

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 731/Kol/2024
Assessment Year: 2012-13

Purushottamlal Singhanian (PAN: AMCPS 4184 P)	Vs.	ITO, Ward-36(5), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	23.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	10.12.2024
For the assessee / निर्धारिती की ओर से	Shri Siddharth Agarwal, Advocate
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 07.03.2024 for the AY 2012-13.

2. The brief facts of the case of the appellant are that the assessee being an individual filed his return of income for the relevant assessment year 2012-13 on

14.09.2012 declaring total income of Rs. 6,68,500/-. The case of the assessee was selected for scrutiny and was reopened u/s 147 of the Act, notices have been issued to the assessee. In response to the notice, the assessee furnished his return of income for the year AY 2012-13 on 11.04.2019 showing total income of Rs. 14,91,020/-. Subsequently, the reasons recorded by the ld. AO for reopening of this case was issued to the appellant. The assessee made a submission through DAK. The ld. AO on the basis of tax evasion petition which was received directly from Mr. Rasik Gupta that the assessee Purushottamlal Singhanian had spent huge amount in the marriage of his daughter and all the expenses engagement ceremony and marriage ceremony were borne by the assessee being the father of Rajni Singhanian. Tax evasion petition has been filed by Mr. Rasik Gupta. son-in-law of the assessee. The ld. AO considering the complaint petition filed by Rasik Gupta in which details of expenditure which has been made by the assessee for the engagement ceremony and marriage ceremony has been depicted, asked the assessee to furnish explanation. The assessee in response has filed show cause but did not file any details of expenditure. Accordingly, the ld. AO after considering the factual position treated the amount of Rs. 1,69,28,861/- as unexplained expenditure of the assessee for the AY 2012-13 and accordingly, added in the income of the assessee. The said order has been challenged by the assessee before the ld. CIT(A) wherein also it has been held by the ld. CIT(A) that the taxpayer could not submit even a plausible explanation about the nature and source of these expenses. In the absence of a valid reason, the expenditure incurred cannot be accepted as out of income that was taxed earlier. It has further been held by the ld. CIT(A) that out of the total expenditure claimed benefit for some gold jewellery found given credit. A relief of Rs. 15 lakh is given to the taxpayer and the rest of the amount at Rs. 1,54,28,861/- is brought to tax as unexplained expenditure. Ld. CIT(A) deleted the amount of Rs. 1 lakh. The ad-hoc disallowance on account of foreign travel and ultimately as a result, appeal has been partly allowed.

Being aggrieved and dissatisfied with the order of ld. CIT(A), the assessee has preferred the present appeal.

3. The Id. Counsel for the assessee challenges the impugned order on various grounds but in the course of argument, the Id. Counsel for the assessee has challenged the very reopening of the instant case by issuing notice u/s 148 of the Act as according to him, there was no reason to believe that income had escaped assessment. The Id. Counsel submits that before initiating the re-assessment proceedings, the Id. AO did not apply his independent mind nor did he conduct independent enquiries worth its name but mechanically and blindly accepted the tax evasion petition which is not permissible in law and that is against the law. The Id. Counsel further submits that it is apparent from the order that reopening of the assessment was initiated against the assessee with reference to the tax evasion petition and on the basis of the information received through tax evasion petition reopening of the assessment was initiated though there was no specific material record to prove the income of the assessee. Ld. Counsel further submits that merely an information in the name of the complaint petition could not lead to an inference that the income has escaped assessment. The Id. Counsel has cited several decisions which are as follows:

i) Commissioner of Income-tax vs. Atul Jain [2008] 299 ITR 383 (Delhi)[23-05-2007]

ii) Commissioner of Income-tax vs. Sfil Stock Broking Ltd. [2010] 325 ITR 285 (Delhi)[27-04-2010]

iii) Income-tax Officer vs. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)[30-03-1976]

iv) Ganga Saran & Sons (P.) Ltd. vs. Income-tax Officer [1981] 6 Taxman 14 (SC)[23-04-1981]

v) Subhash Chander Goel vs. Income-tax Officer, Ward 1(3), Chandigarh [2016] 65 taxmann.com 216 (Chandigarh - Trib.)[18-11-2015]

4. Ld. DR supports the impugned order thereby submitting that it was the duty of the assessee to explain and produce the documentary evidence when there was an allegation of escapement of assessment but the assessee did not furnish any material evidence. Hence, the order passed by the Id. AO confirmed by the Id. CIT(A) do not

require any inference.

5. Upon hearing the rival submissions of the Counsels of the respective parties, the points for determination in this appeal is that whether the order passed by the Id. AO to reopen the case of the assessee on the basis of a complaint petition can be said to be justified and legal.

6. We have perused the record and find that it is the definite case of the assessee that in response to the notice u/s 148 of the Act the assessee filed income tax return. Reasons recorded by the Id. AO for reopening of the case was issued to the appellant. It admits of no doubt that the entire case of the assessee was based upon the tax evasion petition of one Mr. Rasik Gupta, the husband of the appellant's daughter namely Rajni Singhania. It is alleged in the tax evasion petition that Rajni Singhania in her complaint petition filed against her husband i.e. Mr. Rasik Gupta (petitioner of the tax evasion petition) that the appellant had incurred expenditure in making gifts on her wedding to the tune of Rs. 112 lakh and also cash expenditure to the tune of Rs. 65 lakh in tilak ceremony. The Id. AO put his entire reliance on the tax evasion petition and sent a notice to the assessee without investigating the genuineness of the details furnished in the tax evasion petition and asked the assessee to submit his explanation. It is also important to mention here that the assessee in response to the above show cause, filed submission, the main points emerged in the submission is as follows: -

“the above case tax evasion petition was received by your honour from Sri Rashik Gupta and your Honour had not considered the facts and circumstances of the case and framed an opinion purely based on complaint made by another party.

Please also considered the submission made by the assessee as under:

1)This is the clear case of complain made by son in law (of the assessee)Sri Rasik Gupta, due to matrimonial dispute and other related cases filed against him by the Daughter (Rajni Singhania) of the assessee. All the allegations made by him or his family members are baseless and not acceptable in any case. Since the dispute matter is still under litigation.

2)Your honour should also consider the expenses incurred by the groom family in the marriage, since as pe Hindu Custom both the family had to make some expenses in the ceremony.

3)More over I had my Gold Jewellery received at the time of family partition of gold by my father late Ishwardas Singhania and out of my HUF jewellery declared in VDIS scheme of 1977.”

7. On perusal of A.O.’s order we find that the ld. AO asked the assessee to furnish the details of expenditure and when the same could not be filed, he added the same in the total income of Rs. 1,69,28,861/- as an unexplained expenditure. On perusal of the order of the ld. AO one thing is very clear that at the time of initiation of re-assessment proceeding the ld. AO did not have any material record except an allegation in the complaint petition filed by the daughter of the assessee against her husband to the matrimonial dispute and only on this information he initiated re-assessment proceeding and asked the assessee to furnish the details. It is also not in dispute that there was absolutely no independent application of mind and independent enquiry on the part of the ld. AO in respect of the information allegedly received by him through post. We have gone through the cited decisions and find that Hon'ble Delhi High Court in the case of CIT Vs Shri Atul Jain 299 ITR 383 has held thus:

“Where the reasons recorded were vague by hand not proper, A.O. had not recorded his satisfaction about the correctness or other wise of the information he did not verify the correctness of the information received by him merely accepted the truth of the vague information in a mechanical manner, entire re-assessment order was liable to be quashed.

7.1. Further, the Hon'ble Supreme Court in the case of *Lakhmani Mewal Das (supra)* has held as under:

“There must be a direct nexus or live link between the material coming to the notice of the Income tax officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts”

7.2. Further, Hon'ble Apex Court in the case of *Ganga Saran & Sons (P.) Ltd. (supra)* has held as under:

“The important words under Section 147(a) are ‘has reason to believe’ and these words are stronger than the words ‘is satisfied’. The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rational and intelligible nexus between

the reasons and belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.”

7.3. In a recent judgment Hon'ble ITAT, Chandigarh Bench in the case of *Subhash Chander Goel (supra)* has held as under:

“IT: A statement recorded by Police Officer under Section 161 of Code of Criminal Procedure, 1973, is neither given on oath nor it is tested by cross-examination and., therefore, such a statement cannot be treated as substantive evidence to reopen assessment proceedings.

IT: Assessing Officer without making a reasonable estimate of expenses incurred by assessee on marriage of his daughter on basis of material on record, could not make addition under Section 69C merely on basis of surmises and conjectures.

IT: Assessing Officer could not make addition to assessee’s income in respect of jewellery given to his daughter at time of marriage as per Will of assessee’s mother merely on ground that Will was not registered and no probate or letter of Administration had been obtained.”

8. We further find that in the show cause notice the appellant has clearly stated that the aforesaid expenditure was funded partly from the assets distributed in lieu of family participation and partly from the past savings of the appellant himself and his family members. It is settled principle of law that a person who makes an allegation has to prove his allegation. In the present case it was the duty of the ld. AO rather the burden lies upon the ld. AO to investigate the matter before issuing any notice to the assessee. It is merely an allegation.

9. Keeping in view the above cited decisions, we are in this view that there was no valid reason for the ld. AO to reopen the case of the assessee. It was completely without application of mind to the information and without independently arriving at a belief. Accordingly, considering the facts of the case as well as considering the cited decisions, the reopening of the case of the assessee is bad in law. Accordingly, the order of the ld. AO in which he reopened the case of the assessee is hereby set aside. Consequent thereto, the order of the ld. CIT(A) is also hereby set aside.

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

Order is pronounced in the open court on 10th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 10th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Purushottamlal Singhanian, C/o, Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700069
2. Respondent – ITO, Ward-36(5), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata