

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**  
[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

**I.T.A. No. 776/Kol/2023**  
Assessment Year: 2012-13

Tulshi Dealtrade Pvt. Ltd. Howrah Amta Road, Baltikuri, Howrah-711113. (PAN: AADCT3178N)	Vs.	Income Tax Officer, Ward-11(2), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	16.05.2024
Date of Pronouncement	28.05.2024
For the Assessee	Shri Miraj D. Shah, AR
For the Respondent	Shri Amuldeep Kaur, Addl. CIT, Sr. DR

**ORDER**

**Per Shri Rajesh Kumar, AM**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 29.05.2023 for AY 2012-13.

2. The assessee has assailed the order of Ld. CIT(A) on legal issue as well as on merit. However, we will only deal with and decide the legal issue raised by the assessee as the same goes to the root of the assessment. The legal ground no. 3 raised by the assessee is reproduced as under:

*3 FOR THAT on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-NFAC, Delhi was not justified in sustaining the reassessment proceedings as such reassessment proceedings are bad in -law inasmuch as the AO had wrongly assumed jurisdiction to assess the case.*

3. Brief facts are that the assessee filed its return of income on 28.03.2013 declaring total income of Rs.13,84,700/-. The said return was processed u/s. 143(1) of the Act. Thereafter the case of the assessee was selected for scrutiny under CASS and the reason for selection was large share premium received by the assessee during the year under the category of “limited scrutiny”. Thereafter, after calling for the details and information, the assessment was framed u/s. 143(3) of the Act assessing the income at Rs.22,85,750/-. Thereafter the case of the assessee was reopened u/s. 147 of the Act by issuing notice u/s. 148 of the Act on 16.11.2017. The assessee filed the return of income in compliance thereto on 27.01.2017 and requested the AO to supply the copy of reasons recorded u/s 148(2) which were duly supplied to the assessee. During the re-assessment proceeding various queries and explanations were sought from the assessee which have duly been furnished

before the AO and finally the AO framed the assessment u/s. 143(3) read with 147 of the Act by adding a sum of Rs.66,00,000/- received from M/s. Kudrat Holdings Pvt. Ltd., M/s. Spectra Commercial Pvt. Ltd. and Pinnacle Vanijya Pvt. Ltd. by treating the same as unexplained cash credit. In the appellate proceeding, the appeal of the assessee was decided ex parte when the assessee fails to turn-up on the various dates allowed by Ld. CIT(A) nonetheless the issues raised by the assessee were not adjudicated.

4. After hearing the rival contentions and perusing the material available on record including the legal issue raised before us and the reasons recorded u/s. 148(2) of the Act, we are of the considered view that restoring the appeal to the file of the Ld. CIT(A) would not serve any meaningful purpose as this is a purely legal issue that reasons recorded u/s. 148(2) of the Act were only for the purpose of verification of share capital received by the assessee which remained unexplained. For the sake of ready reference, the said reasons were extracted below:

*"This case was selected for scrutiny for the A.Y. 2014-15 through CASS. The reason for selection was "Large share premium received during the year" under the category of limited scrutiny. However, it appears that no share capital was raised during the F.Y. 2013-14 relevant to the A.Y. 2014-15. On scrutiny, of records it appears that capital was raised in F.Y. 2011-12, relevant to the A.Y. 2012-13. In course of scrutiny for the A.Y. 2014-15 the assessee admitted that the same has been "received during the F.Y. 11-12, vide submission dated 20.06.2016. As such genuineness of share capital and premium received by the assessee company was not verified and remained unexplained. Since the assessee company was beneficiary and received share premium I have no reason to believe that income chargeable to tax has escaped assessment.*

*In view of, the above, I have reason to believe' that the income of the assessee for the F.Y. 2011-12 relating to A. Y. 2012-13 chargeable to tax has escaped assessment and in order to assess/reassess the said income which has escape assessment and any other income which may come to notice during the course of re-assessment which has escape assessment for the said year within the meaning of Section 147 of the I. T. Act, 1961.*

*It may be mentioned that for the A.Y. 2012-13 in the case of M/s Tulshi Dealtrade Pvt. Ltd. was not assessed u/s 143(3) of the I. T. Act, 1961 and therefore this issue could not be examined. It is also pertinent to mention that four year has already elapsed from the end of the relevant AY and the income chargeable to tax which has escaped assessment therefore, necessary approval u/s 151 of the I. T. Act. 1961 may be accorded for issue notice u/s 148."*

5. The perusal of the above reasons reveals that the case of the assessee was reopened on the ground that genuineness of the share capital/share premium received by the assessee was not verified. The AO also mentioned that assessee was beneficiary of accommodation entries by way of share premium/share capital which has escaped assessment. Thus, it is clear from above that reasons were recorded not on the basis of objective satisfaction of the

AO which is based upon the information received but merely for the purpose that share application money/share premium received by the assessee was not verified and remained unexplained. In our opinion, the reasons recorded has to read as recorded and there can be no modification or elaboration or substitution thereto as has been held by the Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332]. The relevant finding of the court is extracted below:

*“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”*

6. Moreover, the various judicial forums have decided the issue in clear terms that where the AO has not applied his mind to the information received and has merely acted on the information as received then that amounts to the recording the reasons on the basis of borrowed satisfaction as the AO has not recorded his own objective satisfaction in the reasons for the formation of belief. The statute has made very clear that reopening of assessment is permissible only on the basis of formation of belief by the AO in the reasons recorded and not otherwise as it unsettle the already settled assessment of the assessee. The Hon'ble Apex Court in the case of ITO Vs Lakhmani Mewal Das (1976) 103 ITR 437 (SC) has held that re-opening of assessment cannot be on the basis of suspicion. The Hon'ble Court held as under:

“As stated earlier, the reasons for the formation of the belief must have a 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 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. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee-respondent had escaped assessment of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.”

7. Besides the re-opening of assessment is also not allowed for the purpose of verification and examination of issues as in that scenario the AO is not himself sure whether there is escapement of income by the assessee. In the following cases, the Hon’ble various judicial forums have also decided that reopening made for the purpose of verification or examination is not permissible under the Act. A few decisions are discussed as under:

(a) In the case of PCIT vs Manzil Dinesh kumar Shah (406 ITR 326)(Guj) the Hon’ble Gujrat High Court has held that formation of independent opinion by the AO is mandatory condition and mere mentioning of need for deep verification of information received is not a valid ground for reopening. The Hon'ble court has held that reopening of assessment could

not be permitted for fishing or robbing enquiry as it would not satisfy the requirement of the AO having reasons to believe that income chargeable to tax has escaped assessment. In this case, the AO has recorded that I have reason to believe that income chargeable to tax has escaped assessment for the assessment year 2009-10 due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and thus the case needs to be reopened as the information received by this office needs deep verification. The Hon'ble Court has held that had the AO on the basis of information made available to him and upon applying his mind to such information formed a belief that income chargeable to tax has escaped assessment, the court would have rightly allowed him to reassess the income but in the present case he recorded that information required deep verification and later reconstitution of mandatory words that he believed that income chargeable to tax has escaped assessment would not cure this fundamental defect. The Hon'ble Supreme Court has dismissed the special leave petition filed by the Revenue in the above case as reported in (2019) 101 taxmann.com 259 (SC) wherein thereby upholding the view taken by the Hon'ble Gujarat High Court in the above case.

(b) In the case of Inductotheran (India) P. Ltd. v DCIT (356 ITR 481)(Guj) the Hon'ble Gujarat High Court has held that the reassessment notice is not permissible merely for verification of claim made under section 80HHC of the Act. The relevant extract of the decision of the Hon'ble Gujarat High Court is reproduced below:

*"18. Reverting to the facts of the present case, we notice that in two out of the four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he need to verify the claims. In the second ground, he had recorded that the admissibility of the bad debts written off required to be verified. In the fourth ground also, he had recorded that the admissibility of royalty claim was required to be verified. We are in agreement with the contention of the counsel for the petitioner that for a mere] verification of the claim, the power for reopening of assessment could not be exercised. The Assessing Officer in the guise of power to reopen ai assessment, cannot seek to undertake a fishing or roving inquiry and see] to verify the claims as if it were a scrutiny assessment."*

(c) In the case of Chhugamal Rajpal v S P Chaliha and Ors. Ltd. ((416 ITR 435)(SC)), the Hon'ble Supreme Court has held that the AO must have prima facie grounds for issuing notice u/s 148. The operative part is reproduced as under:

*"Held, (i) that the Income-tax Officer had not even come to a prima fade conclusion that the loan transactions to which he referred were not genuine transactions : he appeared to have only a vague*

*feeling that they might be bogus transactions. Such a conclusion did not fulfil the requirements of section 151(2). Under that section he had to give reasons for issuing a notice under section 148. He should have some prima facie grounds before him for taking action under section 148. His conclusion that there was a case for investigating the truth of the alleged transactions was not the same thing as saying that there were reasons for the issue of the notice. The Commissioner had mechanically accorded permission. The important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Income-tax Officer could not have had reason to believe that income had escaped assessment by reason of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore invalid."*

Thus the court observed that AO has recorded in his report that there is a case for investigation as to the truth of the alleged bogus transactions and court held that this does not meet the requirements to issue notice under section 148 of the Act.

(d) In the case of *Nivi Trading Ltd v Union of India* (375 ITR 308) (Bom) the Hon'ble Bombay High Court has held that if more details are sought or some verification is proposed that cannot be a substitution for reason which led the AO to believe that income chargeable to tax has escaped assessment. The court has held as under:

*"Held, allowing the petition, that the return of income was filed. There was a processing and verification thereof. In the return of income and on the respondents' own showing on its verification, the long-term capital gains and dividend income in the sum came to be disclosed and equally another sum (Rs. 1,21,33,429) as gift. The Revenue proceeded on the footing that these shares were gifted without consideration. It was this fact which it wanted to verify and particularly whether the value of these shares had been computed on the market value. The tax authorities did not state that any income chargeable to tax had escaped assessment: All that the Revenue desired was verification of certain details and pertaining to the gift. That was not founded on the belief that any income which was chargeable to tax had escaped assessment and, hence, such verification was necessary. That belief was not recorded. The notice of reassessment was not valid."*

(e) In the case of *CIT v Maniben Lalji Shah* (283 ITR 453)(Bom)the Hon'ble Bombay High Court has held that the reopening of assessment under section 147 to scrutinize the investment made in the flat purchased is not valid as the AO only seeks to find out the source of funds and same does not constitute any reason for belief that income has escaped assessment so as to invoke section 148 of the Act and accordingly the appeal of the Revenue was dismissed.

(f) In the case of *CIT v Batra Bhatia Company* (321 ITR 526) (Delhi) the Hon'ble Delhi High Court has held while dismissing the appeal of the Revenue that *Ld. CIT(A)* as well as

Tribunal had given a concurrent finding that there was no material before the AO on the basis of which the AO would have had a belief that agricultural land sold by the assessee was a capital receipt within the meaning of section 2(14) of the Act and expression of the AO “requires much deeper scrutiny” indicated that he was mere embarking on mere presumptions without any belief much less belief based on reason and material and thus the reassessment was not valid.

8. In view of the ratio laid down in the various decisions as discussed above vis a vis facts of the assessee case, we are of the considered view that the AO has not formed a prima facie and independent belief on the reasons recorded that income has escaped assessment but reopened the assessment only for carrying out verification of share capital/share premium raised by the assessee. Under these facts and circumstances, we are not in a position to concur with the finding of the Ld. CIT(A) justifying the re-opening of assessment. Accordingly, the appellate order is set aside and the reassessment proceedings are held to be invalid and so is the assessment framed. The legal ground raised by the assessee is allowed.

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

Order is pronounced in the open court on 28th May, 2024

Sd/-  
(Pradip Kumar Choubey)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 28th May, 2024

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC Delhi
4. CIT,
5. DR, ITAT, Kolkata, True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata