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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC NO. 34 OF 2013

Income Tax Officer, Ward- 2(4), Civil Lines, Raipur (C.G.), PS- Civil Lines, Raipur, Pin- 492001

... Appellant

Versus

Chetna Surana, Nanesh Kripa, Civil Lines, Raipur (C.G.), PS- Civil Lines, Raipur, Pin- 492001

... Respondent

For Appellant	:	Ms. Naushina Afrin Ali, Advocate.
For Respondent	:	Mr. S. Rajeshwara Rao, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

30/06/2015

1. The present Appeal was admitted on 30.1.2014 on the following question of law:-

> **"**Whether there were no reasons for initiating re-assessment proceedings.**"**

2. The Respondent assessee filed return for the assessment year 2004-05 on 30.3.2006 declaring a total income of Rs.9,47,532/-. The return was processed under Section 143(1) of the Act. Subsequently, on basis of some complaints made by one partner of the firm, assessment was reopened on 5.5.2010 and which is the bone of contention in the present Appeal.

3. Section 147 of the Act relevant for the purpose reads as follows:-

> **"147.** If the [Assessing] Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):
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> *Explanation 2. -* For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-
> (a)....
>
> (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;**"**

4. The assessee sought to know the reasons for reopening of the assessment. The grounds were furnished by the Assessing Officer on 16.2.2010. It was challenged before the Tribunal which held on 19.7.2013 that the reopening of the assessment did not meet the statutory requirement of Section 147 of the Income Tax Act. The Assessing Officer was of the opinion that further investigation was required and not that he had any reason to believe that any income chargeable to tax had escaped attention. The Tribunal set aside the notice issued under Section 148 of the Income Tax Act and held re-assessment proceedings to be invalid relying upon 79 ITR 603(SC) [Chhugamal Rajpal v. S.P. Chaliha and others] extracted at paragraph 6 of the order.

5. Learned Counsel for the Appellant submitted that the Assessing Officer issued notice on 25.3.2010 stating that he had reason to believe that income had escaped assessment for 2004-05. In response to the reasons sought by the assessee for opening of the assessment, the assessee was supplied the order dated 16.2.2010 mentioning in detail why the Assessing Officer was satisfied to reopen the assessment. Reliance was placed on 259 ITR 19 (G.K.N. Driveshafts (India) Ltd. v. Income-Tax Officer and others) and an order of the Supreme Court in Civil Appeal No. 2830 of 2007 (Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.). It was submitted that the Tribunal erred in holding that there was no material for the Assessing Officer to believe that income has escaped assessment.

6. Conversely, Learned Counsel for the Respondent submitted that from the reasons furnished on 16.2.2010 for reopening the assessment under Section 148 of the Act it is obvious that there was no material for the Assessing Officer to believe that income had escaped assessment. It is manifest that based on the private complaint made by a partner of the firm coupled with certain documents placed before the Assessing Officer by the estranged partner from the police department, the Assessing Officer was satisfied that further investigation in the matter was required. Further investigation may have led to the conclusion of escaped assessment or may not have lead to the conclusion for escaped assessment. The Assessing Officer had no such power to make a roving inquiry.

7. We have considered the submissions.

8. If a power is given to a statutory authority it has to be exercised strictly in accordance with the procedure and manner prescribed in the statute and other modes of performance are necessarily forbidden. The Statute mandates that the Assessing Officer must be satisfied before reopening an assessment under Section 147 that he had reason to believe that income had escaped attention. The notice dated 25.3.2010 is in a cyclostyled format with fill in the blanks and had been issued mechanically without application of mind as evident from subsequent facts. The order dated 16.2.2010 makes it manifest that at this stage the Assessing Officer was unsure of himself if income had escaped assessment and was of the opinion that further investigation was required in view of the complaint sent by the estranged partner to arrive at a conclusion if income had escaped assessment. In essence he desired to make a roving inquiry to decide whether income had escaped assessment or not.

9. *Chhugamal Rajpal* (supra) extracted by the Tribunal at paragraph 6 has been noticed and followed in 1972 (3) SCC 234 (Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta) holding as follows:-

> **"9.** It is abundantly clear that the two reasons which have been given for the belief which was formed by the Income Tax Officer hopelessly fail to satisfy the requirements of the statute. In a recent case – *Chhugamal Rajpal* v. *S.P. Chaiiha and Others*, which came up before this Court, a similar situation had arisen and under the directions of the Court, the Department produced the records to show that the Income Tax Officer had complied with the conditions laid down in the statute for issuing a notice relating to escapement of notice. There also, the report submitted by the Officer to the Commissioner and the latter's orders thereon were produced. In his report, the Income Tax Officer referred to some communications received by him from the Commissioner of Income-Tax, Bihar and Orissa from which it appeared that certain creditors of the assessee were mere name-lenders and the loan transactions were bogus and, therefore, proper investigation regarding the loans was necessary. It was observed that the Income Tax Officer had not set out any reason for coming to the conclusion that it was a fit case for issuing a notice under Section 148 of the Income Tax Act, 1961. The material that he had before him for issuing notice had not been mentioned. The facts contained in the communications which had been received were only referred to vaguely and all that had been said was that from those communications, it appeared that the alleged creditors were name-lenders and the transactions were bogus. It was held that from the report submitted by the Income Tax Officer to the Commissioner it was clear that he could not have had reasons to believe that on account of assessee's omission to disclose fully and truly all material facts, income chargeable to tax had escaped assessment.

> **10.** In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.
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> **11.** There is no material or fact which has been stated in the reasons for starting proceedings in the present case on which any belief could be founded of the nature contemplated by Section 34 (1-A). The so called reasons are stated to be beliefs thus leading to an obvious self-contradiction. We are satisfied that the requirements of Section 34 (1-A) were not satisfied and, therefore, the notices which had been issued were wholly illegal and invalid.**"**

10. G.K.N. Driveshafts (India) Ltd. relied upon by the Appellant has no application in the facts of the case and is distinguishable as the Supreme Court was of the opinion that it was open for the assessee to raise all objections before the Assessing Officer in response to the notice and Assessing Officer was required to furnish reasons within a reasonable time. That has already been complied with in the present case.

11. In Rajesh Jhaveri Stock Brokers Pvt. Ltd., it was observed at paragraph 16 as follows:-

> **"16.** …...In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income......**"**

12. We find no merit in the Appeal. It is dismissed.

Sd/-	Sd/-
(Navin Sinha)	**(P. Sam Koshy)**
Chief Justice	**Judge**

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