

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.98/RPR/2025
निर्धारण वर्ष / Assessment Year : 2011-12

Sudhir Bansal
8, Civic Centre, Bhilai,
Dist. Durg-490 006 (C.G.)
PAN: ADBPB3234H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.07.2025

घोषणा की तारीख / Date of Pronouncement : 29.07.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM:**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 30.12.2024 for the assessment year 2011-12 as per the grounds of appeal on record.

2. In this case, the assessee has filed both legal grounds as well as grounds on merits. The Ld. Counsel for the assessee submitted that he would assail the legal ground first and if the said legal ground is answered affirmative, then the grounds on merits shall become academic only.

3. In this case, at the very outset, the Ld. Counsel for the assessee has assailed legal validity of the reassessment proceedings conducted by the department u/s. 147/148 of the Income Tax Act, 1961 (for short 'the Act'). It was submitted by the Ld. Counsel that as per the reasons recorded u/s. 148(2) of the Act, there is no independent satisfaction arrived at by the A.O in the "reasons to believe" that income of the assessee chargeable to tax has escapement assessment in respect of the assessee. In fact, there is no whisper in the reasons recorded that there is any independent application of mind by the A.O to arrive at a conclusion for reopening the case of the assessee u/s. 147/148 of the Act. That it can be clearly evidenced that the A.O has reopened the case of the assessee only on borrowed satisfaction

which may be termed as guesswork, surmises, perverse and arbitrary as per the mandate of Section 147/148 of the Act.

4. In this regard, the Ld. Counsel referred to the letter from the Assistant Director of Income Tax (Inv.)-1, Raipur which he writes to the Assistant/Dept. Commissioner of Income Tax, Circle-1(1), Bhilai, wherein in the said letter he states “accordingly, action u/s. 147 of the Income Tax Act, 1961 has to be taken in case of such beneficiaries for F.Y.2010-11 relevant to A.Y.2011-12 which is going to be time barred by limitation on 31st March, 2018.” The Ld. Counsel for the assessee contended that therefore, it is forced action taken by the department since it is clearly written that “.....action u/s. 147 of the Income Tax Act, 1961 has to be taken in case of such beneficiaries for F.Y.2010-11 relevant to A.Y.2011-12.....”.

5. In this regard, the Bench had directed the Ld. Sr. DR to furnish a report from the A.O. The Ld. Sr. DR submitted a report dated 06.03.2018 which has been placed on record. For the sake of completeness, the said report is made part of this order:



OFFICE OF THE
ASSISTANT DIRECTOR OF INCOME TAX (INV.)-I
CENTRAL REVENUE BUILDING, CIVIL LINES, RAIPUR (C.G.)

F.No.ADIT(Inv.)-I/Rpr/2017-18/2454

Date: 06/03/2018

To

The Asstt./Dept. Commissioner of Income Tax,
CIRCLE 1(1), BHILAI

Sir,

Sub: Bogus purchase bills taken by the beneficiaries - action u/s 147 of the I.T. Act, 1961 for A.Y. 2011-12 - reg.



Please refer to the above.

The Commercial Tax Department, Chhattisgarh has detected and identified the concerns in whose name bogus sale bills have been issued. Such bogus sale bills were detected with the help of specialized software of the Commercial Tax Department. After detection of such bogus bills, they were confirmed through enquiry and spot verification by the Commercial Tax Department. The findings on such bogus billing have been shared to the various intelligence and investigating agencies in the meeting of REIC, Raipur on various dates. As per these findings, the beneficiaries have taken bogus purchase bills from bogus dealers. Thus, the beneficiaries have suppressed their total income by way of debiting bogus purchases. Accordingly, action u/s 147 of the Income Tax Act, 1961 has to be taken in case of such beneficiaries for F.Y. 2010-11 relevant to A.Y. 2011-12 which is going to be time barred by limitation on 31st March, 2018. Details of such beneficiaries and corresponding bogus dealers, amount of bogus bills, etc. pertaining to F.Y. 2010-11 (list enclosed) are being forwarded for taking action u/s 147 of the I.T. Act, 1961 as the PAN and jurisdiction lies with you.

This is just an indication of bogus purchases debited in the P&L A/c of the beneficiaries. There may be other parties besides above from which bogus bills would have been taken by the

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beneficiaries. Therefore, you are requested to examine ledger account of the purchases of the beneficiaries thoroughly to find out such other bogus bills.

Encl: As above.

Yours faithfully,



(Sunny Kachhwaha)

Asstt. Director of Income Tax (Inv.)-I,
Raipur

Copy to:

1. The Pr. Commissioner of Income Tax - 2, Raipur
2. The Joint Director of Income Tax (Inv.), Raipur
3. The Joint/Addl. Commissioner of Income Tax, Range - 1, Bhilai

(Sunny Kachhwaha)

Asstt. Director of Income Tax (Inv.)-I,
Raipur

6. We have heard the submissions of the parties herein and perused the material available on record. In this case of the assessee was reopened u/s. 147/148 of the Act as per information of the Commercial Tax Department, Chhattisgarh i.e. on borrowed satisfaction and no satisfaction regarding escapement of income recorded by the A.O in the “reasons to believe” as per his independent application of mind. It is settled legal position that the reassessment order shall be vitiated so as to be bad in law and void ab initio where the case of an assessee was reopened without any independent application of mind or on borrowed satisfaction by the A.O. In fact, in the “reasons to believe”, there is no whisper about any

satisfaction recorded by the assessee regarding escapement of income in respect of the assessee.

7. In such scenario, we find that the **Hon'ble High Court of Bombay** in the case of **Principal Commissioner of Income-tax-5 Vs. Shodiman Investments (P.) Ltd., [2018] 93 taxmann.com 153 (Bombay)** has held that where Assessing Officer had issued a reassessment notice on basis of intimation from DDIT (Inv.) about a particular entity entering into suspicious transactions, this was clearly in breach of settled position in law that re-opening notice has to be issued by Assessing Officer on his own satisfaction and not on borrowed satisfaction. For the sake of clarity, the relevant observation of the Hon'ble High Court are culled out as follows:

“13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-

opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.”

8. Further, the **Hon’ble High Court of Delhi** in the case of **Principal Commissioner of Income-tax-6 v. Meenakshi Overseas (P.) Ltd., [2017] 82 taxmann.com 300 (Delhi)** has held that where reassessment was resorted to on basis of information from DIT (Investigation) that assessee had received accommodation entry but and there was no independent application of mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified. For the sake of clarity, the relevant observation of the Hon’ble High Court are culled out as follows:

“24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.”

9. Also, the **Hon’ble High Court of Delhi** in the case of **Well Trans Logistics India (P.) Ltd. v. Addl. Commissioner of Income-tax, [2024] 166 taxmann.com 72 (Delhi)** on the similar issue has held and observed as follows:

“24. We may note that the Assessing Officer after reproducing the information received from DDIT, (Investigation) Unit, drew the conclusion of escapement of income. In the case of Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 (SC), the Supreme Court had explained that expression "reason to believe" would mean justification to know or suppose that income had escaped assessment. While, it is correct that it is not necessary for the Assessing Officer to finally ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has.

25. In the present case, as may be seen, there is no "close nexus" or "live link" between tangible material and the reason to believe that income has escaped assessment. The information received from the Investigating Unit of the Revenue cannot be the sole basis for forming a belief that income of the assessee has escaped assessment. Having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.”

10. Considering the facts and circumstances of the case and aforementioned judicial pronouncements, we are of the considered view that reopening of the assessment u/s.147/148 of the Act by the A.O without recording any independent satisfaction per-se on borrowed satisfaction is bad in law and void ab initio, hence quashed.

11. Since the reassessment is quashed thereafter all the other proceedings becomes non-est in the eyes of law. As the legal issue has been answered in favour of the assessee therefore the grounds on merits becomes academic only.

12. As per the aforesaid terms the grounds of appeal raised by the assessee stands allowed.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29th day of July, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th July, 2025.

SB, Sr. PS

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

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.