



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI



BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No. 220/PAN/2024

Assessment Year : 2012-13

Sunil Hanmantsa Naikwad

1156, Saraf Galli,

Shahapur, Belgaum

PAN:ABEPH0397N

..... *Appellant*

V/s

Income Tax Officer,

Ward-2, Belgaum.

..... *Respondent*

Appearances

Assessee by : Mr JD Kalpavruksha ['Ld. AR']

Revenue by : Mr Ravindra Hattalli ['Ld. DR']

Date of conclusive Hearing : 19/03/2025

Date of Pronouncement : 22/04/2025

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal is instituted against DIN & Order No. ITBA/APL/S/250/2024-25/1064880487(1) dt. 15/05/2024 passed by the Ld. Addl/Jt Commissioner of Income Tax, Appeals-5, Mumbai [for short 'Ld. CIT(A)/NFAC'] u/s 250 of the Income-tax Act, 1961 [for short 'the Act'] relating to assessment year 2012-13.



2. After vouching the sufficiency of reasons explained, we are satisfied that the appellant was for sufficient cause prevented from filing present appeal against the impugned order and the case of the assessee falls within the parameter set by Hon'ble Courts in '*Vijay Vishin Meghani Vs. DCIT & Anr*' [2017, 398 ITR 250 (Bom)] and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' [1987, 167 ITR 5 (SC)]. In view thereof the undeliberate delay of 49 days occurred in instituting present appeal after placing reliance on former judicial precedents, in the larger interest of justice we condone the delay and advanced for adjudication.

3. **Succinctly stated the facts of the case are that;** the assessee is an individual, who did not file his return of income u/s 139 of the Act. Upon receipt of information that the assessee entered into share transactions on Multi-Commodity Exchange [for short 'MCX'] of ₹1933.72Lakhs, the case of the assessee after recording the reasons & obtaining prior approval from competent authority was re-opened vide notice dt. 31/03/2019 u/s



148 of the Act. Pursuant to aforestated notice, the assessee filed his return of income for the year under consideration declaring therein total income of ₹2.25Lakhs. The said return of the assessee was subjected to scrutiny and consequential assessment u/s 143(3) r.w.s. 147 of the Act wherein a solitary addition towards unexplained income of ₹2.67Lakhs was made on assessee's failure to explain nature & source of cash deposits made by him into his bank account maintained with Union Bank. The aforestated addition & the assessment unsuccessfully was agitated by the assessee in an appeal before Ld. CIT(A). Aggrieved by the impugned order, the assessee came in appeal.

4. At the physical hearing, the Ld. AR urged that, section 147 of the Act postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Ld. AO may assess or reassess such income '*and also*' any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. These words '*and also*' used in



section 147 of the Act are in a cumulative and conjunctive sense. To read these words as being alternative would frustrate the clear & unambiguous provision of law. Therefore, when there is no addition on the subject matter of information which triggered formation of belief for recording the reasons to initiate reopening proceedings, the impugned addition of other income cannot be sustained in law. To drive home this contention the appellant relied upon catena of judicial precedents including '*CIT Vs Jet Airways (I) Ltd.*' [2010, 195 Taxman 117 (Bom)], and '*CIT Vs Shri Ram Singh*' [2008, 217 CTR 345 (Raj)], *Per contra*, the Ld. DR relied upon the order of tax authorities below.

5. We have heard the rival party's submission on legal ground (Ground No 3) and perused the material placed on records and considered the facts in the light of settled position of law.

6. We note that, the information relating to financial/share transactions entered on MCX by the assessee was received by the respondent Revenue which exclusively founded the very basis for



invocation of re-opening proceedings u/s 147 of the Act by the Ld. AO. Without there being any addition on the subject matter of re-opening recorded reasons, the assessment proceedings found culminated by making a sole addition towards cash deposits which in the opinion of the Ld. AO remained unexplained by the assessee with corroborative evidences. When the matter travelled in appeal, the Ld. CIT(A) echoed the findings of the Ld. AO in countenancing the addition & assessment.

7. The aforestated findings brings us a legal issue of survival of former independent addition made without there being any nexus on addition made on recorded reasons which solely triggered the invocation of reassessment proceedings?

8. This legal issue in view '*CIT Vs Jet Airways (I) Ltd.*' (supra) pressed into service by the appellant is no more *res-integra* that, any other income chargeable to tax which comes to the notice during the proceedings as having escaped assessment **can be brought to tax only when** income chargeable to tax has escaped assessment which triggered the formation of belief for re-opening



is actually assessed or reassessed together with such other income. This is for the point-blank reason that, the words '**and also**' used in section 147 of the Act are held as cumulative and in conjunctive sense. Reading these words '**and also**' as being alternative in view of their Hon'ble Lordship would amount violence to unambiguous provision of law.

9. The decision in Jet Airways(supra) is also followed in 'Ranbaxy Laboratories Ltd. Vs CIT' [2011, 12 Taxmann.com 74 (Del)] wherein their Hon'ble Lordship have vide para 18 further held that;

'As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related



with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to taken into accounts, he would be required to issue a fresh notice under Section 148. (Emphasis supplied)

10. In the instant case, admittedly the Ld. AO neither made any addition in relation recorded reasons about share transactions undertaken by the appellant on MCX and nor established any nexus there between nor issued any fresh notice to the appellant in relation to unexplained cash deposits which came to his notice during the course of such reopened assessment proceedings. Therefore, in the absence of any addition in relation to recorded reasons, the jurisdiction to assess any other income which surfaced lately during the reopened assessment proceedings, without the issuance of a fresh notice was unlawful. Since in the absence of issuance of fresh notice the Ld. AO was powerless to make any addition towards unexplained cash deposits u/s 69A of the Act, the impugned addition in view of judicial precedents (supra) cannot be sustained.



11. In the absence of anything contrary brought to our notice by the respondent Revenue necessitating the divergent view, we without multiplying authority of the former settled position of law, respectfully following the judicial precedents (supra) set-aside the impugned order of the first appellate authority and direct the Ld. AO to delete the impugned addition in its entirety as the same being without any direct or indirect nexus with the reasons recorded for re-opening of assessment.

12. Since the legal ground raised in the appeal is adjudicated in favour of the appellant assessee and against the revenue, the rival party's submissions & arguments advanced on other grounds render academic, hence not dealt with.

13. In result, the appeal is ALLOWED as above.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court the date mentioned hereinbefore.

-S/d-

PAVAN KUMAR GADALE
JUDICIAL MEMBER

Panaji, 22nd April, 2025.

Copy of the Order forwarded to :

1. The Appellant.
4. PCIT Concerned

2. The Respondent.

5. DR, ITAT, Panaji Bench, Panaji

3. The AO Concerned

6. Guard File

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

By Order,
Sr. Private Secretary / AR ITAT, Panaji.