

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos.349 to 351/Del/2017
Assessment Years : 2009-10 to 2011-12**

Arpit Goel, Office No.205, 4262/3, Ansari Road, Darya Ganj, New Delhi-110002. PAN-ARCPG8663J	Vs	ITO, Ward-30(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None (hearing notice returned back)	
Respondent by	Sh. Ashok Gautam, Sr. DR	
Date of Hearing	01.04.2021	
Date of Pronouncement	28.04.2021	

ORDER

PER KUL BHARAT, JM :

These appeals filed by the assessee for the assessment years 2009-10 to 2011-12 are directed against the order of learned CIT(A)-16, New Delhi all dated 02.11.2016.

2. All these appeals have identical grounds of appeal. Therefore, all are taken up together and are being disposed of by way of a consolidated order. First we take up **ITA No.349/Del/2017 [Assessment Year 2009-10]** wherein the assessee has raised following grounds of appeal:-

1. *“On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in:*

a) *Holding that action u/s 147 has been legally and rightly taken by the A.O.*

- b) *Holding that action u/s 147 by the A.O. was valid and not void.*
- c) *Holding that addition of Rs. 9,14,800/- and 2,01,500/- has been rightly and correctly made by the A.O. u/s 69A.*
- d) *Holding that the assessee had not been able to satisfactorily explain the deposit in the bank accounts by the assessee with ICICI bank and in the Punjab national bank.*
- e) *Dismissing the grounds taken by the assessee regarding invalidity and illegality of action u/s 147/148 and thereby holding that the A.O. had enough reasonable and actionable information to arrive at a particular decision.*
- f) *Dismissing the appeal of the assessee.*
- g) *Dismissing the ground No. 4 of the assessee.*
- h) *Holding that the assessee had earned income of Rs. 88,000/- from salary.”*

3. At the time of hearing, no one appeared on behalf of the assessee. A notice sent through Speed post is returned back with the remarks “No such person in the given address”. Under these facts, the appeals were taken up for hearing in the absence of the assessee.

4. The facts giving rise to the present appeal are that the case of the assessee was re-opened by issuing notice u/s 148 of the Income Tax Act, 1961 (“the Act”) which was duly served on the assessee. In response thereto, Ld.AR for the assessee appeared before the Assessing Officer and was provided copy of the reasons recorded. The reasons for re-opening was supplied to the assessee after having filed the return as

directed by the Assessing Officer. The assessee had filed return declaring loss of Rs.10,117/-. Thereafter, a notice u/s 143(2) and 142(1) of the Act was issued and served upon the assessee. In response thereto, Ld.AR for the assessee attended the proceedings from time to time. While framing the assessment, the Assessing Officer noticed that as per P&L A/c, the total sales of Rs.1,83,000/- was declared by the assessee for Financial Year 2008-09 for which net loss of Rs.10,117/- was claimed. However, it was observed as per the bank statement of the ICICI, Dariyaganj, New Delhi that a total credit of Rs.9,14,800/- was appearing for the Financial Year 2008-09. Therefore, the Assessing Officer called upon the assessee to explain the source of deposits. The assessee was also asked to reconcile the mis-match in the sales declared by the assessee and credit made in the banks. In response to the said query, the assessee filed detailed letter. It was stated before the Assessing Officer that Rs.1,00,000/- was introduced as capital which cannot be taxed. It was further stated that Rs.1,00,000/- was transferred from the Punjab National Bank out of his account in respect of the cheque received against sales of Rs.1,83,000/-. It was stated that the assessee declared an amount of Rs.1,83,000/- as sales. It was stated in respect of amount of Rs.1,72,000/- that it cannot be taxed as undisclosed receipt as the sales has been booked in the next year i.e. Assessment Year 2010-11. In respect of cash deposits amounting to Rs.4,59,800/-, it was stated that it cannot be taxed as the source of amount credit in the bank was re-deposited in cash out of his cash withdrawals from the bank. However, this explanation of the assessee

was not found acceptable to the Assessing Officer, on the ground that the assessee could not support his contention with documentary evidences. Under such circumstances, the Assessing Officer made addition of Rs.9,14,800/- u/s 69A of the Act. The Assessing Officer also observed that there was total credit of Rs.2,01,617/- that constituted cash deposits of Rs.2,01,500/- and credit of interest of Rs.117/- thereon. However, this transaction had not been disclosed by the assessee in his accounts as well as in the return filed. Hence, the Assessing Officer made addition of Rs.2,01,617/-. Finally, the Assessing Officer made addition in respect of the salary income of Rs.88,000/- which the assessee himself had admitted. Hence, the Assessing Officer assessed the income at Rs.12,04,420/- as against loss of Rs.10,117/- claimed by the assessee, in his return of income so filed.

5. Aggrieved against this, the assessee is in appeal before Ld.CIT(A).

6. Before Ld.CIT(A), the assessee had taken grounds against legality of re-opening as well as he also challenged the addition on merit. Ld.CIT(A) on both accounts, rejected the appeal of the assessee and confirmed the findings of the Assessing Officer.

7. Aggrieved against this, the assessee is in appeal before this Tribunal.

8. Ground of appeal Nos. 1(a), 1(b) and 1(e) are on legality of the action u/s 147 of the Act. As no one appeared on behalf of the assessee,

therefore, we proceed on the basis of the submissions made by the assessee before the authorities below.

9. Ld. Sr. DR, Sh. Ashok Gautam supported the orders of authorities below. He submitted that there is no illegality in the orders of the authorities below. The law is clear on the issue of re-opening. The Assessing Officer was satisfied after having received the information of cash deposit in the bank accounts of the assessee that the income has escaped assessment. He relied on the order of Ld.CIT(A).

10. We have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a detailed finding on the issue of re-opening by observing as under:-

“I have considered all the facts and circumstances of the case with regard to reopening u/s 147, the additional ground raised by the appellant is a legal one and it does not require any further enquiry or investigation. The additional ground, also goes to the root of the assessment and determination of the tax liability of the appellant. Therefore, the same is being admitted and adjudicated as under:-

From the above discussion, it is clear that there are umpteenth number of judicial pronouncements on the issue of reopening of assessment u/s 147. Each set of facts and circumstances present before Assessing Officer a new challenge. There could be similarity and circumstances but there are hardly any circumstances which are identical. Therefore, the conclusion has to be derived on the basis of facts and circumstances of the case in hand.

The words 'has reason to believe' are stronger than the words 'is satisfied'. In other words the AO must form an objective and prima facie opinion himself on the basis of expressed statement or reasons or definite/relevant (and not vague) material in his possession. To put it differently, the words "reason to believe" suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the AO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The AO would be acting without jurisdiction if the reasons for his belief that the conditions are satisfied does not exist or is not material- or relevant to the belief required by the section -Sheo Nath Singh v. AAC (1971) 82 1TR 147 (SC). If the AO has cause or justification to know or suppose that income has escaped assessment, it can be said to have 'reason to believe' that an income has escaped assessment. The said expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers CIT vs Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 161 Taxman 316 (SC).

In determining whether commencement of reassessment proceedings is valid, the court has only to see whether there is prima facie some material on the basis of which the department opened the case. The sufficiency or correctness of the material is not a thing to be considered at this state. Raymond Woollen Mills Ltd v ITO (1999) 236 ITR 34 (SC). Green Arts (P) Ltd v ITO (2005) 257 ITR 639 (Delhi). The assessee cannot challenge sufficiency of belief - ITO vs Lakhmani Mewal Das (1976) 103 ITR 437 (SC), What is the ultimate result of enquiry is not material for deciding the jurisdiction of the AO to reopen assessment, even if it is found ultimately that there

has been no escapement of income - Mahasukhram Madan Lai v CAT (1955) 28 ITR 299 (Pat.).

In the present case the specific information “specific to the account number in a particular bank were received, acted upon, further investigated and then sent to the Assessing Officer, Assessing Officer applied his own mind and on the basis of information available on record, not to forget that the appellant has failed to file “his return of income for the relevant assessment year, came to a conclusion that the income of Rs.9,14,800/- has escaped assessment. The Assessing Officer is not suppose to arrive at the final conclusion. He is supposed to reach at a reasonable belief, which a prudent man will arrive at, that the income has escaped assessment. It has to be a prima facie case regarding escapement of income. The Assessing Officer is not passing the final judgement. In the case in hand there is no two opinion that the assessee had bank account in which substantial cash was being deposited from various parts of the country. It is also a fact that the assessee had not disclosed this account to the department and also not filed his return of income for the relevant assessment year. The Assessing Officer has recorded all this in his reasons and then he took the approval of the competent authority as provided in the Act. Everything is in order. The satisfaction and the reason has to be that of Assessing Officer, not of anybody else. In my humble opinion, the Assessing Officer had enough reasonable and actionable information to arrive at a particular decision. Therefore, the ground challenging reopening u/s 147 is dismissed.”

11. We do not find any infirmity in the finding of Ld.CIT(A) as the assessee has not supported his submissions by filing any contrary evidences. Hence, Ground of appeal Nos. 1(a), 1(b) and 1(e) raised by the assessee are dismissed.

12. Ground of appeal Nos. 1(c) & 1(d) raised by the assessee are against the sustaining of addition of Rs.9,14,800/- and 2,01,500/-.

13. Ld. Sr. DR in this regard has relied upon the orders of the authorities below.

14. We have heard Ld.Sr.DR and perused the material available on record. Before Ld.CIT(A), it was stated by the assessee that he was engaged in computer spare parts business. The spare parts were sold throughout the country. It was stated that *modus operandi* was that cash or cheque was deposited by buyers in the assessee's accounts held in ICICI Bank located in different parts of the country. It was also submitted that on various occasions on the same day, such cash and cheques were deposited at stations situated in different States where it was not practically possible that a single person to go and deposit in the same day. It was submitted that having received the information of deposits, such cash was withdrawn immediately and used in the purchase of goods. Goods thereafter, dispatched to such buyers. In respect of credits in PNB account, similar explanation was offered by the assessee. Ld.CIT(A) rejected the same by observing as under:-

"I have considered all facts and circumstances of the case. There is no denying the fact that the appellant was maintaining a bank account' in ICICI Bank Ltd. Darya Ganj ,New Delhi, in which there were cash deposits amounting to Rs.9,14,800/- and Punjab National Bank, New Delhi, having cash deposits amounting to Rs.2,01,500/-. It is also a fact that in these accounts the cash had been deposited. It is also a fact that the appellant had not disclosed

these accounts to the department nor had he disclosed the business carried on by him outside the books of accounts. The action initiated by the department was not based on some hearsay or mere suspicion. The action taken by the Department was based on concrete information passed on to Investigation Wing and then eventually to the Assessing Officer from Financial Intelligence Unit. The information passed on with respect to deposits in bank account is also not vague it was concrete and correct to the extent of not only account number, but also the quantum of cash deposits.

During the assessment proceedings, the appellant has claimed the cash deposits to be the proceeds of sale of computers and computer parts. However, it remained just a contention not supported by any piece of evidence. The appellant has singularly failed to explain satisfactorily the amount of deposits in his- bank accounts. The action of the appellant is squarely covered under the mischief of section 69A which is reproduced as under:-

"Sec. 69A:- Unexplained money:-

Where in any financial year the assessee is found to be the owner of any money bullion* jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the AO satisfactory, the money and the value of the bullion, jewellery or other valuable article may deemed to be the income of the assessee for such financial year."*

As discussed above, the appellant has tried to explain the deposits in cash by saying that it was the proceeds of sale of computers and computer parts. However, in the absence of any concrete, cogent and reliable evidence, the contention of the

appellant is rejected. The action of the Assessing Officer is confirmed.”

15. We do not see any infirmity into the findings of the Ld.CIT(A) as the assessee had only made a bald statement without giving any supportive evidences regarding his business. No detail is furnished by the assessee regarding whom spare parts as claimed by the assessee were supplied and the complete details of parties to whom he supplied computer parts. In the absence of such material evidences, we do not see any reason to interfere in the findings of the authorities below. Therefore, Ground of appeal Nos. 1(c) & 1(d) raised by the assessee are rejected and same are dismissed.

16. Ground of appeal Nos. 1(f) & 1(g) raised by the assessee are general in nature and need no adjudication.

17. Now, coming to Ground of appeal No.1(h) raised by the assessee related to addition made in respect of the salary income.

18. Ld. Sr. DR submitted that before the Assessing Officer, the assessee himself had added the factum of having earned the salary income. Therefore, the Assessing Officer was justified in making this addition.

19. We have heard Ld. Sr. DR and perused the material available on record. We find that the Assessing Officer has categorically recorded that in the statement oath dated 27.02.2014, the assessee himself that prior to start business, he was working with M/s. Oldy Goldy Computers

on a monthly salary of Rs.8,000/- per month. However, in the return of income and the year under consideration, no salary income was disclosed for the period from 01.04.2008 to 28.02.2009.

20. We find that the Assessing Officer did not make any inquiry from the employer of the assessee whether he had actually received the salary. Merely, offer made by the assessee in our considered view, ought not to have been taken as a conclusive evidence of earning salary income by the assessee. Therefore, in the absence of any conclusive evidence that the assessee infact had earned salary from M/s. Oldy Goldy Computers, the Assessing Officer was not justified in taking the addition and making the addition on account of earning of salary income. Moreover, if it is presumed that the assessee had earned salary income in that event, the Assessing Officer should have accepted source of deposit made in bank account. We, therefore, direct the Assessing Officer to delete this addition. Thus, Ground of appeal No.1(h) raised by the assessee is allowed.

21. In the result, the appeal of the assessee is partly allowed.

22. Now, we take up **ITA Nos.350 & 351/Del/2017** filed by the assessee relating to Assessment Years 2010-11 & 2011-12 wherein the assessee has raised following grounds of appeal :-

ITA No.350/Del/2017 [Assessment Year 2010-11]

1. *“On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in:*

- a) *Holding that action u/s 147 has been legally and rightly taken by the A.O.*
- b) *Holding that action u/s 147 by the A.O. was valid and not void.*
- c) *Holding that addition of Rs.2,75,56,790/- and 79,100/- has been rightly and correctly made by the A.O. u/s 69A.*
- d) *Holding that the assessee had not been able to satisfactorily explain the deposit in the bank account by the assessee with ICICI bank and in the Punjab National Bank.*
- e) *Dismissing the grounds taken by the assessee invalidity and illegality of action u/s 147/148 and thereby holding that the A.O. had enough reasonable and actionable information to arrive at a particular decision.*
- f) *Dismissing the appeal of the assessee.”*

ITA No.351/Del/2017 [Assessment Year 2011-12]

1. “On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in:
- a) *Holding that action u/s 147 has been legally and rightly taken by the A.O.*
 - b) *Holding that action u/s 147 by the A.O. was valid and not void.*
 - c) *Holding that addition of Rs.21,57,160/- and 1,89,202/- has been rightly and correctly made by the A.O. u/s 69A.*
 - d) *Holding that the assessee had not been able to satisfactorily explain the deposit in the bank accounts by the assessee with ICICI bank and in the Punjab National Bank.*

- e) *Dismissing the grounds taken by the assessee regarding invalidity and illegality of action u/s 147/148 and thereby holding that the A.O. had enough reasonable and actionable information to arrive at a particular decision.*
- f) *Dismissing the appeal of the assessee.*
- g) *Assessing the assessee on account of income from salary of Rs.1,75,000/- as against declared salary income of Rs.95,000/- only.”*

23. Since the facts and the grounds are identical as in ITA No.349/Del/2017 and Ld. Sr. DR adopted the same arguments as in ITA No.349/Del/2017. In ITA No.349/Del/2017, we have rejected the grounds of appeal by observing as under:-

10. *“We have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a detailed finding in the issue of re-opening by observing as under:-*

“I have considered all the facts and circumstances of the case with regard to reopening u/s 147, the additional ground raised by the appellant is a legal one and it does not require any further enquiry or investigation. The additional ground, also goes to the root of the assessment and determination of the tax liability of the appellant. Therefore, the same is being admitted and adjudicated as under:-

From the above discussion, it is clear that there are umpteenth number of judicial pronouncements on the issue of reopening of assessment u/s 147. Each set of facts and circumstances present before Assessing Officer a new challenge. There could be similarity and

circumstances but there are hardly any circumstances which are identical. Therefore, the conclusion has to be derived on the basis of facts and circumstances of the case in hand.

The words 'has reason to believe' are stronger than the words 'is satisfied'. In other words the AO must form an objective and prima facie opinion himself on the basis of expressed statement or reasons or definite/relevant (and not vague) material in his possession. To put it differently, the words "reason to believe" suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the AO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The AO would be acting without jurisdiction if the reasons for his belief that the conditions are satisfied does not exist or is not material- or relevant to the belief required by the section -Sheo Nath Singh v. AAC (1971) 82 1TR 147 (SC). If the AO has cause or justification to know or suppose that income has escaped assessment, it can be said to have 'reason to believe' that an income has escaped assessment. The said expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers CIT vs Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 161 Taxman 316 (SC).

In determining whether commencement of reassessment proceedings is valid, the court has only to see whether there is prima facie some material on the basis of which the

department opened the ease. The sufficiency or correctness of the material is not a thing to be considered at this state. Raymond Woollen Mills Ltd v ITO (1999) 236 ITR 34 (SC). Green Arts (P) Ltd v ITO (2005) 257 ITR 639 (Delhi. The assessee cannot challenge sufficiency of belief - ITO vs Lakhmani Mewal Das (1976) 103 ITR 437 (SC), What is the ultimate result of enquiry is not material for deciding the jurisdiction of the AO to reopen assessment, even if it is found ultimately that there has been no escapement of income - Mahasukhram Madan Lai v CAT (1955) 28 ITR 299 (Pat.).

In the present case the specific information "specific to the account number in a particular bank were received, acted upon, further investigated and then sent to the Assessing Officer, Assessing Officer applied his own mind and on the basis of information available on record, not to forget that the appellant has failed to file "his return of income for the relevant assessment year, came to a conclusion that the income of Rs.9,14,800/- has escaped assessment. The Assessing Officer is not suppose to arrive at the final conclusion. He is supposed to reach at a reasonable belief, which a prudent man will arrive at, that the income has escaped assessment. It has to be a prima facie case regarding escapement of income. The Assessing Officer is not passing the final judgement. In the case in hand there is no two opinion that the assessee had bank account in which substantial cash was being deposited from various parts of the country. It is also a fact that the assessee had not disclosed this account to the department and also not filed his return of income for the relevant assessment year. The Assessing Officer has recorded all this in his reasons and then he took the approval of the competent authority as provided in the Act. Everything is in order. The satisfaction

and the reason has to be that of Assessing Officer, not of anybody else. In my humble opinion, the Assessing Officer had enough reasonable and actionable information to arrive at a particular decision. Therefore, the ground challenging reopening u/s 147 is dismissed.”

11. *We do not find any infirmity in the finding of Ld.CIT(A) as the assessee has not supported his submissions by filing any contrary evidences. Hence, Ground of appeal Nos. 1(a), 1(b) and 1(e) raised by the assessee are dismissed.”*

24. Therefore, taking the consistence view, Grounds of appeal No.1(a), 1(b) & 1(e) raised by the assessee in ITA Nos. 350 & 351/Del/2017 are rejected.

25. Now coming to Ground of appeal Nos. 1(c) & 1(d) raised by the assessee in ITA Nos. 350 & 351/Del/2017 relating to Assessment Years 2010-11 to 2011-12.

26. Ld. Sr. DR adopted the same arguments as in ITA No.349/Del/2017 wherein we confirmed the action of the authorities below by holding as under:-

15. *“We do not see any infirmity into the findings of the Ld.CIT(A) as the assessee had only made a bald statement without giving any supportive evidences regarding his business. No detail is furnished by the assessee regarding whom spare parts as claimed by the assessee were supplied and the complete details of parties to whom he supplied computer parts. In the absence of such material evidences, we do not see any reason to interfere in the findings of the authorities below. Therefore, Ground of appeal Nos. 1(c) & 1(d) raised by the assessee are rejected and same are dismissed.”*

27. Taking the consistent view, Grounds of appeal Nos.1(c) & 1(d) raised by the assessee in ITA Nos. 350 & 351/Del/2017 are dismissed.

28. Ground No.1(f) raised by the assessee in ITA Nos. 350 & 351/Del/2017 is general in nature and needs not adjudication in both the appeals. Thus, Ground No.1(f) is dismissed in both the appeals.

29. Now, coming to Ground of appeal No.1(g) in ITA No. 350/Del/2017 raised by the assessee wherein the assessee has challenged the action of the Assessing Officer raising the salary income of Rs.1,75,000/- as against Rs.95,000/- claimed by the assessee.

30. Ld. Sr. DR has adopted the same arguments wherein the Assessing Officer has made addition on account of undisclosed salary on the basis of statement on oath dated 27.01.2014.

31. The facts in brief are identical as in ITA No.349/Del/2017 except that in ITA No.349/Del/2017 (supra) the assessee has not disclosed the salary income but in the current year, the assessee has disclosed salary income at Rs.80,000/- in the statement of oath. The assessee had stated that he had received income @ 75,000/- per month.

32. Considering the facts available on record and in view of the facts that the Assessing Officer has not made any inquiry from the employer of the assessee to ascertain the factum of receipt of salary income. Therefore, we direct the Assessing Officer to delete this addition. Thus, Ground of appeal No.1(g) raised in ITA No.350/Del/2017 is allowed.

33. In the result, the appeals of the assessee in ITA Nos. 349 & 351/Del/2017 are partly allowed and appeal of the assessee in ITA No.350/Del/2017 is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 28th April, 2021.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI