

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3340 OF 2018

Avirat Star Homes Venture Private Limited ... Petitioner

V/s.

Income Tax Officer -15(1)(2) and ors. ... Respondents

Mr.Firoz Andhyarujina with Mr.Maneek Andhyarujina with Mr.
Harsh Kapadia for the Petitioner.
Mr.Suresh Kumar for the Respondents.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 13, 2018.**

P.C.:-

1. Petitioner has challenged a notice of re-opening of assessment dated 26th March, 2018.

2. The brief facts are as under:

Petitioner is a private limited company. For the assessment year 2011-12 the petitioner had filed the return of income on 25th April, 2012 declaring total income of Rs.2749/-. The return

was accepted under Section 143(1) of the Income Tax Act, 1961 ("The Act" for short) without scrutiny. To re-open such assessment the Assessing Officer issued impugned notice. In order to do so he had recorded following reasons:

"The assessee filed return of income for A.Y. 2011-12 electronically on 25.04.2012 declaring total income of Rs.2,749. The same processed u/s. 143(1) of the IT Act.

2.1 ADIT (Inv.), Unit -3(1), Kolkata, vide letter No.DDIT(Inv.)/Unit-3(1)/Kol/x-46651/18-19/10339 dated 27.02.2018, provided information about certain companies having bank accounts with INDUSIND Bank, Kolkata Stock Exchange Branch and who were involved in giving accommodation entries of various natures to several beneficiaries.

2.2 According to the ADIT (Inv.), one such company is Finelink Suppliers Pvt. Ltd. (FSPL) holding Current A/c No.0515-AA2692-050 with INDUSIND Bank, Kolkata Stock Exchange Branch. Vide another letter dated 14.03.2018, he stated that between 22.05.2010 to 31.03.2012, huge tune of fund has been washed out from the said account of FSPL by several company seem to be real beneficiary. He also stated that summons u/s 131 issued to FSPL was received back unserved and as per ITD database that the company's income and tax for various years were as under:

F.Y.	Gross Total	Profit before tax	Tax
2010-11	26,280	26,280	Nil
2011-12	38,820	38,820	Nil
2012-13	1,02,330	1,02,330	Nil

Income-tax details of the directors of FSPL provided by him are as under:

Mukesh Sharma	AIQPS4217H		Nil
Jitendra Kr.Singh	BCZPS0870C		Non-filer
Kishore Shaw	BGIJS6392A		Non-filer
Prakash Kr.Khaitan	ARYPK0082F		Non-taxable income

The ADIT (Inv.) also provided photocopies of bank statements of Finelink Suppliers Pvt. Ltd. for the period 22.05.2010 to 31.03.2012 and stated that

“.....From the bank statement and further investigation it is crystal clear that fund had routed through these A/c resulting in complex layering without economic rationale and raised suspicion. The entire funds thus received were immediately being transferred or remitted to other A/cs by way of RTGS, Fund Trf, confirming the real beneficiaries like one M/s Avirat Ventures Pvt. Ltd., PAN:AAHCA9499D bring back its unaccounted money/cash into their regular books of accounts of total Rs.110.25 lakhs for the F.Y. 2010-11. The AO is also requested to quantify the yearwise amount received by their assesseees from the given soft copy Bank statement ..”

3. In view of the above specific information, I have a reason to believe that in the case of the assessee, income chargeable to tax exceeding Rs.1 lakh has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for A.Y. 2011-12. Hence, it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961.”

3. Upon being supplied the reasons, the petitioner raised objections to the notice of re-opening under a communication dated 25th September, 2018. Such objections were rejected by the Assessing Officer by an order dated 20th October, 2018. Hence, this petition.

4. Learned counsel for the petitioner took us through the reasons recorded by the Assessing Officer and raised following contentions in support of the challenge:

(1) The reasons are based on information received from the investigation wing. Such information itself does not suggest any escapement of income of the petitioner chargeable to tax.

(2) In such communication the investigation wing of the Income Tax Department had asked the Assessing Officer to quantify the year-wise amount received by the assessee. This exercise the Assessing Officer never undertook.

(3) The petitioner had sought certain information from the Assessing Officer upon receiving the reasons which the Assessing Officer had not supplied.

