

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2424/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15

Minal Shroff, 42, Kannuswamy Road, R.S.Puram-641 002, Tamil Nadu.	v.	The ITO, Non-Corporate Ward-2(3), Coimbatore.
[PAN: AIDPM 8925 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S.K.Tulsiyan, Advocate (Virtual)
प्रत्यर्थी की ओर से /Respondent by	:	Ms.T.M.Suganthamala, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	24.12.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.01.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 15.07.2024 for the Assessment Year (hereinafter in short 'AY') 2014-15.

2. Briefly stated the facts of the case are that for AY 2014-15, the assessee had filed its return of income (RoI) declaring total income of



:: 2 ::

Rs.12,63,210/-. During the relevant Financial Year 2013-14, the assessee received Long Term Capital Gain (LTCG) aggregating to Rs.96,73,796/-. The RoI of the assessee was selected for scrutiny through CASS. In response to notices u/s.143(2) & 142(1) of the Income Tax Act, 1961 (hereinafter in short 'the Act'), the assessee furnished the books of accounts, balance sheet, and income & expenditure statements and other details as requisitioned. From the material placed in the Paper Book, it is noted that before passing of the order u/s 143(3) of the Act on 24.06.2016, the AO called for details regarding increase in capital account vide notice dated 07.06.2016. Upon verification of the material collected by him, the AO in his original scrutiny order passed u/s 143(3) of the Act on 24.06.2016, observed that "the *Ld.AR of the assessee has explained the increase in capital of Rs.37,82,856/- which includes exempt income*". Thereafter, the case of the assessee was reopened after the expiry of four years vide notice u/s.148 of the Act dated 31.03.2021. In response, the assessee filed RoI on 12.04.2021 and the AO supplied the reasons recorded prior to reopening of the assessment vide letter dated 17.01.2022, which read as follows:



:: 3 ::

"Reasons for the belief that income has escaped assessment:

1. Brief details of the Assessee: The assessee is an individual and filed the return of his income for the AY 2014-15 19.09.2014, admitting a total taxable income of Rs 12,63,210/-.
2. Brief details of information received by the AO (details and evidences to be submitted): The assessee is one of the beneficiary in the Penny stock cases forwarded by the CCIT Office, Coimbatore and he has claimed exempt incomes from the bogus LTCG transaction.
3. Analysis of Information received: During the FY 2013-14 the assessee had claimed to have sold shares for a consideration of Rs. 98 Lakhs and admitted an income of Rs.96,73,796/- Sale of such shares. The income admitted from sale of shares is found to be claimed as exempt.
4. Enquiries made by the AO as sequel to information received in regard to the income admitted by the assessee from the sale of shares, it is verified from the ITR that the assessee has received accommodation entry for bogus capital gain from penny stocks and the same has been claimed at exempt income.
5. Findings of the AO: During the FY relevant to the current AY, the assessee had claimed to have sold shares for a consideration of Rs.98 Lakhs and admitted an income of Rs.96,73,796/- from sale of such shares. The income admitted from sale of shares is bound to be claimed as exempt.

In regard to the income admitted by the assessee from the sale of shares, it is informed that the assessee has received accommodation entry for bogus capital gain from penny stocks and the same has been claimed as exempt income.

6. Basis of forming reason to believe and details of escapement of Income: On basis of the above facts as established in Paragraph-5, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 and such income is likely to amount to Rupees One lakh or more for the AY 2014-15.
7. Escape of income chargeable to tax in relation to any assets (Including financial interest in any entity) located outside India: Not Applicable.
8. Applicability of the provisions of Sec.147/151 to the facts of the case: In this case, a return of income was filed for the year under consideration but no scrutiny assessment u/s.143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s.147 is reason to believe which has been recorded above.

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s.2(40) of the Income Tax Act was made. In view of the above, 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. In this case, more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue notice u/s.148 is obtained from Principal Commissioner of Income Tax Act as per the provisions of Section 151 of Income Tax.



:: 4 ::

3. The objections raised by the assessee against reopening of assessment that the essential condition precedents for invoking the jurisdiction to reopen was absent was disposed of by the AO. And the AO issued requisitions u/s 143(2) & 142(1) of the Act *inter alia* calling for details in connection with sale of shares which fetched LTCG received during the year. From the details submitted, it is noted that the assessee during the original assessment/first round had filed her books, balance-sheet, income & expenditure, has clearly shown at Page No.4, the very same LTCG/exempt income of Rs.96,73,796/-; and in the computation of total income for AY 2014-15 has given the details of LTCG/exempt income viz. sale of shares in two transactions on 3rd & 4th March, 2014, fetching Rs.97,73,797/- as total sale consideration and LTCG claimed at Rs.96,73,797/-. Upon examination of the replies, as well as the details comprising of demat account statement, contract note for sale of equity shares, letter of allotment and holding statement issued by M/s.Enam Securities Direct Pvt. Ltd., notification received from the respective Companies and contract notes received from M/s.Axis Securities Ltd. for sale of shares, the AO noted that the assessee has sold 10,000 shares at a price of Rs.796/- per share which was purchased by M/s.Waltare Investment Pvt. Ltd., through broker M/s.GRD Securities Ltd; and whose Director Shri Bimal Drolia, couldn't give satisfactory explanation on



:: 5 ::

05.12.2019 to Q.No.32, which fact AO observed "that money in stock market has been routed through his company via M/s.Waltare Investment Pvt. Ltd., to which he didn't give any satisfactory replies". Thus, according to the AO, the purchaser is exit-provider and the price rise of the shares are not justified, since it shows variation from Rs.10/- in FY 2013-14 and Rs.16.05 in the next year and later on, increased and again came back to Rs.224/- in FY 2017-18, which shows this scrip was penny stock. Therefore, he treated Rs.98 lakhs as unexplained cash credit u/s.68 of the Act. The AO issued draft assessment order on 29.03.2022 proposing the addition and framed re-assessment order on 31.03.2022 u/s.147/143(3) of the Act. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A)/NFAC dismissed the legal issue as well as grounds of appeal raised on merits by the assessee against the re-opening of assessment.

4. Being aggrieved, the assessee is now in appeal before us and has raised *inter-alia* the legal issue, which grounds of appeal are as under:

1. That the AO erred in invoking sec. 147 of the Act beyond four years from the end of the relevant assessment year reopening a completed assessment u/s.143(3) of the Act as there was no failure on the part of the assessee to disclose fully and truly all material fact during original assessment.
2. That the proviso to section 147 of the Act prohibits reopening of assessment if the escapement is not due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the assessment year.
3. That the assessee having furnished all details relating to both income chargeable to tax and income claimed exempt from tax in response to notice u/s.143(2) of the Act and that the assessment being completed



:: 6 ::

after examination of all details submitted in course of the original assessment, the proceeding u/s.147 of the Act initiated is totally illegal and without jurisdiction.

4. That the AO failed to provide any material either along with the reasons recorded or during the assessment to bring on record any fresh information relating to the impugned transaction of sale of shares duly considered in the original assessment u/s.143(3) of the Act.
5. That the impugned proceeding u/s.147 of the Act is not only illegal but was based on change of opinion on same set of material and therefore the entire proceeding is vitiated and bad in law.
6. That without prejudice to the above, even otherwise, the Ld. CIT(A) failed to appreciate the fact that the completion of assessment u/s.147 of the Act making disallowance of the exemption claimed on account of Long term capital gain on sale of shares of Sharp trade, duly recorded in regular books of accounts, when the assessee had already furnished sufficient documentary evidences in support of the genuineness of the impugned transaction of sale of shares, is totally illegal and not as per law.

5. Assailing the action of the Ld.CIT(A), the Ld. AR submitted that the Ld. CIT(A) didn't appreciate the contentions raised objecting to reopening of the regular/original assessment under Section 147 of the Act. He submitted that in the present case the original assessment was passed after scrutiny u/s 143(3), and the proceedings u/s.147 were initiated after the expiry of four years from the end of the relevant assessment year. The Ld.AR therefore argued that for valid initiation of proceedings u/s.147 it was necessary for the AO to show that while recording the reasons u/s 148, he was prima facie satisfied that the escapement of the income chargeable to tax for the relevant assessment year was as a result of the failure on the part of the assessee to disclose truly and fully, all material facts necessary for assessment. He submitted that from the recorded reasons itself such satisfaction should have been discernible. Drawing attention to the reasons recorded (supra) and copy of which is found



:: 7 ::

placed at Page Nos.34 to 35 of the Paper Book, the Ld.AR submitted that nowhere it was even prima facie apparent that in AO's opinion escapement of income had resulted because of assessee's failure to disclose truly & fully all material facts for its assessment. The Ld.AR therefore submitted that the twin conditions embedded in section 147 and proviso to it were not fulfilled. The Ld.AR submitted that initiation of reassessment would have been permissible only if the AO was having in his possession fresh and tangible material which came in his possession subsequent to passing of the order u/s 143(3) and its relation with formation of belief should have been spelt out in the reasons recorded to justify reopening. According to Ld. AR the AO had miserably failed to demonstrate the foregoing in the recorded reasons which vitiated the usurpation of jurisdiction by the AO. The Ld.AR further submitted that in the course of original proceedings u/s 143(3), the assessee was directed to furnish the details of increase in capital account during the relevant year. And in compliance the particulars as requisitioned were furnished which thereafter were examined by the AO not only with reference to the assessee's books of account, balance-sheet, income & expenditure, computation of income but also by enquiry from the assessee by issuing notice u/s.142(1) of the Act. The Ld.AR therefore submitted that there was no failure on the part of the assessee to disclose true and full material facts prior to completion of order u/s 143(3). In the



:: 8 ::

circumstances therefore the reopening of assessment after four years was claimed to be impermissible.

6. Further according to Ld AR, the AO has re-opened the assessment without application of mind, which fact is evident from reading of para 8 of the *reasons recorded* which reveals that AO erred in wrong assumption of crucial fact that assessee didn't undergo scrutiny assessment, whereas for AY 2014-15, the assessee's original assessment was framed u/s 143(3) on 24.06.2016. Therefore, it is evident that AO didn't even bother to look into the assessment records before reopening the assessment, and consequently failed to satisfy the proviso to section 147 of the Act, which is *sine qua non* before reopening the assessment after four years from the end of the relevant assessment year.

7. Moreover, according to the Ld.AR, a perusal of the reasons recorded would reveal that based on the report from office of Ld.CCIT, the AO had recorded his reasons for reopening the assessment; and in the same there is no mention about the contents of the information received from the CCIT, Coimbatore. Therefore, according to the Ld.AR, merely based on bald statement that an information from office of CCIT, the AO could not have resorted to reopening of the assessment. According to Ld.AR, there was no tangible material before the AO which can be said to have been gathered by the CCIT, Coimbatore which could have led one to



:: 9 ::

believe that income of the assessee for AY 2014-15 to the extent of Rs.98 lakhs has escaped assessment. Drawing our attention again to the reasons recorded, the Ld.AR brought to our notice that there was only an observation made that assessee was one of the beneficiary of the penny-stock and pointed out that there is no mention of the purported penny-stock which the assessee has sold and the details of investigation done by any agency to come to such a view. The Ld.AR therefore submitted that based on unknown/unsubstantiated allegation contained in the so-called CCIT's letter can't be termed as intangible material which could have formed the basis for recording reason to believe that the income of assessee had escaped assessment. The Ld.AR therefore submitted that acting on the dictate of the CCIT, the AO proceeded to issue notice u/s 148 in the most mechanical manner without himself being satisfied about the correctness of such information. The Ld. AR pointed out that after receiving the information from Office of CCIT, the AO himself did not conduct any worthwhile enquiry of his own to verify the correctness of the information and in the most mechanical manner proceeded to record his satisfaction. The Ld.AR therefore submitted that besides there being no tangible material available with the AO, the reopening of assessment was based only on borrowed satisfaction and therefore proceedings u/s.147 suffered from incurable infirmity. In the light of the aforesaid submissions, the Ld. AR submitted that the reopening of the assessment



:: 10 ::

was legally impermissible and, therefore he urged for allowing the legal issue against re-opening.

8. Per contra, the Ld.Addl.CIT, DR submitted that there indeed was failure on the part of the assessee to submit full and true information at the time of original assessment and hence the Ld. CIT(A) rightly held that the initiation of reassessment by the AO was in order and correct in law. The Ld.DR submitted that from the information supplied by office of CCIT, it could be gathered that the assessee was beneficiary of accommodation entries received in the form of LTCG. This material information indicated that the assessee did not make full and true disclosure of material facts before the AO during the course of assessment proceedings under Section 143(3). The Ld.DR has also given a written submissions wherein she brought out a new allegation which is not emanating from the assessment records and asserted that the assessee had committed deception while furnishing information at the time of original assessment and invited our attention to the reply filed by the assessee during the original assessment [which is found placed at Page No.10 of the Paper Book] wherein the assessee has replied to the AO explaining the increase in the capital account. In the reply, the assessee had shown that the capital account to be Rs.1,34,37,662/- which includes balance brought forward of Rs.96,54,806/- and the remaining Rs.37,82,856/- is the excess of income over the expenditure for the year [Rs.96,54,806/- **plus** Rs.37,82,856/- =



:: II ::

Rs.1,34,37,662/-]. According to Ld DR, this reply/explanation of the assessee that Rs.96,54,806/- was brought forward from the earlier year, was a false statement and made to hoodwink the AO. In other words, the AO was deceived by a make-believe story that sum of Rs.96,54,806/- was the opening balance of the capital as on 01.04.2013, but actually it was the LTCG from the sale of shares of Rs.96,73,797/-. In the light of the aforesaid facts pointed out, according to the Ld.DR, it can't be said that assessee has fully disclosed all material facts necessary for assessment. However, to the query from the bench the Ld.DR couldn't contradict the assertion of the assessee that AO in his reasons recorded factually erred in observing that there was no scrutiny/143(3) assessment carried out in this case [refer Para No.8 of reasons recorded supra] and thus wrongly presumed that there is no necessity to satisfy the additional condition precedent stipulated in proviso to section 147 of the Act. However, the Ld.DR doesn't want us to interfere with the action of reopening of the assessment.

9. In his rejoinder, the Ld.AR countering the above allegation [refer Para Nos.12.2 to 12.7 of Ld DR written submissions dated 17.12.2024] urged that the Ld.DR was misleading this Tribunal/bench by raising such an allegation which was not the case of the AO for re-opening of assessment; and again took us through the reasons recorded by the AO to re-open the assessment, which we agree; However, to repel the



:: 12 ::

allegation, the Ld.AR pointed out that the new allegation was misleading bereft of merits; and to buttress such a contention, he drew our attention to Page Nos.2 to 8 of the Paper Book, wherein, the balance-sheet, income & expenditure account [both business & personal of the assessee] and computation of total income for AY 2014-15 is found placed. The Ld.AR drew our attention to Page No.2 [balance-sheet of the business of the assessee dated 31.03.2014] which showed Rs.96,54,806/- as the brought forward capital from the earlier year and Rs.37,82,856/- pertaining to relevant assessment year was added to it, which increased the capital account to Rs.1,34,37,662/- as on 31.03.2014. The Ld.AR thereafter invited our attention to Page No.4 of the Paper Book wherein the income & expenditure account [personal of the assessee] is found placed, wherein the assessee has shown LTCG of Rs.96,73,796/- and pointed out that the LTCG of Rs.96,73,796/- has nothing to do with brought forward capital of Rs.96,54,806/- and therefore asserted that the Ld.DR was misleading the Tribunal on this count and there was no merit whatsoever about this allegation. Moreover, the Ld.AR brought to our notice that in the computation of total income found placed at Page No.7 of the Paper Book the assessee has duly disclosed the income from LTCG at Rs.96,73,797/-. Further, the Ld.AR brought to our notice that in the ITR exempting schedule of income shows total exempt income of Rs.1,27,61,857/- which includes Rs.96,73,797/- which is the impugned LTCG on the basis of



:: 13 ::

which the AO has made an ad hoc addition of Rs.98 lakhs. Thus, according to Ld.AR, the allegation made by the Ld.DR is neither emanating from the "reasons recorded" by the AO to re-open the assessment nor emanating from the impugned re-assessment order. Further according to the Ld.AR, even though it is an undisputed fact that original assessment u/s.143(3) of the Act has been re-opened after four years from the relevant assessment year but the reasons recorded by him does not have a whisper about the failure on the part of the assessee to fully and truly disclosed all material facts necessary for the assessment. Therefore, according to the Ld.AR the essential condition precedent for re-opening of assessment is not satisfied and therefore, the impugned action of the AO to re-open the assessment is bad in law and need to be quashed.

10. We have heard both parties and perused the records. Before we advert to the legal issue [*challenging the jurisdiction of AO to reopen the assessment already completed u/s.143(3) of the Act after 4 years from the end of the relevant AY*], first we will sort out the allegation raised by the Ld.Departmental Representative (Addl.CIT-DR) which we have noted at Para 8 and reply to it by Ld.AR at Para 9 supra; in the light of the discussions and having perused page 2, 4 & 7 of PB, we do not find any substance in the allegation and observe that Rs.96,54,806/- shown in Page 2 is the brought forward capital from earlier year, which has nothing



:: 14 ::

to do with the LTCG claim of assessee to the tune of Rs.96,73,796/- which is reflected at Page 4 of PB. Therefore, the allegation made by Ld.DR that assessee played deception during original assessment is unfounded, baseless and devoid of merit; and it is further noted that such an allegation is new and neither emanate from the *reasons recorded* for reopening nor from the reassessment order. For the reasons discussed in the foregoing, therefore we find no substance in the allegation of the Ld.DR and proceed to adjudicate the legal issue raised by the assessee challenging the jurisdiction of AO to reopen the assessment.

11. Before we advert to deal with the legal issue, let us understand the settled position of law on the issue at hand. To begin with, it should be kept in mind that the concept of assessment is governed by the time-barring Rule, and the assessee acquires a right as to the finality of proceedings. Queitus of the completed assessment is the Fundamental Rule and exception to this rule is Re-opening of assessment by AO under section 147 or exercise of Revisional jurisdiction by CIT under section 263 of the Act. Therefore, the Parliament in its wisdom has provided safeguards for exercise of the reopening of assessment jurisdiction to AO; and revisional jurisdiction of CIT by providing *condition precedent* which is *sine qua non* for assumption/usurpation of jurisdiction. In the case of reopening of assessment, section 147 provides that where the Assessing Officer has *reason to believe escapement of income* [is the jurisdictional



:: 15 ::

fact & law] he shall record his reasons for doing so and assess or reassess the income which has escaped assessment; and for exercising revisional jurisdiction u/s. 263 the CIT has to find the *assessment order of the AO to be erroneous as well as prejudicial to the revenue*. Unless the condition precedent is satisfied, the AO or the CIT can't exercise their reopening jurisdiction or revisional jurisdiction respectively. The legislative history is that in respect to the reopening u/s. 147 of the Act, the Parliament by Direct Tax Laws (Amendment) Act 1987 w.e.f. 01.04.1989 had substituted "for reason to believe escapement of income" to "for reasons to be recorded by him in writing, is of the opinion" which gave unbridled subjective satisfaction to the AO was later substituted back to "reason to believe escapement of income", by the Direct Tax Laws (Amendment) Act, 1989. The Hon'ble Apex Court as well as the Hon'ble jurisdictional High Court as well as other Hon'ble High Courts have already held in plethora of cases the test of a prudent person instructed in law in understanding jurisdictional fact & law (mixed question of fact and law) the reason to believe escapement of income (supra).

12. As noted, the AO, who is a quasi-judicial authority is empowered to reopen the assessment only in a given case wherein there is reason to believe escapement of chargeable income to tax, which he has to record before issuing notice u/s 148 of the Act. In this regard, it must be borne in mind that *reasons to believe* postulates foundation based on



:: 16 ::

information, and belief based on reason. After a foundation based on information, is made, there still must be some reason, which should warrant the holding of a belief that income chargeable to tax has escaped assessment. It has to be kept in mind that the Hon'ble Supreme Court in Ganga Saran & Sons P. Ltd. Vs. ITO (1981) 130 ITR 1 (SC) held that the expression "reason to believe" occurring in sec. 147 "is stronger" than the expression "if satisfied" and such requirement has to be met by the AO in the reasons recorded before usurping the jurisdiction u/s. 147 of the Act. At this stage, authorities must understand the fine distinction between "*reason to suspect*" & "*reason to believe*". Adverse information against an assessee may trigger "*reason to suspect*," then the AO is duty bound to make reasonable enquiry to collect material which would make him form a belief that there is an escapement of income. And on satisfaction of such an event, then proceed to reopen the assessment and not before that event, because *reason to believe* is the jurisdiction requirement u/s 147 of the Act, and not the *reason to suspect* escapement of income. *This subtle distinction should be borne in mind while adjudicating the legal issue raised by assessee.*

13. And further, the *reason to believe escapement of income* should be that of AO, and not that of any other authority, because then it will be against one of the basic feature of the Constitution of India ie, the Rule of Law, wherein the Parliament has empowered this reopening jurisdiction



:: 17 ::

only to that of Assessing Officer and that is why if the reason to believe escapement of income is not that of AO, the assumption of jurisdiction to re-open, is vitiated; and resultantly bad in law, because assumption of jurisdiction to reopen will be on the basis of *borrowed satisfaction*.

14. And, if the AO intends to re-open the assessment [scrutinized u/s 143(3)] after four years from the relevant assessment year, then as per first proviso to section 147 of the Act, an additional safeguard or condition that escapement of income was due to fault of the assessee, in not fully and truly disclosing the material facts at the time of original assessment needs to be satisfied. In this context, it is gainful to refer to the Hon'ble Supreme Court decision endorsing the Full Bench decision of the Hon'ble Delhi High Court in CIT vs. Kelvinator of India Ltd. [320 ITR 561] wherein inter-alia, it was held that Assessing Officer has no power to review; and emphasized that AO in absence of "tangible material" should not resort to reopening. The Hon'ble Supreme Court held that merely on "change of opinion" the AO should not re-open the assessment because he doesn't enjoy the power to review his own order.

15. Thus, as noted before the AO assumes jurisdiction to re-open it is necessary that the conditions laid down in the said section 147 has to be satisfied viz., AO should record "reason to believe" that the income chargeable to tax for that assessment year has escaped assessment. And,



:: 18 ::

if the AO intends to re-open an assessment [scrutinized u/s 143(3)] after four years from the relevant assessment year, then an additional condition needs to be satisfied viz escapement of income was due to fault of the assessee, in not fully and truly disclosing all the material facts necessary at the time of original assessment. If the conditions stipulated by statute are not satisfied at the first place, then it cannot be said that AO has validly assumed jurisdiction u/s.147 of the Act. Therefore, the question for consideration is whether on the basis of the reasons recorded by the AO, he could have validly reopened the assessment. For that it has to be seen as to whether the AO on the basis of whatever material before him, [which he had indicated in his "reasons recorded"] had reasons warrant holding a belief that income chargeable to tax has escaped assessment. At this stage, it is also important to bear in mind that the reasons recorded by AO to reopen has to be evaluated on a *stand-alone* basis and no addition/extrapolation can be made or assumed, while adjudicating the legal issue of AO's usurpation of jurisdiction u/s. 147 of the Act. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, *inter alia*, observed that "*..... It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the*



:: 19 ::

AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons."Their Lordships added that "*The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....*". Therefore, the reasons are to be examined only as they were recorded by the AO before the issue of the notice.

16. From the aforesaid understanding of law governing the issue at hand, we have to examine the reasons recorded by AO to reopen which has been already set out above, and test whether the condition precedent necessary to usurp the re-opening jurisdiction as required u/s. 147 of the Act is satisfied or not ? And in the present case, since four years have elapsed from the end of the relevant AY and original assessment has been completed u/s. 143(3) of the Act, it needs to be examined as to whether the addition condition precedent as laid down in first proviso to section 147 of the Act is also satisfied or not ? For doing that we have to examine on a standalone basis the reasons recorded by the AO to reopen the assessment (refer Page No.2 supra). The AO in the reasons recorded, first of all notes that assessee had filed return admitting Rs.12,63,210/-; and in second Paragraph states about receiving information from the Office of the CCIT, Coimbatore that assessee is one of the beneficiary of the penny-stock cases forwarded to him; and that assessee has claimed exempt income from bogus LTCG transactions. Further at Para 3 onwards



:: 20 ::

it was stated that the assessee has claimed to have sold shares for a consideration of Rs.98 lakhs and admitted an income of Rs.96,73,796/- and claimed it as exempt. According to the AO, pursuant to receiving the aforesaid information he verified from the ITR of assessee and noted that the assessee has received accommodation entry on sale of penny-stocks and has booked bogus capital gain which was claimed as exempt income. On the basis of the aforesaid facts, the AO formed his opinion that income chargeable to tax has escaped assessment. Further, at Para No.8 [of the reasons recorded], the AO records that even though return was filed by the assessee, no scrutiny assessment u/s.143(3) of the Act was made and therefore, according to him, in this case, the only requirement to initiate proceedings u/s.147 of the Act is "reason to believe escapement of assessment" which assertion he reiterates in the last paragraph; and also acknowledges that more than four years have lapsed from the end of the assessment year and therefore has taken approval from Pr.CIT for re-opening the assessment. On an analysis of the reasons recorded by the AO to justify re-opening of assessment, we find for various reason stated infra the AO erred in reopening the assessment. From a reading of the reasons recorded by AO, it is discerned that the AO has taken note of an information from the Office of the CCIT, Coimbatore that assessee is a beneficiary of penny-stock (*details are not stated in his reasons recorded*); which made him verify from the ITR and found that assessee



:: 21 ::

has claimed LTCG of Rs.96,73,796/- as exempt income and therefore, he has formed his belief that income has escaped assessment, which means that AO has treated information from office of CCIT that assessee is a beneficiary of penny-stock bogus and claimed bogus exempt income, as gospel truth against the assessee [without any enquiry] to form a conclusion about escapement of income without independent application of mind by himself, is nothing but an action taken by AO based on the strength of borrowed belief of the CCIT and not that of AO, which vitiates the very assumption of jurisdiction by AO to re-open the assessment. It has been held by the Hon'ble Supreme Court in Anirudhsinhji Karansinhji Jadeja & Anr. vs. State of Gujarat – (1995) 5 SCC 302, that "if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authority's instructions, then it will be a case of failure to exercise discretion all together." It has to be kept in mind that satisfaction recorded should be "independent" and "not borrowed" or "dictated" satisfaction. On this score the reasons recorded by AO to reopen is bad in law.

17. Moreover, the bald statement of AO in the "reasons recorded" that based on information received from office of CCIT, Coimbatore that assessee is a beneficiary in the penny-stock cases cannot be considered as a "tangible material" for reopening the assessment. No details about



:: 22 ::

the contents of the purported information received from the office of CCIT, Coimbatore is stated in the "reasons recorded". There is no mention about which all shares were classified as penny-stock; and what is the link between the shares that assessee sold and the alleged bogus claim made by assessee in this regard; and whether the stock-exchange found any mischief on the part of the assessee/broker regarding sale of shares; whether SEBI carried out any enquiry etc; No relevant information is discernable from reading of the reasons recorded, to connect assessee with any wrong doing to claim LTCG from one line statement given by the AO at Para No.2 of his reasons recorded, which is cryptic and is extremely scanty and vague; and abruptly holds assessee to have dealt with penny-stock to claim bogus LTCG. Thus we find that there is absolutely no relevant details available in the reasons recorded to form such adverse conclusion; and in the light of the same, the initiation of proceedings u/s. 147 of the Act by the AO cannot be held to be valid and justified in law.

18. Furthermore, a perusal of Para Nos.3 to 5 of the reasons recorded only shows that assessee in his ITR has claimed LTCG of Rs.96,73,796/- as exempt. Nothing more is discernable. Nothing turns on the AO's statement that pursuant to receipt of information from the Office of the CCIT, he enquired/verified from the ITR filed by the assessee and found that assessee has claimed exempt LTCG. There is no mention or reason stated therein as to how he branded the shares sold by assessee as



:: 23 ::

penny-stock and alleged the claim of LTCG as bogus which is not discernable, and remains a mystery. From the aforesaid discussion in respect of Para No.2 to 5 of the reasons recorded by AO it is evident that other than the general/bald information given by the Office of the CCIT, there is no other material the AO collected himself during preliminary enquiry (other than verifying from assessee's own ITR) which could have enabled him at the time of recording reasons to come to a conscious independent conclusion that "income of the assessee has escaped assessment". According to us, the information given by the Office of the CCIT can only be at the most a basis to ignite/trigger an enquiry. In other words the information given by CCIT only constitutes the starting point of AO to enquire; and such an information can only be termed as a foundation to form "reason to suspect" and not reason to believe escapement of income "which is the jurisdictional fact & law required to enable the AO to successfully assume jurisdiction to reopen an assessment as per section 147 of the Act. Thus the material/information referred to by the AO in his reasons recorded cannot be held to be a tangible material for reopening the assessment. Furthermore, the information referred to in the reasons recorded at the most can trigger only "reasons to suspect"; and it is settled position that *reason to suspect* cannot be the basis for usurping jurisdiction to reopen u/s.147 of the Act, and enable the AO to conduct roving/further examination in order to



:: 24 ::

strengthen the suspicion to an extent which can later transform the suspicion to create the belief in his mind that income chargeable to tax has escaped assessment.

19. Moreover, we find that the reasons recorded by the AO is riddled with factual inaccuracies. At Para No.8 the AO erroneously notes that the return of income filed by the assessee didn't undergo scrutiny u/s.143(3) of the Act, whereas we find that original assessment u/s.143(3) of the Act was framed on 24.06.2016. Thus, we find that the AO on wrong assumption of fact noted at Para No.8 [of reasons recorded to re-open] that there was no scrutiny assessment u/s.143(3) of the Act, and thus erroneously proceeded to re-open the assessment without complying with the additional condition precedent as stipulated in the first proviso to section 147 of the Act i.e. without making any averment/allegation about the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Thus, in the facts and circumstances of the case, in the absence of satisfying the essential condition precedent as envisaged in the first proviso to section 147 of the Act, the AO's action to reopen is bad in law. The AO erred not only taking note of the relevant facts, he erred in applying/omitting to apply the correct law before reopening the assessment. In this regard, it would be gainful to refer to the decision of the Hon'ble Supreme Court in the case of CIT v. Avadh Transformers (P.) Ltd. 51 Taxmann.com 369 wherein, the



:: 25 ::

Apex Court upheld the judgment of the Allahabad High Court, holding that in absence of failure on the part of the assessee in disclosure of material facts, the reassessment proceedings could not be initiated after expiry of four years.

20. For the reasons discussed in the foregoing, therefore, we find that the essential condition precedents to invoke the jurisdiction to reopen the assessment for AY 2014-15 is absent; and consequently the action of AO to reopen the assessment without complying with the requirement of law is held to be wholly without jurisdiction and therefore the issuance of notice u/s. 148 of the Act is ab-initio void and consequent actions of AO are quashed.

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

Order pronounced on the 10th day of January, 2025, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th January, 2025.

TLN, Sr.PS



ITA No.2424/Chny/2024 (AY 2014-15)
Minal Shroff

:: 26 ::

आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF