

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
I.T.A. No. 1023/Del/2019  
Assessment Year: 2010-11

ANURAG,  
E-26, SHASTRI NAGAR,  
MEERUT  
UTTAR PRADESH  
PIN: 250002  
(PAN: AAWPA7602C)  
**(ASSESSEE)**

vs. ITO, WARD-1(1),  
GHAZIABAD

**(RESPONDENT)**

Assessee by : Shri M.P. Rastogi, Adv.  
Revenue by : Shri Pradeep Singh Gautam, Sr. DR.

**ORDER**

The Assessee has filed this appeal against the impugned order dated 04.11.2018 passed by the Ld. CIT(A), Ghaziabad on the following grounds:-

- 1. That there was no valid assumption of jurisdiction u/s. 147/148 of the Income Tax Act, 1961 and consequently the reassessment framed by the AO is also bad in law.*
- 2. That there was no reason to believe as contemplated u/s. 147/148 of the Act and consequently the assumption of jurisdiction as made by AO is bad in law and the reassessment so framed in furtherance of such invalid assumption of jurisdiction is also invalid.*
- 3. That without prejudice to grounds no. 1 and 2 above, the addition of Rs. 40 lacs, being the gift received from various relatives, as made by the AO, is arbitrary, unjust and at any rate very excessive.*
- 4. That the addition of Rs. 10 lacs, received from mother Smt. Sushma Devi made from known sources, is based on surmises and conjectures not admissible in law.*

5. *That the assessee denied his liability to pay interest u/s. 234B/234C of the Act.*
6. *That the above grounds of appeal are independent and without prejudice to one another.*

*Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.*

2. At the time of hearing, Ld. Counsel for the assessee stated that the legal issues in dispute on identical facts and circumstances of the case have already been adjudicated and decided in favour of another assessee by the various Hon'ble High Courts and the ITAT, Benches. Therefore, he requested to follow the said decisions and reassessment may be quashed by allowing the appeal filed by the assessee. In support of this contention, he relied upon the following case laws:-

- Hon'ble Punjab & Haryana High Court in the case of Vipan Khanna vs. CIT (2002) 255 ITR 0220
- ITAT, Delhi Bench 'A' decision dated 20.01.2015 passed in the case of Bir Bahadur Singh Sijwali vs. ITO, Ward-1, Haldwani (2015) 53 taxmann.com 366 (Delhi-Trib).
- Hon'ble Bombay High Court decision dated 14.2.2015 in the case of CIT vs. Smt. Maniben Valji Shah (2006) 204 CTR (Bom) 249.
- ITAT, Delhi SMC Bench decision dated 27.5.2016 in the case of Gurpal Singh vs. ITO (2016) 71 taxmann.com 108 (Amritsar-Trib.)
- Hon'ble Gujarat High Court decision dated 06.12.2017 in the case of Vijay Harichandra Patel vs. ITO (2018) 400 ITR 167 (Guj).
- Hon'ble Delhi High Court decision dated 07.07.2017 in the case of PR. CIT vs. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (Delhi).

2.1 Besides above case laws, he heavily relied upon the order dated 07.05.2018 passed by the Hon'ble Gujarat High Court in the case of Principal Commissioner of Income Tax vs. Manzil Dineshkumar Shah reported (2018) 406 ITR 326 (Guj.) and stated that the facts and circumstances of the case in hand and the facts of the aforesaid case are exactly similar and identical, hence, the legal issues involved in the present appeal are squarely covered by the aforesaid case law and requested to follow the same and quash the reassessment by allowing the appeal of the assessee.

3. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT(A) and to support the orders of the revenue authorities, he has filed the written submissions in which he has referred various decisions of the Hon'ble Supreme Court of India, Hon'ble High Courts and the ITAT Benches and requested that the same may kindly be considered with regard to reopening of cases u/s. 147 of the I.T. Act.

1. *Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 341 (Copy Enclosed) where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*
2. *Yuvraj v. Union of India Bombay High Court [2009] 315 ITR 84 (Bombay)/[2009] 225 CTR 283 (Bombay) Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.*
3. *Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- IT The likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice..*
4. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/[2014] 223 Taxman 181 (Delhi)(MAG)/[2014] 362 ITR 417 (Delhi) In terms of section 148, law only requires that information or material on which Assessing Officer*

records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document.

5. *PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)*  
*Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*
6. *Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT*  
*SLP of assessee dismissed. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*
7. *Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court [2018] 94 taxmann.com 393 (Gujarat)*  
*Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.*
8. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court [2017] 83 taxmann.com 82 (Gujarat)*  
*Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.*
9. *Murlibhai Fatandas Sawlani Vs ITO Gujarat High Court 2016-TIQL-370-HC- AHM-IT*  
*It is not open to the assessee to object to the reopening by asking the AO to produce the source from where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.*
10. *Ankit Aqrochem (P.) Ltd. Vs JCIT Rajasthan High Court [2018] 89 taxmann.com 45 (Rajasthan)*

Where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

11. *Rakesh Gupta Vs CIT P&H High Court f20181 93 taxmann.com 271 (Punjab & Haryana)*

Where Assessing Officer received information from Principle Director of Income Tax (Investigation) that assessee had received bogus loss from his broker by client code modification, reassessment on basis of said information was justified.

12. *Home Finders Housing Ltd. Vs. ITO (2018) 94 taxmann.com 84 (SC).*

SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in *GKN Driveshafts (India) Ltd. Vs. ITO (2002) 125 Taxman 963* that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose objections by passing a speaking order, would not make reassessment order void ab initio.

13. *Baldevbahi Bhikhabhai Patel vs. DCIT (Gujarat High Court) (2018) 94 Taxmann.co, 428(Gujarat)*

Where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment alongwith reasons recorded by the Assessing Officer for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified."

4. I have heard both the parties and perused the records, the impugned order as well as the case laws relied by both the parties, reasons recorded by the AO while issuing the notice u/s. 148 of the Act. After going through the same, I am of the considered view that no doubt that assessee has filed various decisions of the Hon'ble High Courts, but the decision of the Hon'ble Gujarat High Court reported in (2018) 406 ITR 326 (Guj.) in the case of Principal Commissioner of Income Tax vs. Manzil Dineshkumar Shah is directly

applicable in the case in hand by which the legal issues involved in this appeal are squarely covered in favour of the assessee. The relevant portion of the decision of the Hon'ble Gujarat High Court is reproduced as under:-

*"4. The Tribunal by the impugned judgment held that the notice was invalid, against which view of the Tribunal, the Revenue has preferred this appeal.*

*5. Mrs.Bhatt for the department vehemently contended that Assessing Officer had sufficient material to enable him to form a belief that income chargeable to tax has escaped assessment. After verifying the information emerging from the record he was prima facie of the opinion that the assessee had shown purchases from Hawala dealers. In other words, the purchases were bogus. Original assessment was made under section 143(1) of the Income Tax Act, 1961 ('the Act' for short). The Tribunal committed an error in invalidating the reassessment proceedings.*

*6. By now it is well settled that even in case where the original assessment is made without scrutiny, the requirement of the Assessing Officer forming the belief that income chargeable to tax has escaped assessment, would apply. Reference in this respect can be made of the judgment in case of Inductotherm (India) P. Ltd. v. M. Gopalan, Deputy Commissioner of Income Tax reported in [2013] 356 ITR 481 (Guj).*

*7. It is equally well settled that the notice of reopening can be supported on the basis of reasons recorded by the Assessing Officer. He cannot supplement such reasons. The third principle of law which is equally well settled and which would apply in the present case is that reopening of the assessment would not be*

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*permitted for a fishing or a roving inquiry. This can as well be seen as part of*

*the first requirement of the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment. In other words, notice of reopening which is issued barely for making fishing inquiry, would not satisfy this requirement.*

*8. With this background, we may revert to the reasons recorded by the Assessing Officer. Information from the Value Added Tax Department of Mumbai was placed for his consideration. This information contained list of allegedly bogus purchases made by various beneficiaries from Hawala dealers. Assessee was one of them. As per this information, he had made purchases worth Rs.3.21 crores (rounded off) from such Hawala dealers during the financial year 2010-11. According to the Assessing Officer, this information 'needed deep verification'.*

*9. If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.*

*10. Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently*

formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'it needs deep verification'.

11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it.

12. Both these Tax Appeals are dismissed.”

4.1 I have also gone through the aforesaid decision of the Hon'ble Gujarat High Court alongwith the orders passed by the Revenue Authorities and the other judgments cited by both the parties as well as reasons recorded by the AO while issuing the notice u/s. 148 of the Act, I am of the considered view that the legal issues in dispute are squarely covered by the decision of the Hon'ble Gujarat High Court reported in (2018) 406 ITR 326 (Guj.) in the case of Principal Commissioner of Income Tax vs. Manzil Dineshkumar Shah, wherein the Hon'ble Gujarat High Court has held that reopening of the assessment would not be permitted for a fishing or a roving inquiry, because in the assessment the AO has gone through all the facts and taken one decision. The notice u/s. 148 of the I.T. Act has been issued on the income of Rs. 35 lacs which according to the reopening subject has already been disclosed by the assessee in the original return of income and has also been enquired and taken one decision. In my considered opinion, notice of reopening u/s. 148 of the Act on this issue was merely for making fishing or roving inquiries which would not permit the requirement of reopening. Therefore, respectfully following the decision of the Hon'ble Gujarat High Court reported in (2018) 406 ITR 326 (Guj.) in the case of Principal Commissioner of Income Tax vs. Manzil Dineshkumar Shah (Supra), the reassessment in dispute is hereby quashed by



allowing the appeal of the assessee. The judicial decisions relied upon by the Ld. Sr. DR have been duly considered. In my considered view, I do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Since the assessee succeeds on this legal grounds challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 25/11/2019.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date 25/11/2019

**"SRB"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT                      TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches