

॥ आयकर अपीलीय न्यायाधिकरण, पुणे “ए” न्यायपीठ, पुणे में ॥

2. Tersely stated that facts borne out of case records;

2.1 The assessee is a resident individual engaged in Multi-Level-Marketing on agency basis, had filed his return of income [in short "**ITR**"] for AY 2011-12 declaring total income of ₹3,76,966/- under presumptive taxation u/s 44AD of the Act.

2.2 On the basis of annual information return [in short "**AIR**"] observing the cash deposits into saving bank account of the assessee, the Ld. AO invoked the reassessment jurisdiction by issue of notice u/s 148 and eventually framed the assessment by bringing to tax the entire cash deposits of ₹47,63,510/- as unexplained investment u/s 69 coupled with net commission income after allowing 50% deduction u/s 44AD of the Act.

2.3 When matter travelled before first appellate authority [in short "**FAA**"] in an appeal, the Ld. CIT(A) reiterating the findings confirmed the action of Ld. AO.

2.4 Aggrieved by the actions of both the tax authorities below [in short "**TAB**"] the assessee is in appeal before the Tribunal.

3. We state that, grounds raised in the appeal memo are inconsonance with rule 8 of the Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT-Rules"**], hence it shall suffice to articulate that, ground number 1 to 4 alleged against the assumption of reassessment jurisdiction and the balance grounds are directed against merits of the case. Both the parties to the present appeal expressed their concurrence to the effect that, if the legal ground is adjudicated in favour of the appellant, then the later grounds would turn academic calling no adjudication, hence we shall first deal with the legal grounds directed against assumption of 148 jurisdiction as ***contra-legem***

4. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records till the date of conclusive hearing and duly considered the facts of the case in the light of settled legal position which are forewarned to either parties.

5. Without touching merits of the case, we note that,

5.1 Non filing of ITR and no response to the letter issued to assessee coupled with information received through **AIR** stating cash deposits of ₹47,63,510/- in saving bank account, has compositely formed a basis for invocation of reassessment jurisdiction u/s 148.

5.2 **Per contra**, on the face of records it glaringly evident that, the Ld. AO himself at para 3 placed at page 2 of his order categorically noted his finding to the effect of assessee having filed his ITR on 10/10/2011, thus it amply demonstrates **lack of enquiry** by the Ld. AO before exercising the jurisdiction to reopen the case u/s 148 of the Act.

5.3 Further the information relating to cash deposit into saving bank received through **AIR** was there on record during the unexpired period of regular assessment and hence such information cannot **ispo-facto** part-take the characteristic of fresh material giving rise to form a basis for forming an opinion in assuming jurisdiction u/s 148 of the Act. Conversely

any information coming to light upon the expiry of period within which regular assessment can be triggered by issue of notice u/s 143(2), can elementarily support the invocation of reassessment jurisdiction subject to forming of belief thereon upon conclusive enquiry thereunto.

6. In the present case, we ***prima-facie*** find that, the reason to believe that the income of the assessee has escaped assessment is found to have formed on **incorrect facts** as regards to filing of ITR, further **without any enquiry** into the transaction reported in AIR and without bringing any cogent material to showcase that the said bank deposits made into saving bank account ***per se*** represent the income of the assessee. Further in the absence of any material ***vis-à-vis*** findings of the Ld. AO suggesting that, the facts were indeed duly analysed, and required enquiries were conducted before forming a belief for recording reasons so has to invoke the reassessment jurisdiction, the reopening of the same u/s 148 of the Act is found misplaced.

7. In our considered view, the reasons recorded in present case at best can be treated to be reason to suspect which is not sufficient for reopening the case under section 148 of the Act. While recording the reasons to believe merely relying upon financial information cannot be treated as good enough to reopen the case. There can be multiple capital sources of cash deposits available to the assessee and unless and until it is brought out in the reasons to believe as to how the cash deposits represent income or investment from undisclosed sources same cannot give justification to reopen the case u/s 148 of the Act, and for the reason we see that the requirement of application of mind is missing in the present case on the face of reasons recorded, thus the cardinal principle of taxation that all receipts are not income and all income are not taxable income applies squarely to present facts.

8. It is a well settled law that, the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief.

Whereas in the absence of nexus between the prima facie inference arrived in the reasons recorded and information **vis-a-vis** material much less tangible, credible, cogent and relevant to form a reason to believe could not be made a basis to assume jurisdiction, hence cannot be relied upon; thus the proceedings initiated are purely based on surmises, conjectures and suspicion and therefore, the same are without jurisdiction; that the reasons recorded are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income which deserve to be quashed in the light of judgement of Hon'ble Apex Court in **"ITO Vs Lakhmani Mewal Das"** reported in 103 ITR 437, whereby their lordship on the issue of assumption of reassessment jurisdiction have laid that;

"Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his 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 the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer 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 far- fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.”

9. Thus the legal grounds raised is adjudicated in favour of appellant, consequently the meritorious grounds turned academic calling no adjudication.

10. Resultantly, the appeal of the appellant assessee is ALLOWED in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 18th day of January, 2023.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 18th day of January, 2023.

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

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|------------------------------------|---------------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. |
| 3. The Pr. CIT -1, Pune (MH-India) | 4. The CIT(A)-2, Pune(MH-India) |
| 5. DR, ITAT, Pune Bench 'A', Pune | 6. गार्डफ़ाइल / Guard File. |

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.