



IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1070/PUN/2024
Assessment Year : 2017-18

Suhas Hirachand Mehta
At Post-Jalgaon, Dapoli,
Ratnagiri-410571.
PAN: AKSPM5272G.

..... Appellant

V/s

The Income Tax Officer,
Ward-1, Ratnagiri.

..... Respondent

Appearances

Assessee by : None for the Assessee

Revenue by : Mr Umashankar Prasad ['Ld. DR']

Date of conclusive Hearing : 24/07/2024

Date of Pronouncement : 24/07/2024

ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal is filed against the DIN & Order No. ITBA/NFAC/S/250/2023-24/1062941519(1) dt. 19/03/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the National Faceless Appeal Centre ['NFAC' hereinafter] which in turn arisen out of order of assessment passed u/s 147 r.w.s. 144 of the Act by the National Faceless Assessment Centre ['AO / NeAC' hereinafter] anent to assessment year 2017-18 ['AY' hereinafter];

2. The case was called twice, none appeared at the bequest of the appellant, in absence of any application seeking adjournment and none prosecution, after the primary briefing



from the Ld. DR we deem it fit to proceed & adjudicate the issue *ex-parte* u/r 24 of ITAT-Rules, 1963, ergo proceeded accordingly.

3. We have heard the Ld. DR and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position.

4. We note that, the assessee is an individual who deposited a cash of ₹6,74,000/- into his bank account maintained with 'Vidharbha Konkan Bank' ['VKB' hereinafter] during the period of demonetisation. For the year under consideration the assessee filed his return of income on 14/10/2017 declaring total income of ₹2,98,930/-. The record suggests that the case of the assessee was not subjected to scrutiny under regular assessment scheme. However, within a period of four years, the Ld. Jurisdictional AO initiated re-opening proceedings by notice dt. 31/03/2021 u/s 148 of the Act and called upon the assessee to explain nature & source of cash deposits made by him during the course of demonetisation. The case of the assessee then transferred to Faceless Scheme which issue further notices u/s 142(1) of the Act. In the event of non-compliance, the Ld. NeAC framed the assessment to the best of its judgement u/s 144 of the Act by bringing to tax the entire amount of cash deposited as unexplained money u/s 69A of the Act vide assessment order dt. 26/03/2022. When matter travelled up in appeal, the Ld. NFAC confirmed the addition and upheld the action of Ld. NeAC for assessee's failure to substantiate the claim of having earned such balance of cash out of business transactions by placing on record evidential & cogent documents like sales register, purchase register, cash book, month wise reconciliation of cash and bank deposits etc. in respect of his nature of business. While doing so the Ld. NFAC relied on '*Shashi Garg Vs PCIT*' [2020, 113 taxmann.com 93 (SC)] where the addition u/s 69A was upheld for not discharging the burden of proof by assessee with cogent evidence to the satisfaction of tax authorities.



5. Without touching merits of the case, we note that, information received through AIR etc., stating cash deposits of ₹6,74,000/- in a bank account by the assessee alone formed a basis for invocation of reassessment jurisdiction u/s 148 of the Act. It is glaringly evident on record that, the action of re-opening amply demonstrates lack of enquiry by the Ld. AO before exercising the jurisdiction to reopen the case u/s 148 of the Act. Further the information relating to cash deposit into bank account received through AIR was very much available on record during the unexpired period of regular assessment and hence such information in our considered view cannot *ispo-facto* part-take the character of fresh material giving rise to form a basis for forming an opinion in assuming jurisdiction u/s 148 of the Act. Conversely any information coming to light upon the expiry of period within which regular assessment u/s 143(3) of the Act can only trigger issuance of notice u/s 148 of the Act and can elementarily support the invocation of reassessment proceedings subject to forming of belief thereon upon conclusive enquiry thereunto.

6. In the present case, we prima-facie find that, the reason to believe that the cash deposit escaped assessment is found to have formed without any enquiry into the transaction reported in AIR and without bringing any deprecative/cogent material to showcase that the said bank deposits *per-se* represents escaped income of the assessee. Further in the absence of any material *vis-à-vis* findings of the Ld. AO suggesting that, information was indeed duly analysed, and required enquiries were conducted before forming a belief to invoke the reassessment jurisdiction, the reopening of the same u/s 148 of the Act is found misplaced. In our considered view, re-opening in the present case without first inquiring into and forming belief for recording reasons can well be treated to be reason to suspect which is not sufficient for reopening the case u/s 148 of the Act. While coming to record reasons to believe escapement merely relying upon financial information cannot be treated as good enough to reopen the case. There can be multiple



capital sources of cash deposits available to any assessee and unless and until it is brought out in the reasons as to how such cash deposit represents escaped income or investment same cannot give justification to reopen the case u/s 148 of the Act.

7. It is a well settled law that, the reasons for formation of belief must have rational connection with or relevant bearing on the formation of the belief. Whereas in the absence of nexus between prima facie inference arrived in assuming/recording reasons and information *vis-a-vis* material much less tangible, credible, cogent and relevant to form a reason to believe could not be a basis to assume jurisdiction, hence cannot be relied upon. Thus, in our considered view the impugned re-opening proceedings initiated were purely based on surmises, conjectures and suspicion and therefore, the same are without jurisdiction; that the reasons believed/recorded (if any) are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement therefore deserve to be quashed in the light of '*ITO Vs Lakhmani Mewal Das*' [103 ITR 437 (SC)].

8. Since the legal ground is adjudicated in favour of appellant, other grounds turned out to be academic in nature, therefore delving unto deem unwarranted.

9. The appeal of the assessee in result stands ALLOWED

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 24th July, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 24th July, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT Concerned.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'SMC' Bench, Pune

6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER