

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 133/Del/2014 : Asstt. Year : 2003-04

Shri Gaurav Chopra, 3-C/6, New Rohtak Road, New Delhi-110005	Vs	Income Tax Officer, Ward-33(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AEIPC2912D		

Assessee by : Sh. Gautam Jain, CA &

Sh. P. K. Kamal, Adv.

Revenue by : Sh. F. R. Meena, Sr. DR

Date of Hearing : 20.02.2017	Date of Pronouncement : 27.02.2017
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ORDER

This is an appeal by the assessee against the order dated 21.10.2013 of Id. CIT(A)-XXVIII, New Delhi.

2. The main grievance of the assessee in this appeal relates to the validity of the reassessment proceedings u/s 147 r.w.s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the AO initiated the proceedings u/s 147 of the Act by issuing the notice u/s 148 of the Act on 26.03.2010 and required the assessee to file a return of income for the relevant period within a month of receiving the notice u/s 148 of the Act. In response, the assessee

submitted that the return filed u/s 139(1) of the Act on 23.09.2003 may be treated as a return filed u/s 148 of the Act. The AO framed the assessment at Rs.5,14,331/- by making an addition of Rs.5,00,000/- on account of bogus accommodation entries taken by the assessee.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the reopening of the assessment was done by the AO only on the basis of information received from the Investigation Wing and he did not apply his own mind. The Id. Counsel for the assessee drew our attention towards page nos. 10 & 11 of the assessee's paper book which are the copies of the reasons performa for obtaining approval of the CIT/Addl. CIT u/s 151(2) of the Act for initiating the proceedings u/s 148 of the Act and submitted that the AO acted only on the report of the Investigation Wing and did not apply his own mind. Therefore, the reopening itself was not valid. The reliance was placed on the following case laws:

- *Principal Commissioner of Income Tax-4 Vs G & G Pharma Ltd. 384 ITR 147 (Del.)*
- *CIT Vs Smt. Anjali Dua 219 CTR 183 (Del.)*
- *CIT Vs Anil Khosla in ITA No. 838/2008 (Del.)*
- *Smt. Smriti Media Vs UOI 339 ITR 37 (Cal.)*
- *CIT Vs Atul Jain 299 ITR 383 (Del.)*

- *CIT Vs SFIL Stock Broking Ltd. 325 ITR 285 (Del.)*
- *Signature Hotels (P) Ltd. Vs ITO 338 ITR 51 (Del.)*
- *CIT Vs Suren International (P.) Ltd. 357 ITR 24 (Del.)*
- *Smt. Meera Kapoor Vs CIT in ITA No. 1395/2008 (Del.)*
- *Smt. Anjali Dua Vs DCIT in ITA No. 4827/Del/2004*
- *Ranjeet Singh Vs ACIT 120 ITR 517 (Del.)*
- *ITO Vs Krishan Kumar Gupta 16 DTR 1 (Del.)*
- *ITO Vs Shri Karan Sawhney in ITA No. 2098/Del/2009*
- *ITO Vs Rajender Prasad Gupta 135 TTJ 9 (Jodh)*
- *ACIT Vs Smt. Chetna Kukreja in ITA No. 2141/Del/2009*
- *Shri Kamal Piyush Vs ITO in ITA No. 406/Del/2011*
- *ACIT Vs Hesham Petrotech Ltd. 147 TTJ 730 (Ahd.)*
- *ITO Vs Smt. Arti Khattar in ITA No. 2395/Del/2012*
- *CIT Vs Insecticides (India) Ltd. 357 ITR 330 (Del.)*
- *M/s Intimate Jewels Pvt. Ltd. Vs ITO in ITA No. 4498/Del/2010 order dated 30.12.2010*
- *Smt. Jaswinder Kaur Vs ITO in ITA No. 1511/Del/2011 order dated 07.10.2011*
- *ITO Vs Mrs. Maya Gupta in ITA No. 3455/Del/2013 order dated 13.12.2013*
- *M/s RKG International Pvt. Ltd. Vs ITO in ITA No. 101/Del/2013 order dated 14.11.2014*
- *Mini Leisure City Pvt. Ltd. Vs ITO in ITA No. 6153/Del/2012 order dated 28.11.2014*

6. In his rival submissions the ld. DR strongly supported the orders of the authorities below and further submitted that the AO was satisfied that the assessee concealed the income to the extent of Rs.5,00,000/-. Therefore, the reopening was justified.

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case,

from the performa for obtaining approval of the CIT for initiating the proceedings u/s 148 of the Act (copies of which are placed at page nos. 10 & 11 of the assessee's paper book). It is noticed that the AO in the Column No. 11 pertaining to reasons for the belief that income has escaped assessment noted as under:

“The Investigation Wing, Delhi conducted large scale filed investigation to unearth a huge racket involving accommodation entry providers. Such entry providers were found to be involved in giving accommodation entries in form of bogus gifts/loans/share application money/capital gain etc. by cheques/DDs in lieu of cash received from intending beneficiaries. The entry providers operated large number of bank accounts in their own names and also in fictitious names. The list of beneficiaries who had taken accommodation entry from such persons/firms included the name of Shri/Smt/M/s GAURAV CHOPRA.”

8. He also mentioned in the said performa as under:

“In view of the precise information, as discussed above, I have reasons to believe that assessee had obtained accommodation entries worth Rs.2,00,000/- from the above mentioned persons who is/are involved in the business of providing accommodation entries. Such amount represents undisclosed income of the assessee, which has escaped assessment.”

9. From the above notings of the AO, it is crystal clear that the reopening u/s 147 r.w.s 148 of the Act was done only on the basis of the information received from the Investigation Wing and the AO did not apply his own mind to come to the conclusion that the income of the assessee escaped assessment.

10. On a similar issue the Honøble Jurisdictional High Court in the case of Principal Commissioner of Income Tax-4 Vs G & G Pharma Ltd. (supra) vide order dated 08.10.2015 (now reported at 384 ITR 147) held as under:

“The basic requirement of law for reopening an assessment is application of mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.”

It has further been held as under:

“Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment.”

11. Similarly, the Honøble Jurisdictional High Court in the case of Signature Hotels Pvt. Ltd. Vs ITO and Anr. (2011) 338 ITR 51 (supra) held as under:

“Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence on belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bonafide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/material available with the Assessing Officer. The "reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and not that the Assessing Officer should have finally ascertained the fact by legal evidence or reached a conclusion, as is determined and decided in the assessment order, which is the final stage before the Assessing Officer.

It has further been held that:

“the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The

annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed.”

12. In the present case also the AO simply acted upon the information received from the Investigation Wing and did not apply his own mind. Therefore, the reopening u/s 147 by issuing the notice u/s 148 of the Act only on the basis of information received from the Investigation Wing was not valid. Accordingly, the reassessment framed by the AO is quashed.

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

(Order Pronounced in the Court on 27/02/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 27/02/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR