of sale of equity shares of M/s. Shree Securities Limited and this account is of M/s. Rajesh Projects India Private Limited and not of the assessee.

10. A glaring discrepancy that comes up from the perusal of the reopening reasons is that in the reasons shown to be recorded on 22.03.2018 statement of one entry operator Ajay Anand Pugalia was relied for conclusion that M/s. Shree Securities Pvt. Ltd. is an accommodation entry company. Then on page no. 248 of the paper book, assessee has placed on record a copy of letter dated 13.08.2018 written by the Assessing Officer addressed to

Investigation Wing wherein reference has been made to the Investigation Wing's earlier letter dated 12.03.2018, which stands mentioned in the reasons and is foundation for reopening and in reference to letter dated 12.03.2018, by this letter dated 13.08.2018, the Assessing Officer has actually called the Investigation Wing to forward the copy of statement of alleged entry operator Ajay Anand Pugalia. Thus what can be inferred is that at time of recording the reasons this statement was not available and yet AO, mentions that this statement is relied for reopening.

11. Furthermore as we go through the reasons recorded it comes up that the Assessing Officer seems to be aware of the fact that reopening relates to A.Y.2011-12 which is beyond four years for which it is necessary to have conclusion drawn that assessee has not fully or truly disclosed the material facts necessary for assessment leading to escapement of income. In this context the AO by observing that assessee has not fully and truly disclosed material facts, has observed that;

“it is true that the assessee has filed a copy of annual report and audited P&L A/c and balance sheet alongwith return of income where various information / material were discussed.”

12. Now, as a matter of fact during assessment concluded on 26.02.2014, the assessee has categorically stated that assessee does not maintain books of accounts and as such the same were never filed. So there was no question to examine them and conclude that

there was there was failure to fully and truly disclose material facts by the assessee. In this context itself it can be observed that the AO while recording the reasons has mentioned that the assessee has failed to provide details of STT, DMAT and purchase of shares while infact these details were furnished by the assessee during the original assessment proceedings as established by the detailed replies filed by the assessee in response to notice u/s. 143 (2).

13. The aforesaid discussion makes us reach to only one conclusion that at the time of recording reasons there was absolutely no application of mind by the AO and the reopening was on the basis of merely the information received from the Investigation Wing without there being any other new tangible material whatsoever. In similar circumstances Hon'ble Delhi High Court in the case of **Signature Hotels Private Limited Vs. ITO (2011) 338 ITR 51 (Delhi)**, Judgment relied by Ld. Senior Counsel, observed in para-4 as follows :-

"4. The aforesaid section is wide but it is not plenary. We have to consider and examine the crucial expression "reason to believe" used in the said Section. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence of belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record,

which was available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/ material available with the Assessing Officer. However, as we are dealing with initiation of proceedings, it is not necessary that the material should conclusively prove the escapement. The "reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and do not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer."

14. Reliance can also be placed on the judgment of Hon'ble Delhi High in the case of **PCIT Vs. Meenakshi Overseas (2017) 82 taxmann.com 300 (Delhi)** wherein Hon'ble Delhi High Court has discussed the legal position of reopening of assessment with particular reference on the basis of information received from Investigation Wing and the Hon'ble Delhi High Court came to the conclusion that the reasons were infact in the form of conclusions "one after the other" and the satisfaction arrived by the AO was "borrowed satisfaction" and at best "reproduction of the conclusion in the investigation report". The same is the case before us. The crucial link between the information made available to the AO and formation of belief is absent.

15. Further as we go through the notice u/s. 143 (2) of the Act issued by the AO on 18.09.2012 during the original assessment and the submissions to same made available at page No.5 to 7 and 46 to

49 and 52 to 55 along with annexure, we are satisfied that assessee had furnished complete details of long term capital gains as exempt u/s. 10(38) of the Act along with all documents sought by the Assessing Officer including contract note, purchase bill, allotment letter. Thus, there is no justification in the observations of the AO at the time of reopening that there was deficit on the part of the assessee to disclose true and correct facts in regard to the issue.

16. We also take into consideration the fact that during the re-assessment proceedings assessee had requested for giving an opportunity of cross-examination of Ajay Anand Pugalia, which somehow forms basis of additions on merits, but no such opportunity was given quite likely for the reasons that even the AO did not have access to the statement of Ajay Anand Pugalia at the time of reassessment.

17. In the light of aforesaid discussion we are inclined to hold that the reopening is not in accordance to settled proposition of law and thus the exercise of the jurisdiction u/s 147 read with 148 of the Act is vitiated. The ground no 4 and 5 are sustained. The appeal is allowed and as a consequential effect, impugned assessment is quashed.

Order pronounced in the open court on 28.05.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:-28.05.2024