(4) The Assessing Officer did not have any tangible material to form a belief that income chargeable to tax had escaped assessment. The Assessing Officer had undertaken a mechanical exercise and recorded the reasons for issuing the notice.

5. In support of his contentions the counsel relied on the following decisions:

(1) The judgment of the Supreme Court in case of **Chhugamal Rajpal V. S.P.Chaliha**¹, in which noticing that the Assessing Officer had not set out any reasons for coming to the conclusion that it was a fit case to issue notice under Section 148 of the Act, the Supreme Court held that the exercise of re-opening exercise was invalid.

(2) In case of decision of Division Bench of Gujarat High Court in case of **Amar Jewellers Ltd. Vs. Deputy Commissioner of Income-tax**² in which in facts of the case, the Court had come to the conclusion that the notice of re-opening was invalid.

(3) In the judgment dated 16th April, 2018 of this Court in Income Tax Appeal No. 1297 of 2015 in case of **The Principal**

1 (1971)79 ITR 603(SC)

2 (2018)92 tamann.com 4(Gujarat)

Commissioner of Income Tax-5 Vs. M/s Shodiman Investments Private Limited, in which while dismissing the revenue's appeal against the judgment of Income Tax Appellate Tribunal, the ground of the assessee of invalidity of the re-opening of assessment was upheld.

6. On the other hand, learned counsel Shri Suresh Kumar appearing for the Department opposed the petition contending that the original return was accepted without scrutiny. The Assessing Officer has recorded proper reasons for issuing notice. The issues on merits raised by the petitioner can be examined only during the assessment.

7. As noted, the return of the petitioner was accepted without scrutiny. Thus, there was no scrutiny assessment in the present case. Under the circumstances, the question of change of opinion would not arise since the Assessing Officer had not formed any opinion on any of the issues arising out of the return filed by the petitioner. The Supreme Court in case of **Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock**

Brokers Pvt. Ltd.¹. in this context observed as under:

“16. [Section 147](#) authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in [Central Provinces Manganese Ore Co. Ltd. v. ITO](#) [1991 (191) ITR 662, for initiation of action under [section 147\(a\)](#) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is 'reason to believe', but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see [ITO v. Selected Dalurband Coal Co. Pvt. Ltd.](#) [1996 (217) ITR 597 (SC)] ; [Raymond Woollen Mills Ltd. v. ITO](#) [1999 (236) ITR 34 (SC)]].

17. The scope and effect of [section 147](#) as

1 291 ITR 500

substituted with effect from April 1, 1989, as also [sections 148 to 152](#) are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of [section 147](#), separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under [section 147\(a\)](#) two conditions were required to be satisfied firstly the Assessing Officer must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under [section 148](#) read with section 147(a) But under the substituted [section 147](#) existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to [section 147](#). The case at hand is covered by the main provision and not the proviso.”

The Supreme Court analyzed the distinction between the acceptance of return under Section 143(1) of the Act and assessment which has been framed under Section 143(3) of the Act. The Court held that in the former case the Assessing Officer

would have much wider latitude to reopen the assessment. In the said judgment the Court also discussed the concept for reason to believe. Referring the earlier judgments of the Supreme Court, the Court reiterated that the term "reason to believe" does not imply with certainty that the addition would be invariably made in the assessment.

8. This aspect was reiterated by Supreme Court in later judgment in case of **Deputy Commissioner of Income Tax and anr. Vs. Zuari Estate Development and Investment Company Limited¹**.

9. With this background, in my mind we may revisit the reasons recorded by the Assessing Officer. In the reasons the Assessing Officer referred to the report of the investigation wing in which it was found that one company namely Finelink Suppliers Private Limited through its current account in Indusind Bank between the specified period, had released huge funds to several companies. It seems that notice under Section 131 of

1 (2015) 15 Supreme Court Cases 248

the Act was issued to said FSCI which was received unserved. The report also referred to the said company income and tax paid for various years between financial years 2010-11, 2012-13 and noted that the gross profit and profit before tax were negligible and the tax paid in all three years was nil. The investigation wing also provided copies of the bank's statement of FSPL for the period between 22nd May, 2012 to 31st March, 2012 and conveyed that from the bank statement and further investigation it was clear that the funds had been routed through the accounts of the said company. The funds thus received were immediately transferred or remitted to other accounts by way of RTGS fund transfer pointing out that the real beneficiaries were the petitioner and other similar companies, in whose account the unaccounted money was brought through regular books of accounts.

10. In our opinion, the information supplied by the investigation wing to the Assessing Officer thus formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Therefore, it cannot

be stated that the Assessing Officer did not have reason to believe that income chargeable to tax had escaped assessment. Being a case where return were accepted without scrutiny, we must leave the question of taxability of such allegedly escaped income to Assessing Officer to examine during scrutiny assessment.

11. The Assessing Officer perused the information supplied by the investigation wing and having formed the belief that income chargeable to tax had escaped assessment, cannot be stated to have acted mechanically. Further, mere fact that assessee had asked for certain information from the Assessing Officer, which at this stage was not supplied, would not invalidate the reasons recorded by the Assessing Officer in issuing the impugned notice.

12. In case of **Principal Commissioner of Income-tax, Rajkot-3 V. Gokul Ceramics¹** in division bench of Gujarat High Court had in somewhat similar circumstances observed as under:

1 241 Taxman 1

9. It can thus be seen that the entire material collected by the DGCEI during the search, which included incriminating documents and other such relevant materials, was alongwith report and show-cause notice placed at the disposal of the Assessing Officer. These materials prima facie suggested suppression of sale consideration of the tiles manufactured by the assessee to evade excise duty. On the basis of such material, the Assessing Officer also formed a belief that income chargeable to tax had also escaped assessment. When thus the Assessing officer had such material available with him which he perused, considered, applied his mind and recorded the finding of belief that income chargeable to tax had escaped assessment, the re-opening could not and should not have been declared as invalid, on the ground that he proceeded on the show-cause notice issued by the Excise Department which had yet not culminated into final order. At this stage the Assessing Officer was not required to hold conclusively that additions invariably be made. He truly had to form a bona fide belief that income had escaped assessment. In this context, we may refer to various decisions cited by the counsel for the Revenue.

10. In case of Central Provinces Manganese Ore Co. Ltd. v. Income Tax Officer, Nagpur (supra) the Supreme Court noted that in case of the assessee which had an office in London, this Customs authority had come to know that the assessee had declared very low price in respect of the consignment of Manganese exported by them out of India. After due inquiries and investigations, the Customs authorities found that the assessee was systematically under-voicing the value of Manganese as compared

with the prevailing market price. The Income Tax Officer on coming to know about the proceedings before the Customs Collector in this respect issued notice for reopening of the assessment. In the reasons that the Assessing Officer relied on the facts as found by the Customs Authorities that the assessee had under-voiced goods during export. Under such circumstances, upholding the validity of the notice for reopening, the Supreme Court held and observed as under:

"So far as the first condition is concerned, the Income Tax Officer, in his recorded reasons, has relied upon the fact as found by the Customs Authorities that the appellant had under invoiced the goods it exported. It is not doubt correct that the said finding may not be binding upon the income tax authorities but it can be a valid reason to believe that the chargeable income has been under assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income Tax Officer believe that there has been under assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income Tax Officer under Section 147(a) of the Act was satisfied."

11. In case of Income Tax Officer v. Purushottam Das Bangur (supra) after completion of assessment in case of the assessee, the Assessing Officer received letter from Directorate of Investigation giving detailed particulars collected from Bombay Stock Exchange which revealed earning of share and price of share increased during period in question and quotation appearing at Calcutta Stock Exchange was as a

result of manipulated transaction. On the basis of such information, the Assessing Officer issued notice for reopening of the assessment. The question, therefore, arose whether the information contained in the letter of Directorate of Investigation could be said to be definite information and the Assessing Officer could act upon such information for taking action under Section 147(b) of the Act. In such background, the Supreme Court observed as under:

"12. Ms. Gauri Rastogi, the learned counsel appearing for the respondents, has urged that the letter of Shri Bagai was received by the Income tax Officer on March 26, 1974 and on the very next day, that is, on March 27, 1974, he issued the impugned notice under Section 147(b) of the Act and that he did not have conducted any inquiry or investigation into the information sent by Shri Bagai. Merely because the impugned notice was sent on the next day after receipt of the letter of Shri Bagai does not mean that the Income Tax Officer did not apply his mind to the information contained in the said letter of Shri Bagai. On the basis of the said facts and information contained in the said letter, the Income Tax officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment. The High Court, in our opinion, was in error in proceeding on the basis that it could not be said that the Income Tax Officer had in his possession information on the basis of which he could have reasons to believe that income of the assessee chargeable to tax had escaped assessment for the relevant assessment years. For the reasons aforementioned, we are unable to uphold the impugned judgment of the High

Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the Writ Petitions filed by the respondents are dismissed. No order as to costs."

12. In case of Income Tax Officer v. Selected Dalurband Coal Co. Pvt. Ltd.(supra), the assessment was reopened on the basis of the information contained in letter from Chief Mining Officer that the colliery of the assessee had been inspected and there had been under reporting of coal raised. Upholding the validity of re-opening of assessment, the Supreme Court held and observed as under:

"After hearing the learned counsel for the parties at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income Tax Officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January 9, 1967, by the officers of the Mining Department in the presence of the representatives of the assessee and according to the opinion of the officers of the Mining Department, there was under reporting of the raising figure to the extent indicated in the said letter. The report is made by a Government Department and that too after conducting a joint inspection. It gives a reasonably specific estimate of the excessive coal mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may be well be that the assessee may be able to establish that the facts stated in the said letter are not true but that conclusion can be arrived at

only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our order, the reassessment proceedings have not to go on we do not and we ought not to express any opinion on the merits."

13. In case of A.G.R. Investment Ltd. v. Additional Commissioner of Income Tax and anr. (supra), a Division Bench of Delhi High Court considered the validity of reopening of assessment where the notice was based on information received from Directorate of investigation that the assessee was beneficiary of bogus accommodation entries. The Court while upholding the validity of reopening observed that sufficiency of reason cannot be considered in a writ petition. It was observed as under:

"23 The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the assessing officer treated them as objections and made a communication. However, on a scrutiny of the order, it is perceivable that the authority has passed the order dealing with the objections in a very careful and studied manner. He has taken note of the fact that transactions involving Rs. 27 lakhs mentioned in the table in Annexure P-2

constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The assessing officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the DIT (INV-V) as regards the transactions entered into by the assessee company with number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceeding under Section 147 of the Act. The reason to believe has been appropriately understood by the assessing officer and there is material on the basis of which the notice was issued. As has been held in *Phool Chand Bajrang Lal* (supra), *Bombay Pharma Products* (supra) and *Anant Kumar Saharia* (supra), the Court, in exercise of jurisdiction under Article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In *SFIL Stock Broking Ltd.* (supra), the bench has interfered as it was not discernible whether the assessing officer had applied his mind to the information and independently arrived at a belief on the basis of material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the factual matrix in the case at hand. In the case of *Sarthak Securities Co. Pvt. Ltd.* (supra), the

Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into transactions and the assessing officer was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee company through the banking channel. Regard being had to the aforesaid fact situation, this Court had interfered. Thus, the said decision is also distinguishable on the factual score."

14. Learned Single Judge of Madras High Court in case of Sterlite Industries (India) Ltd. v. Assistant Commissioner of Income Tax reported in MANU/TN/0471/2008MANU/TN/0471/2008 : [2008] 302 ITR 275 (Mad) upheld the notice for reopening which was based on information from enforcement directorate showing possible inflation of purchases made by the assessee.

13. The decisions cited before us do not involve controversy as we are examining in this petition. In the case of **Chhugamal Rajpal (supra)** as noted, the Supreme Court held the re-opening of assessment invalid upon finding that the Assessing Officer had not set out any reasons for coming to the conclusion that it was a fit case for issuing notice under Section 148 of the Act. In case

of **Amar Jewellers Ltd. (supra)** the Gujarat High Court was examining the validity of re-opening of assessment in a case where original assessment was carried out under Section 153(A) of the Act, pursuant to search carried out by the Revenue Authorities. Further, the conclusions of the Court were based on facts of that case. Lastly, this Court in case **Shodiman Investments Private Limited (supra)** was examining the revenue's income tax appeal against the judgment of the Tribunal holding that the re-opening of assessment was bad in law.

14. In the result, petition is dismissed. All contentions on merits of the petitioner however kept open.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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