

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.1161/Del/2024

[Assessment Year : 2013-14]

Naveen Kumar Singhal Prop. M/s. Naveen Crane Service, 1 st Floor, Balaji Boot House, Dharuhera Gurgaon, Haryana-123106. PAN-AAACI2241L	vs	ITO, Ward-2 Rewari Haryana-123110
APPELLANT		RESPONDENT
Appellant by		Shri Mayank Patwari, CA & Shri Akash Ojha, CA
Respondent by		Shri Amit Shukla, Sr. DR
Date of Hearing		22.10.2024
Date of Pronouncement		31.12.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 26.02.2024 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre, Delhi [“Ld.CIT(A)”] under s. 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 26.03.2022 passed under s. 147 r.w.s. 144B of the Act pertaining to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case. Ld. CIT(A) ought to have quashed the impugned reassessment order as the same has been passed by Id. AO us 147/144B and that too without assuming jurisdiction as per law and without complying with mandatory conditions as 147 to 151A as envisaged under the Income Tax Act, 1961.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 147/144B which is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

3. *That having regard to the facts and circumstances of the case. Ld CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.3,80,00,000/- on account of unsecured loan by treating it as alleged unexplained credits u/s 68 and that too by recording incorrect facts and findings and without considering the submissions filed by the assessee and without following the principles of natural justice and without providing the entire adverse material on record and without providing the opportunity of cross examination.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs.3,80,00,000/- on account of unsecured loan by treating it as alleged unexplained credits u/s 68, is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.1,50,00,000/- on account of investment in agricultural land by treating it as alleged unexplained investment u/s 69 and that too by recording incorrect facts and findings and without considering the submissions filed by the assessee and without following the principles of natural justice and without providing the entire adverse material on record and without providing the opportunity of cross examination.*
6. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs. 1,50,00,000/- on account of investment in agricultural land by treating it as alleged unexplained investment u/s 69, is bad in law and against the facts and circumstances of the case.*
7. *That having regard to the facts and circumstances of the case. Ld. CIT(A) ought to have quashed the impugned reassessment order u/s 147/144B which is barred by limitation.*
8. *That having regard to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234D of the Income Tax Act 1961.”*

3. As per the grounds of appeal, the assessee has challenged the assumptions of jurisdiction under s. 147 of the Act as well as the addition of INR 3,80,00,000/- under s. 68 of the Act on merits. The assessee has also challenged the addition of INR 1,50,00,000/- in aggregate towards unexplained investment in purchase of certain land parcels.

4. Briefly stated, the assessee filed return of income electronically declaring total income at INR 12,98,450/- for AY 2013-14 in question. The return filed by

the assessee was re-opened under s. 147 of the Act by issuing notice under s. 148 of the Act dated 30.03.2021.

5. Based on the notice issued under s.148 of the Act and thereby, re-opening of the concluded assessment, re-assessment proceedings were set motion. The AO alleged that aggregate sum of INR 3,80,00,000/- received from six various parties are unexplained credits on the ground that the assessee has failed to led satisfactory explanation to prove the nature and source of such credits. The AO also observed that assessee has failed to provide source of funds to purchase certain land parcels. The AO accordingly invoked the provision of section 69 of the Act alleging unexplained investment in purchase of three land parcels aggregating to INR 1,50,00,000/-.

6. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) however declined to provide any relief.

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. When the matter was called for hearing, the Ld. Counsel for the assessee at the outset, referred to the reasons recorded and challenged the validity of assumption of jurisdiction under s. 147 of the Act.

8.1. The Ld. Counsel for the assessee submitted that the AO has wrongly usurped jurisdiction under s. 147 of the Act contrary to the mandate of law for more than one reasons:

(i) the reasons recorded do not meet the requirement of law inasmuch as the reasons recorded would show that the AO has proceeded under s. 147 of the Act on the last day of limitation merely on the ground that the assessee has entered into significant financial transactions amounting to INR 50,00,000/-. It was also alleged in the purported reasons that the assessee has not truly and correctly disclosed the quantum of transaction done during the year under consideration. For coming to such conclusion, no reference of any material has been made. It is not known as to which financial transactions have not been disclosed and what is the nature of deficiency in the manner of disclosure.

(ii) The AO for the purposes of formation of belief towards escapement states that *“the assessee has taken unsecured loans of INR 50,00,000/- during the previous year relevant to AY 2013-14 whereas documentary evidences substantiating creditworthiness of the lender(s) were not produced.”* For assailing such observations in the reasons recorded, the Ld. Counsel for the assessee pointed out that neither the name of the parties from whom the aforesaid unsecured loans of INR 50,00,000/- have been received nor the allegation of lack of substantiation of creditworthiness of the lender is based on any particulars or material set out in the reasons.

