

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 135 of 2019****Reserved on 22.11.2019****Delivered on 05.12.2019**

Suresh Kumar Agarwal S/o Late Shri Shankar Lal Agrawal, Aged About 56 Years, Civil Contractor, Jindal Fuels, Main Road, Post Lormi, District Mungeli, Chhattisgarh 495115

---- Petitioner**Versus**

1. Dy. / Assistant Commissioner Of Income Tax Circle - 2(1), Bilaspur
2. The Pr. Commissioner Of Income Tax Bilaspur
3. The Chairman, Central Board Of Direct Taxes, North Block, Central Secretariat, New Delhi - 110001

---- Respondents

For Petitioner	:	Mr. S. Varudevan along with Mr. Romir S. Goyal and Mr. Shashank Sharma, Advocates
For Respondents	:	Ms. Naushina Afrin Ali along with Mr. Amit Choudhary, Advocates.

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

1. The challenge in this writ petition is to the order Annexure P-1 dated 09.08.2019 passed by the respondent no.1. Vide the impugned order, the respondent no.1 has decided the objection raised by the petitioner in respect of reopening of the assessment of income tax for the assessment year 2012-13 under Section 147 of the Income Tax Act, 1961.
2. The facts of the case, in brief, are that the petitioner who is a civil

contractor had submitted his assessment of income tax for the year 2012-13. During the course of scrutiny of the assessment, the Department found certain discrepancies in respect of certain unsecured loans received by the petitioner. The respondents initiated a proceeding under Section 147 of the IT Act, 1961 dealing with income escaping assessment to which the petitioner submitted his reply. Thereafter, an order of reassessment was passed on 22.12.2018 under Section 68 of the IT Act. Against the said order dated 22.12.2018, the petitioner has already preferred an appeal which is pending consideration before the CIT(Appeals).

3. Down the line, the respondents further found that there are still certain income which has escaped assessment and therefore a fresh notice under Section 147 of IT Act was issued on 29.03.2019. The petitioner filed an objection on 29.07.2019 questioning the reassessment process again initiated. The said objection raised by the petitioner on 29.07.2019 stands decided vide impugned order dated 09.08.2019 which led to the filing of the present writ petition.
4. According to the petitioner, the subject matter of reassessment is one which is not permissible under Section 147 of the IT Act. The preconditions attached to Section 147 of IT Act are not revealed in the notice under Section 147 of IT Act. In other words, according to the petitioner, the statutory requirement or precondition for invoking the provisions of Section 147 of IT Act has not been complied with nor is it available for the respondents in the given facts of the case. According to the petitioner, there has been no suppression of facts

and details by the petitioner while assessment was made and at the same time, the respondents also had scrutinized the assessment of the petitioner's return and had already initiated a proceeding under Section 147 of IT Act in respect of certain unsecured loans received by the petitioner which got escaped from the assessment at the first instance. According to the petitioner, he had made available all these facts and details and the entire book of accounts including the bank statements were already in possession of the respondents. According to the petitioner, once on scrutiny the respondents did not find any error so far as the bank statements and book of accounts are concerned, the respondents cannot again subject the petitioner to reassessment proceeding under Section 147 of IT Act. There was no such material available with the respondents nor was there any new tangible material which was found by the respondents which had escaped assessment, on the basis of which a proceeding under Section 147 of IT Act could have been initiated. According to the petitioner, the scope under Section 147 of IT Act cannot be stretched to such extent that reassessment becomes permissible under any circumstances and at any point of time. According to the petitioner, there has to be strong and cogent material available with the respondents for invoking the provisions of Section 147 of IT Act and it should also be a case where the assessee has suppressed these materials from being assessed at the first instance and which was detected at a later stage, necessitating a proceeding under Section 147 of the Act.

5. Counsel for the petitioner, in this regard, relied upon the judgment of the Delhi High Court in the case of Revolution Forver Marketing (P) Ltd. Vs. Income-tax Officer, (2019) 104 taxmann.com 61 (Delhi). He further relied another judgment of the Delhi High Court in the case of Commissioner of Income Tax Central I Vs. Indo Arab Air Services, (2015) 64 taxmann.com 257 (Delhi). The petitioner also relied upon the judgment of the Supreme Court in the case of Commissioner of Income-tax, Delhi Vs. Kelvinator of India Ltd., (2010) 187 Taxman 312 (SC).
6. Per contra, learned standing counsel for the Department opposing the petition submits that the petition is pre-mature at this juncture for this Court to invoke its extra ordinary writ jurisdiction. According to the respondents, it is a case where the reassessment proceeding now has been initiated at the behest of the DIT (I & CI) who had intimated that in the saving bank account maintained by the petitioner with Punjab National Bank, Khaprikala, Lormi, Bilaspur, there was a cash deposit of Rs. 1.53 crore during the said year and which had escaped assessment that has led the Department for initiating a proceeding under Section 147 of Income Tax Act.
7. The learned counsel for the Department submitted that there is absolutely no illegality or perversity in the order passed by the respondent No.1 dated 09.08.2019 as the said order is by itself self explanatory and it shows the reasons, which lead to the initiation of the proceedings under Section 147 for reassessment. It was further the contention of the respondents that the plain reading of the

contents of the impugned order would also reveal that the order has been passed taking into consideration all the statutory provisions as is required before initiating a proceeding under Section 147 and which includes the condition precedent for initiating a reassessment proceedings beyond a period of 4 years. Thus, there is no strong case made out by the petitioner calling for an interference with the impugned order.

8. Likewise, it was also the contention of the counsel for the Department that the impugned order would also show that it was not a case where the order of reassessment has been initiated without there being any basis. According to the respondents in the course of scrutiny of the books of account of the petitioner, it was revealed that there were certain cash transactions made by the petitioner and that there was an amount of Rs.1.53 crores deposited in his savings account and which has not been properly explained or accounted while submission of the return. That this amount which otherwise is an income of the petitioner has escaped assessment, therefore when the respondents have got this new cogent and tangible material knowing fully well that 4 years have lapsed for initiating the reassessment, therefore the concerned officer forwarded a note-sheet seeking permission from the higher authorities in the Department as is required under Section 151 of the Income Tax Act.
9. In the instant case, the order would show that there were sufficient materials available with the Department and there were also strong reasons to believe that the same has escaped assessment and it

meets the requirement as is required under Section 147, thus the writ petition being devoid of merits should be rejected.

10. Having heard the contentions put forth on either side and on perusal of record, the core issue in the instant case is whether the rejection of the objection filed by the petitioner on the initiation of the proceedings under Section 147 was proper, legal and justified or not. For proper adjudication of the issue involved in the case it would be relevant at this juncture to refer to section 147 of the Income Tax Act:

“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) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure⁵⁹ on the part of the assessee to make a return under section 139 or in response to a notice issued under subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts⁵⁹ necessary for his assessment, for that assessment year:

[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.]

[Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

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) where no return of income has been furnished by the assessee

although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(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 ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

(d) where a person is found to have any asset (including financial interest in any entity) located outside India]

Explanation 3. - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

Explanation 4. For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

[Issue of notice where income has escaped assessment.]

11. If we read into the aforementioned provisions, it would be clearly reflected that the provisions under Section 147 prescribes certain situations in which a reassessment is permissible. The proviso to section 147 provides for the situations and the said proviso also prescribes the maximum period during which the reassessment proceedings could have been initiated. The situations as is envisaged under the proviso clause to Section 147 are (i) where the income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to make a return under Section 139, (ii)

where there is a failure on the part of the assessee in response to a notice issued under Sub-section (1) of Section 142 or Section 148, and (iii) where there is a failure to disclose fully and truly all relevant materials necessary for the assessment for that assessment year.

12. Now, if we read the provision of Section 147 all that is required for reopening of assessment is that the Assessing Officer should have **“reasons to believe”** that any income chargeable to tax has escaped assessment and which is noticed by the Department subsequently.
13. According to the respondents, when the assessment of the petitioner was being verified and which was being conducted by the DIT (I & CI), Bhopal office, they found that there has been huge amount of cash deposit in the savings bank account of the petitioner and the deposit was to the tune of Rs.1.53 crores and this amount got escaped and there has not been any proper accounting of this amount of Rs.1.53 crores, therefore it becomes income chargeable to tax and under the given circumstances at the instance of DIT (I & CI) proceedings under Section 147 was ordered to be initiated
14. What is under challenge in the writ petition is the order dated 09.08.2019 whereby the objections raised by the petitioner against reopening of the assessment under Section 147 of the Act has been rejected.
15. The only transaction which has led to reopening of the assessment for the year, 2012-13 is the subsequent detection of cash deposit of Rs.1.53 Crores being made through the savings bank account of the

petitioner, which at the time of initial assessment could not be detected or taken note of in the course of assessment being made and when this matter are detected or discovered in the course of scrutiny, the respondents realizing the fact that time of more than four years have lapsed to reopen the assessment already made, therefore, took assistance of provisions of Section 151 of the Act wherein the Assessment Officer has given justifiable reasons seeking permission to reopen the assessment for the year, 2012-13.

16. All that this court has to see is, whether this transaction of cash in the savings account of the petitioner is new information or is a tangible material which could be brought within the ambit of income which has escaped assessment so as to attract the provisions of Section 147 of the Act.
17. A plain reading of Section 147 of the Act, what stands revealed is that, the requirement for reopening of assessment is of the Assessing Officer finding **“Any income chargeable to Tax”** having escaped assessment. The term any income, in the opinion of this court, would also include the informations provided by the assessee to the department and it could also be an information not submitted by the assessee, or had suppressed it. Nowhere under the provisions of Section 147, either in the main section nor under the proviso clause, so also neither under the explanations provided under this section, is there a bar for the department to initiate reassessment if the documents/records has already been subjected to scrutiny at the time of assessment being made. Neither does the said provision

anywhere envisages that once if the books of account has been scrutinized, the same cannot be scrutinized again for the purpose of initiating a proceeding under Section 147 of the Act. The documents having been submitted to the Assessing Officer at the first instance and the Assessing Officer having skipped/missed the said transaction from being assessed or having been overlooked, the said transaction would not bar the department from initiating proceedings under Section 147 of the Act in case if the department finds certain transaction which have escaped assessment.

18. The only condition which is required under Section 147 of the Act for reopening assessment is that, the Assessing Officer should have reasons to believe that the income chargeable to tax had escaped assessment. Such belief has to be to the subjective satisfaction of the Assessing Officer and the Act does not prescribe a precondition of the material not having been disclosed in the course of assessment at the first instance.
19. The overall reading of Section 147 of the Act would show that wide powers have been given upon the Assessing Officer to reach to the conclusion of there being sufficient reasons to believe that income chargeable to tax had escaped assessment. It could even cover cases where assessee has fully disclosed the material facts. This view of the court stands fortified from the Division Bench judgment of Punjab & Haryana High Court in case of **Jawand Sons Vs. Commissioner of Income Tax** (2010) 195 Taxman 144. The Division Bench of Delhi High Court in case of **Consolidated Photo and**

Finvest Ltd. Vs. Assistant Commissioner of Income Tax (2006)

281 ITR 394, has also held that action under Section 147 of the Act was permissible even if the Assessing Officer gathered his reasons to believe from the same record as had been the subject matter of the completed assessment proceedings. Mere production of books of account is not sufficient to infer that there had been full disclosure of material facts necessary for the purpose of assessment. Once, if in the opinion of the Assessing Officer, there are reasons to believe of escapement of income, it would be sufficient for initiating proceedings under Section 147 of the Act.

20. It would not be proper for this court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, to sit over the order of the Assessing Officer to examine threadbare or to conduct a roving enquiry to determine whether the reasons recorded by the Assessing Officer are rational or has relevant bearing on the formation of the belief and are not based on extraneous considerations.
21. It is also settled position of law that the High Court under Article 226 of the Constitution of India cannot go into the sufficiency or adequacy of the material and substitute its opinion from that of the Assessing Officer. All that this court can see, verify or scrutinize is as to whether the reasons assigned are not vague, indefinite and without any basis etc.
22. The phrase “Reasons to Believe” does not mean that the Assessing Officer should have ascertained the facts by legal evidence. All that is required is that, the Assessing Officer should prima facie have some

material on the basis of which there should be reasons to believe of certain incomes chargeable to tax escaping assessment. There need not be any concrete evidence or proof available for coming to a final conclusion. It is only an initiation of proceedings of reassessment where the assessee gets a chance to put forth their defence, explanation and justification which would further be scrutinized by the Assessing Officer while reaching to the final conclusion. One should not lose sight of the fact that the final assessment on the conclusion of a proceedings under Section 147 of the Act is also an appealable order wherein also the assessee has a right to agitate or challenge the order passed by the Assessing Officer on a proceeding under Section 147 of the Act.

- 23.** In case of *M/s Phool Chand Bajrang Lal & Anr. Vs. Income Tax Officer and Another*, 1993(4)SCC 77, the Supreme Court in paragraph 6, 26 and 27 held as under:

“6. From the plain phraseology of the above Sections of the Act, it appears that two conditions precedent which are required to be satisfied before an Income Tax Officer can acquire jurisdiction to proceed under Clause (a) of Section 147 read with Sections 148 and 149 of the Act, beyond the period of four years but within a period of eight years, from the end of the relevant year, are: (a) that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to tax had either been under assessed or escaped assessment and (b) that the ITO must have reason to believe that such escapement or under-assessment was occasioned by reason, of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Both these conditions must co-exist in order to confer jurisdiction on the Income Tax Officer. The Income Tax Officer is obliged, before initiating proceedings under Section 148 of the Act to record the reasons for the formation of his belief to reopen the assessment.

26. We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of Sections 147(a) and 148 of the Act and is against the settled law by this Court. We have to look to the purpose and intent of the provisions. One of

the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude.

27. In our opinion, therefore, in the facts of the present case the Income-tax Officer Azamgarh rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific relevant and reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and therefore income chargeable to tax had escaped assessment. He, therefore, correctly invoked the provisions of Sections 147(a) and 148 of the Act. The High Court was, thus, perfectly justified in dismissing the writ petition. There is no merit in this appeal which fails and is dismissed but with no order as to costs."

- 24.** Again in case of Income Tax Officer, Calcutta Vs. M/s Selected Dalurband Coal Co. Pvt. Ltd. 1997(10)SCC 68, in paragraph 3 held as under:

"3. It is well settled by various decisions of this Court that the notice under Section 148 read with Section 147 can be issued only where the Income- tax Officer has reason to believe that the income profits or gains chargeable to tax had been under-assessed or escaped assessment and further that such escapement or under assessment was occasioned by reason of the failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year. (We are not concerned with Clause (b) of Section 147 here but only with Clause (a). In other words, there must be relevant material before the assessing officer upon which he must reasonably and rationally form the requisite opinion (belief). The question, therefore, is whether the letter of the Chief Mining Officer aforesaid does not constitute relevant material upon which the Income-tax Officer could have formed the requisite belief? It must be remembered that the formation of belief by the Income-tax Officer is essentially within his subjective satisfaction."

- 25.** The aforesaid principles are still holding good and has been again reiterated by the Supreme Court in case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. 2008(14)SCC 208, wherein in paragraph 19,20 and 21 held as under:

"19. 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.

20. As observed by the Delhi High 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)]).

21. The scope and effect of section 147 as 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.”

- 26.** Recently a similar issue came up before this court in WPT No.234 of 2018 and other connected writ petitions of similar nature wherein referring to various judgments on the field and relying upon the analogy laid down in the judgments referred in the preceding paragraphs, this court had dismissed the writ petitions. The said judgment of Single Bench was subsequently subjected to challenge in Writ Appeal also being WA No.336 of 2019 and the Division Bench on 29.07.2019 dismissed the Writ Appeal affirming the order passed

by the Single Bench.

- 27.** In view of the legal position as it stands and in the light of the judgments referred to in the preceding paragraphs, this court also is of the view that there was sufficient material germane to the issue detected by the Assessing Officer which, in the opinion of the Assessing Officer, was an income chargeable to tax and he had reasons to believe that it had an escaped assessment, at the first instance. Therefore, there is no illegality or perversity on the part of the Assessing Officer in reaching to the said conclusion while deciding the objections raised by the assessee.
- 28.** It is made clear that this court is not expressing any opinion on the merits of the case which is still to be agitated upon before the Assessing Officer, after which, the right to challenge the said finding is still open for the petitioner.
- 29.** With the aforesaid observations, the present writ petition stands rejected.

**Sd/-
P. Sam Koshy
Judge**