आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE S/SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.463/Ahd/2018
Assessment Year : 2009-10

Kalyan Jewells P.Ltd. 49, Super Mall Nr.Lal Bungalow, Ahmedabad 380 015 PAN : AACCK 4717 B	Vs	ITO, Ward-2(1)(2) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri P.F. Jain, CA
Revenue by :	Shri Urjit Shah, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 17/02/2022**
घोषणा की तारीख /**Date of Pronouncement: 18/02/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 16.07.2018 in appeal no. CIT(A)-2/377/ITO, Wd.2(1)(2)/2016-17 passed by the Ld.Commissioner of Income-tax (Appeals)-2, Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2009-10.

2. This appeal is filed with a delay of 51 days. The assessee has filed an affidavit stating that there were number of legal proceedings against the assessee-company by Bank Authorities, Income-tax Department and there were huge tax demand against the company for different assessment years for which order under section 179(1)

of the Income Tax Act, 1961 ("the Act" for short) has been passed by the AO for recovery of the outstanding demand. Further, the assessee-company had sold various properties against DRT liabilities due to various financial institutions thereby, the assessee could not file appeal within time and the delay of 51 days to be condoned on the above reasons. The Ld.DR has no objection for condoning the delay.

3. We are satisfied with the reasons given by the assessee, and thereby we condone the delay of 51 days in filing this appeal and take up the appeal for adjudication.

4. Grounds of appeal raised by the assessee are as follows:

> *"1) The Id. CIT(Appeals) has erred in law and on facts in upholding addition of Rs.51,37,815/- as bogus purchases without properly appreciating the facts of the assessee.*
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> *2) The Assessment made u/s.147 r.w.s 143(3) is submitted to be bad in law and on facts on the ground of non assumption of proper jurisdiction and non fulfillment of conditions provided u/s.147 of the Act and the CIT(A) on the facts of the appellant ought to have held the re-assessment order as invalid.*
>
> *3) On the facts no such addition ought to have been made.*
>
> *4) The appellant being under the disturbed mind on account of various litigations going/on and being under financial crisis unintended delay occurred which is prayed to be kindly condoned.*
>
> *5) On the facts no interest u/s.234-A, 234-B, and 234-D of the Act ought to have been levied."*

5. Brief facts of the case is that the assessee is a private limited company. It has filed its return of income for the Asst.Year 2009-10 on 30.9.2009 declaring income of Rs.29,78,039/-. Subsequently, an *ex parte* assessment order under section 144 read with section 147 of the Act was passed on 27.6.2014 determining total income at

Rs.38,17,878/-. Thereafter, it was informed by the Director of Income Tax (Investigation), Surat based on search and seizure operation carried out in the case of Shri Dharmichand Jain Group and others wherein a list of beneficiaries who have benefited from the accommodation entries obtained from this group was compiled. Main activities of these *benami* concerns were providing accommodation entries of unsecured loans and bogus purchase. The assessee-company has also obtained accommodation entries of Rs.1,37,815/- during the Asstt.Year 2009-10 in the form of purchases from one of the *benami*, Rajendra Jain. Further information was also received from additional CIT(Inv.), Uni-1, Ahmedabad in respect of accommodation entries paid by the companies and controlled by Shri Pratik Shah wherein it is noticed that the assessee-company has also obtained accommodation entries of Rs.25 lakhs each by cheque from Poineer Mercantile Ltd. and another from Jupiter Business Ltd. In view of the above information, the AO reopened assessment under section 147 for the second time by issue of notice under section 148 on 30.3.2016. In response to the notice, the assessee vide letter dated 21.8.2016 requested to treat the return filed originally on 12.10.2019 as a return in response to the notice under section 148 of the Act. Thereafter, the AO completed re-assessment by making addition of Rs.51,37,815/- as income escaped assessment and brought to tax the same.

6. Aggrieved against this second the reassessment order, the assessee filed an appeal before the Ld.CIT(A)-2, Ahmedabad by questioning validity of reopening of the assessment and also additions made by the AO. The assessee by its letter dated 10.10.2017 submitted that the assessee's accounts are audited

under the Companies Act as well as under Income Tax Act. Further, an amount of Rs.25 lakhs was received on application from Jupiter Business Ltd. and that company was assessed vide PAN No.AABCJ1178J. Similarly, Poineer Mercantile Ltd. has also assessed vide PAN No.AADCP3995R and that amount was paid from the bank to the assessee and as per the record of ROC, both companies are active. The assessee further submitted that the reasons recorded by the AO is not valid in law, since the basis on the "borrowed satisfaction", it cannot be treated as satisfaction of the AO as required under the Act. Thus, the re-assessment proceedings become *void ab initio* and relied upon few case laws. However, the ld.CIT(A) upheld that the re-assessment is good in law and confirmed the additions made by the AO thereby dismissed the appeal preferred by the assessee.

7. Aggrieved against the same, the assessee is in appeal before the Tribunal by reiterating submissions as were made before the Revenue authorities. In reply, the ld.DR supported the orders of the lower authorities and prayed that the assessee's appeal be dismissed.

8. We have given our thoughtful consideration to the facts of the case and the material placed before us. The reasons recorded for re-opening of the assessment is placed at page nos.21 and 22 of the paper book filed by the assessee, which read as under:

Reasons recorded for reopening of assessment u/s.147 of the I.T. Act, 1961

In this case, the assessee-company filed its Return of Income for the A.Y. 2009-10 on 30/09/2009 declaring income of Rs. 29,78,039/-, subsequently return was revised at the same income. Return was processed u/s 143(1) on 02/11/2010. Thereafter, the case was reopened on behalf of the information received from the Director of Income-

Tax(investigation),Mumbai and ITO(Inv.), Mehsana. Consequently the assessment u/s 144 r.w.s. 147 of the Act was finalized on 27.06.2014.

Later on, it is learnt from the Director of Income-Tax (Investigation), Surat that a search and seizure operation in the case of Shri Rajendra Jain, Shri Sanjay Choudhry & Shri Dharmichand Jain group was carried out 03/10/2013. During the search and seizure, the list of the beneficiaries who have benefited from the entries obtained from these group was compiled. The main activities of these benami concerns are providing accommodation entries of unsecured loans and bogus purchase. The assessee company has also obtained accommodation entries of Rs.1,37,815/- during the year under consideration in the form of purchase from the one of the benami concern of Rajendra Jain.

Further, information received from the Addl. DIT (Investigation)-Unit-l, Ahmedabad in respect of accommodation entries paid by the companies and controlled by shri pratik shah wherein it is noticed that the assessee company has also obtained accommodation entries of Rs.50,00,000/- during the year under consideration as tabulated hereunder:

Sr.	*Date*	*Cheque No.*	*Bank name*	*Party name*	*Amount*	*Name of the entry giving company*
1.	*20 March 09*	*RTGS*	*DCB*	*Kalyan Jewels P.Ltd.*	*25,00,000/-*	*Poineer Merchantile Ltd.*
2.	*10 March 2009*	*171371 DCB Bank*	*Kalyan Jewels P.Ld.*	*25,00,000/-*	*25,00,000/-*	*Jupiter Buinsess Limited*

As such the accommodation entries of Rs.51,37,815/- obtained by the assessee company in the form of purchases from' benami concerns of different groups is required to be disallowed and added to income for the year A. Y. 2009-10.

Since, it was failure on account of the assessee to disclose, fully and truly all material facts, necessary for assessment, I have reasons to believe that income chargeable to tax has escaped assessment within the meaning of u/s. 147 of the Act and this case is fit for reopening the assessment u/s. 147 of the Act.

Sd/-

(ANKITA SINGH)
Asst. Commissioner of Income Tax,
Circle-2(l)(2), Ahmedabad

9. The reasons recorded clearly state that the same was recorded merely on the basis of the information received by the AO from

DIT(Investigation), Surat and Ahmedabad relating to the accommodation entries. The AO has not recorded any other information that what extent of income which has escaped from the assessment for the Asst.Year 2009-10 in the case of the assessee by these accommodation entries. The AO was not clear whether these entries in the receipt/income of the assessee. He simply repeated the information that he has received from the DIT(Investigation), Surat and Ahmedabad.

10. Co-ordinate Bench of the Tribunal, Ahmedabad in the case of Mariyam Ismaile Razawani Vs. ITO in ITA No.676/Ahd/2016 vide order dated 9.8.2016 after relying on the decision in the case of Bir Bahadur Singh Sijwali Vs. ITO, (2015) 68 SOT 197 URO (Del) has considered similar issue of validity of reopening of the assessment and held that reopening of the assessment is bad in law, when the reassessment is based on "borrowed satisfaction". The relevant observation of the Tribunal read as follows:

> *"5. Having heard the rival contentions, and having perused the material on record, I see no reasons to take any other view of the matter than the view taken by the division bench, in the case of Bir Bahadur Singh Sijwali (supra), as follows :-*
>
> > *"3. This assessment was reopened, as noted in the reasons recorded for reopening the assessment- furnished to the assessee vide Assessing Officer's letter dated 25th April 2012, on the following ground:*
> >
> > > *During the financial year 2007-08, the assessee has made transaction of Rs 10,24,100 (deposits in cash) in his saving bank account but no return of income was filed by the assessee. As such, it was reason to believe that there is an escapement of income at Rs 10,24,100 on the part of the assessee. Therefore, in the light of the above fact that the income chargeable to tax for the assessment year 2008-09 has escaped assessment within meanings of section 147 of the Income Tax Act, notice was issued under section 148 on 14.9.2009 which*

was served upon the assessee through his counsel Sri Arun Kumar Agarwal, Advocate, on 14/09/2009.

4. The short question that we are required to adjudicate is whether or not, on the basis of the above reasons, reassessment proceedings can be lawfully initiated. This aspect of the matter was not examined by the CIT(A), but, as is the settled legal position in the light of Hon'ble Supreme Court's judgment in the case of National Thermal Power Co. Ltd Vs CIT [(1198) 223 ITR 383], the assessee is not precluded from raising this legal issue at this stage, on the ground that the same has not been raised before the authorities below. Learned Departmental Representative, in all fairness, did not raise this technicality either. We, therefore, proceed to examine this issue on merits.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. A plain look at the reasons for reopening the assessment, as produced before us, show that these reasons were recorded after the notice was served on 14th September 2009 as a mention about the fact of service of notice is set out in the recorded reasons itself. It is only elementary that the reasons are to be recorded before issuance of notice, and in the absence of any reasons for reopening having been recorded prior to reopening of assessment, the reassessment proceedings fail for this short reason alone. Hon'ble Bombay High Court, in the case of Prashant S. Joshi vs. ITO [(2010) 230 CTR (Bom) 232.] has observed: "The AO must have reasons to believe that such is the case (i.e. any income chargeable to tax has escaped assessment for a particular year) before he proceeds to issue notice under s. 147". In other words, when no reasons are recorded for reopening the assessment prior to issuance of notice, the reassessment proceedings must fail for that reason alone. However, for the reasons we will set out now, the conclusions will be no different even if it is presumed that this communication, extracts from which are reproduced before, only conveys the reasons already recorded prior to issuance of notice.

7. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor anything can be deleted from the reasons so recorded. Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, inter alia, observed that ".....It is needless to mention that the reasons

are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordships added that "The reasons recorded should be self- explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....". Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly, at the stage of recording the reasons for reopening the assessment, all that is necessary is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection to an income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which indicate a legitimate suspicion about income escaping the assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. While dealing with this aspect of the matter, it is useful to bear in mind the following observations made by Hon'ble Supreme Court in the case of ITO Vs Lakhmani Mewal Das [(1976) 103 ITR 437],

> *"the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation*

of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs 10,24,100 has escaped assessment of income because the assessee has Rs 10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

9. Learned Departmental Representative has referred to a number of judicial precedents in support of her stand that even deposits in the bank account, as having come to the notice of

the Assessing Officer through AIR, can be reason enough for holding the belief that income has escaped assessment. She has relied upon the decisions in the cases of CIT Vs Nova Promoters & Finlease Pvt Ltd [(2012)342 ITR 169] but then none of the questions before Hon'ble High Court had anything to do with reopening of assessment and this decision can not, therefore, be taken as an authority on the legal issue which did not even come up for specific adjudication before Their Lordships. As for her reliance on Hon'ble Supreme Court's judgment in the case of Phool Chand Bajrang Lal Vs ITO [(1993) 203 ITR 456], that was case in which Their Lordships concluded that the AO "rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific relevant and reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and, therefore, income chargeable to tax had escaped assessment" and we are unable to see anything on the facts of the present case which are materially similar to the facts of the said case. As regards her reliance on the decision of a coordinate bench in the case of Mithila Credit Services Limited Vs ITO (ITA No. 1078/Del/2013; order dated 23.5.2014), it is important to bear in mind the fact that it was a case in which the Assessing Officer had reopened the assessment on the basis of receipt of information from Directorate of Investigation, and, as noted by the Assessing Officer in the reasons recorded for reopening the assessment, "the name of the assessee figures as one of the beneficiaries of these alleged bogus transactions" in the information given by the directorate. If the assessee was a beneficiary of such a scam, the income was indeed to have been taxed in its hands but then in the case before us the only reason for reassessment proceedings was the fact of deposit of bank account which by itself does not lead to income being taxed in the hands of the assessee. Learned Departmental Representative has referred to several other judicial precedents in support of the proposition that at the stage of initiation of reassessment proceedings, all that is to be seen as existence, rather than adequacy, of the material to come to the conclusion that income has escaped assessment. To us, there cannot be any, and there is no, doubt on the correctness of this proposition but then, as we have elaborately explained earlier in this order, the material must indicate income escaping assessment rather than desirability of further probe in the matter which may or may not lead to income escaping the assessment. On the basis of reasons as recorded in this case, such an inference about income escaping assessment, in our humble understanding, cannot be drawn.

> *10. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous."*

> *6. In the present case also, there is nothing more than cash deposit of R.12,76,000/- in the bank account to justify the reopening of assessment by holding the belief that income has escaped assessment. A mere cash deposit in the bank account, however, cannot justify such a belief or inference. In this view of the matter, and respectfully following the division bench order in the case of Bir Bahadur Singh Sijwali (supra), I hold that the very initiation of reassessment proceedings, on the facts of this case, were unsustainable in law. I, therefore, quash the reassessment proceedings and the impugned reassessment order. As the reassessment itself stands quashed, all other issue raised in the appeal are rendered infructuous and do not call for any adjudication."*

11. In the present case also deposits of Rs.25 lakhs by Pioneer Mercantile Ltd. and Jupiter Business Ltd were towards share application money to the assessee-company which has been explained by the assessee before the ld.CIT(A) vide its letter dated 10.10.2017, the same was not considered by the ld.CIT(A) and however confirmed the additions. Further, on the validity of re-assessment notice issued on the ground of "borrowed reasons", the CIT(A) has not followed jurisdictional Tribunal's decision and upheld the reopening of the assessment, which is not in accordance with law and following judicial discipline. Since the present case is reopening of the assessment, which is similar to the issue decided by this Tribunal in Mariyam Ismal Razawani (supra), respectfully following the same, we have no hesitation in holding that reopening of the assessment is bad in law, since the Ld.AO has not applied his mind in recording what is the income escaped from the assessment, rather, he reproduced information received from the

DIT(Investigation), Surat and Ahmedabad which is nothing but "borrowed information". Therefore, reopening of the assessment itself is bad in law, and thus entire re-assessment is hereby quashed, and the appeal of the assessee is disposed off accordingly.

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

Order pronounced in the Court on 18th February, 2022 at Ahmedabad.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad, dated 18/02/2022