(iii) The assessee has filed the return of income under s. 139(1) of the Act and the tax audit report showing the name and address alongwith PAN of the lenders. The movement of loans during the year, were also filed along therewith as required in law. Merely because the assessee has obtained loans during the year, this by itself hardly provides any basis to the AO to exercise powers under s. 147 of the Act. There was no occasion for the assessee in the past to substantiate the creditworthiness of the lenders in the absence of any assessment under s. 143(3) of the Act. However, the requisite details have been provided in the income tax return as statutorily required. The onus descended on the assessee thus stood discharged. As pointed out, in the absence of minimum information towards the name of the lender provided in the reasons, it is wholly inconceivable to allege lack of substantiation of creditworthiness. The entire allegation is apparently in vacuum.

(iv) The AO has not referred to any material whatsoever to take drastic step of re-opening of a concluded assessment. The reasons recorded are delightfully vague, bald and non-speaking and thus, proceedings under s.147 of the Act based on non-descript reasons do not meet the requirement of law. Notice issued under s. 148 of the Act is nonest and void. For the proposition that vague and inexplicable reasons to make imputations of escapement of income is not a valid foundation for initiating re-opening proceedings, the Ld. Counsel for the assessee relied upon the judgement of Hon'ble High Court of Delhi in the case of *CIT, IV vs Insecticides (India) Ltd. [2013] 38 taxmann.com 403 (Delhi)*

& *Divine Infracon Pvt.Ltd. vs DCIT [TS-661-HC-2024(Del.)]* among other plethora of judgements.

8.2. On merits, the Ld. Counsel for the assessee referred to the tabular statements of the lenders as reproduced in first appellate order and submitted that the relevant evidences such as bank statement, return of income of the lenders etc. were provided to the lower authorities. All the lenders are income tax assesseees and the transactions have been carried out through banking channel. The evidences filed are speaking for itself and no worthwhile enquiries were carried out by AO in such evidences. The Ld. Counsel for the assessee referred to the judgement of Hon'ble Supreme Court in the case of *PCIT vs DLF Commercial Project (2019) 260 taxmann 1 (SC)* to contend that the onus which lay upon the assessee was discharged by furnishing the relevant documentary evidences.

8.3. The Ld. Counsel for the assessee also assailed the additions under s. 69 of the Act towards unexplained investment in three pieces of land. It was submitted that the loans taken have been utilized for investment in agricultural land and the action of the Revenue to treat loan as well as corresponding investment, both as unexplained income, has apparently resulted in double jeopardy to the assessee. It was pointed out that the assessee jointly purchased the land parcels with other co-owners and the share of money from the assessee has been transferred to the persons named in the agreement as submitted in para 6 of the first appellate order.

8.4. The Ld. Counsel for the assessee further pointed out that the Ld.CIT(A) by a pedantic and non-speaking order discredited the version of the assessee and adjudicated the issue against the assessee on all counts.

9. Per contra, the Ld. Sr. DR for the Revenue relied upon the assessment order and the first appellate order.

10. We have heard both the sides at length and also perused the re-assessment order and first appellate order in question. The material referred to and relied upon and the case laws cited have also been perused.

11. Since the assessee has *inter-alia* challenged the legality of re-assessment order itself which directly affects the jurisdiction and goes to the very root of the present proceedings, we consider it necessary to adjudicate the grounds seeking to contest the basic issue of lack of jurisdiction first.

11.1. The validity of the assessment order framed under s. 144B r.w.s. 147 of the Act as well as validity of issuance of notice under s. 148 of the Act for making re-assessment order under s. 147 of the Act is in controversy.

11.2. Section 147 gives over-riding powers to re-open a case which is otherwise time-barred by operation of law or assessment earlier completed. Hence, before we proceed to deal with the vital jurisdictional aspect, it will be pertinent to reproduce the reasons recorded under s. 148(2) of the Act under contemplation as extracted in the assessment order. The reasons indicated recorded by the Assessing Officer behind re-opening are set-out hereunder:-

“The above-named assessee is having PAN and has filed return of income on 27.09.2013 declaring total income of Rs. 12,98,450/-, As per information available on records the assessee has carried out significant financial transactions.

2. Brief details of Information collected/received by the AO

In this case as per the information received in category of High-Risk Transaction CRIU/VRU Information on Insight Portal of the department. As per the information uploaded by the ITO (I&CI), Jodhpur it is noticed that the assessee has entered into significant financial transactions as mentioned hereunder in Para 5.

3. Analysis of information collected / received

On perusal and analysis of information available on record, it is noticed that the assessee has entered into financial transactions exceeding the taxable limits. The assessee has undertaken transactions as per the details given in the following chart, however, despite making these financial transactions the assessee has not truly and correctly disclosed the quantum of transactions done during the year under consideration.

4. Enquiries made by the AO as sequel to information collected / received

Necessary verification was made from the entire details available on records and database of ITBA and Insight portal thereby, I have sufficient form of 'Reason to believe' to frame my opinion. The information available with this office has been analyzed and I have framed my opinion after due application of all the facts and mind.

5. Finding of the AO

During the year under consideration, assessee had undertaken following financial transactions:

Sr.No.	Type of transactions	Amount
1.	The assessee has taken unsecured loans of Rs.50,00,000/- during the previous year relevant to A.Y. 2013-14 whereas, documentary evidences substantiating creditworthiness of the lender were not produced.	Rs.50,00,000/-
	Total income escaping assessment	Rs.50,00,000/-

Thus, on perusal of the details available on record, it is noticed that during the previous year relevant to the assessment year under consideration, the assessee has undertaken financial transactions much beyond the taxable limit. However, the source of entering such huge transactions is not conclusively proved from the details and data collected during the course of inquiry. I have verified all the details available on record and I am conclusively satisfied that the assessee has not disclosed truly and correctly all the relevant particulars of the above transactions and therefore the income to the above extent has escaped assessment.

6. Basis of forming reason to believe and details of escapement of income

In light of the details available on records and the above facts and findings, I have reason to believe that income chargeable to tax quantified as above has escaped the assessment.

7. Applicability of provisions of section 147/151 to the facts of the case

Considering all the details and materials available on records, I am satisfied that the assessee has understated the income in its return of income filed as per above details and therefore the income chargeable to tax to the tune of Rs. 50,00,000/- has escaped the assessment. I have reasons to believe that this is a fit case for reopening and there is escapement of income within the meaning of Explanation 2(b) to Section 147 of the Income Tax Act, 1961.”

12. To begin with, it may be pertinent to observe that provisions of section 147 of the Act are substantive in nature vesting jurisdiction to re-open a concluded assessment and therefore, conditions stipulated for assumption of jurisdiction are required to be adhered strictly. Section 147 of the Act is structured with inbuilt statutory safeguards. The AO is not permitted to exercise the powers under s. 147 of the Act arbitrarily or mechanically. The reasons for re-opening are the fulcrum for formation of belief towards alleged escapement. The onus lies on Revenue to point out culpability with reference to

documentary evidences available with it at the time of issue of re-opening notice. The burden is on the Revenue to establish that there was income which escaped assessment as held in *TIN Mfg. of India vs CIT (1996) 222 ITR 323 (All.)*; *Hiralal Bhagwati vs CIT (2000) 246 ITR 188 (Guj.)*. The cause of action under s. 147 is expression 'reason to believe' which puts strict fetters on the AO. 'Reason' pre-supposes logic and must pass the test of objectivity. The formation of 'belief' of the AO is realisation of information which is a subjective exercise but in the same vein, must be arrived in good faith and in bonafide manner. The purpose of recording reasons is to unfold the process which led to formation of belief towards purported escapement. The reasons recorded carry a probative value and are justiciable.

13. On appraisal of reasons so recorded for exercise of drastic powers conferred under s. 147 of the Act for re-opening of assessment for AY 2013-14 in question and having regard to stance taken on behalf of the assessee, it emerges that the solitary cause for formation of belief is that the assessee has taken unsecured loans of INR 50,00,000/- whereas documentary evidences substantiating the creditworthiness of the lender(s) were not produced. The AO thus alleged that the assessee has understated income in its return of income to the extent of INR 50,00,000/-.

14. For an objective understanding, the body of reasons recorded has been divided by the AO in seven parts.

14.1. First part is general and introductory in nature.

14.2. In the second part of the reasons recorded, the AO made reference to the information received in category of high risk transactions whereby the AO noticed that the assessee has entered into financial transactions referred to in para 5 of the said reasons.

14.3. In the third part, the AO claims to have analysed the information collected/received and repeats that the assessee has entered into financial transactions exceeding the taxable limits. However, despite making these financial transactions, the assessee has not truly and correctly disclosed the quantum of transactions done during the year.

14.4. In the fourth part of reasons under challenge, the AO observed that certain verifications were made from the details available on record and data base of ITBA etc. and based on such verification, the AO holds reasons to believe. However, the nature of analysis and verification continues to remain unknown.

14.5. In the fifth part, the AO has retained his finding that the assessee has taken unsecured loans of INR 50,00,000/- during the AY 2013-14 without substantiating the creditworthiness. The AO makes an averment that he has verified the details available on record and comes to a conclusion that source of entering into huge transactions are not conclusively proved.

14.6. As per sixth part of the reasons, the AO holds that in the light of details available on record, he has reason to believe that changeable income has escaped assessment.

14.7. As per part seven and last part, the AO finally reached a conclusion that escapement of income within the meaning of Explanation 2(b) to section 147 of the Act has occurred.

15. On the basis of such reasons, notice under s. 148 of the Act was issued and served on the assessee to re-open the assessment concluded earlier at the end of the 6th year from AY 2013-14.

15.1. As per the main provision of erstwhile section 147 of the Act, the AO is vested with powers to re-open a concluded or completed assessment subject however, to presence of some tangible material which is capable of giving rise to belief towards escapement of income. The reasons or material thus must have a live link with formation of belief. The cause of action under s. 147 is 'reason to believe' towards escapement.

15.2. In this backdrop, we shall now advert to test the reasons for re-opening on the touchstone of main provisions of section 147 of the Act. The main provision essentially provides that belief must be built on some material or information which are specific in nature and reliable in character. In the absence of reference to specific material giving exact nature of transactions, the belief of AO is to be regarded as an abstract one. In the present case, the basis

for formation of belief is receipt of some information in the category of 'high risk transactions' triggered in the e-portal of the Department which reflects that the assessee has entered into some significant financial transactions.

15.3. As can be seen from the reasons recorded, the observations made by the AO in the reasons so recorded makes a vague and generic imputations towards escapement. The exact name of party, date of transactions with reference to which, lack of substantiation of creditworthiness of the unsecured loans of INR 50,00,000/- is alleged, is entirely unknown. The particulars of unsecured loans under consideration itself are conspicuously absent. The nature of inquiry carried out for formation of belief if any, is also in totally unknown territory. The reasons on record do not indicate any specific material against the assessee to dislodge the bonafides set up by the assessee while making disclosures in the return of income as required. Needless to say, the assessee is not obliged to provide the requisite details towards creditworthiness of the lenders while filing the return of income. Thus, there was no occasion for the assessee to establish creditworthiness. Besides, it is impossible task for an assessee to respond to such allegations in the absence of basic detail of name of lenders and the date of transactions. Furthermore, the AO solely relied on some unspecified and unintelligible information in the category of 'high risk transactions' of unsecured loans. The allegations towards escapement without giving specific particulars of the lenders is apparently in the realm of bald allegations devoid of any specific details. To reiterate, the name of the lender(s) who are alleged to be susceptible to section 68 of the Act do not feature in the reasons recorded at all. No definitive link is present. At the time of formation of belief, the AO is not shown to be in possession of any document of adverse nature which may led to allegations of escapement. Clearly, the AO has harboured belief on vague and non-descript hypothesis emerging from so-called analysis of any specified information collected. No tangible material has been referred in the reasons recorded which is capable in igniting the belief towards alleged escapement. Mere identification of transactions fueling in 'high risk transaction' category *ipso facto* would not provide cause of action to invoke the drastic power of reopening of a concluded

assessment. The requirement of main provision of section 147 of the Act is thus apparently not met.

15.4. It appears that re-opening has been carried out to disturb the concluded assessment based on some generic and undimensional information with an intended objective to carry out the scrutiny of such 'high risk transactions'. We do not see availability of any definite information which may permit holding of reasons to belief before commencement of re-assessment proceedings. The confirmation of powers under s. 147 of the Act is howsoever wide but however not plenary. It postulates that the AO must have reason to believe that chargeable income has escaped assessment. The expression 'reason to believe' is the most valuable safeguard available to prevent arbitrary exercise of jurisdiction. It is trite that the 'reason to suspect' cannot be equated with expression 'reason to believe'. The reasons recorded in the instant case, gives an infallible impression that it is a case of 'reason to suspect' on so-called risk transactions categorised by the automated system of the Department. rather than 'reason to believe'. It is well-settled that notice of re-opening can be supported by the Revenue within the confines of the reasons recorded by the AO alone. The AO cannot supplement the reasons at a later stage. Other principle which is equally well-settled and which applies in the present case is that re-opening of assessment would not be permitted for a fishing or a roving inquiry as a part of requirement of main provision of section 147 of the Act.

16. In totality, the purported 'belief' in the instant case is premised on some vague and undisclosed grounds and thus, a mere pretence. Such action does not pass the test of 'reason to believe'. We thus, see no semblance in the action of the AO on the touchstone of main provision of section 147 of the Act.

16.1. Thus when seen holistically, the conclusion is inescapable that the AO has failed to satisfy the pre-requisites of main provision of section 147 of the Act. The jurisdiction assumed thus is clearly without legal foundation.

16.2. The notice issued under s. 148 of the Act to re-open the concluded assessment is thus without jurisdiction and as a sequel thereto, the re-

assessment order in question based on non-est jurisdiction is bad in law and hence quashed.

17. In view of such conclusion, we do not consider it necessary to deal with the challenge to merits of the additions canvassed at the time of hearing.

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

Order pronounced in the open Court on 31st December, 2024.

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI