

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 139 of 2019

Reserved on 27/11/2019

Delivered on 20/12/2019

Sanjay Agrawal A Partnership Firm, 35/36, 1st Floor, Millenium Plaza, G. E. Road Raipur Through Partner Sanjay Agrawal S/o Late Ramavtar Agrawal, 57 Yrs R/o Chaubey Colony, Raipur Chhattisgarh.

---- Petitioner

Versus

1. Principal Commissioner Of Income Tax 1 Cr Building, Civil Lines, Raipur Chhattisgarh.
2. Additional Commissioner Of Income Tax Range-1, Cr Building, Civil Lines, Raipur Chhattisgarh.
3. Assistant Commissioner Of Income Tax Circle 1 (1), Cr Building, Civil Lines, Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sumit Nema, Sr. Advocate along with Shri Raja Sharma, Advocate.
For Respondents	:	Smt. Naushina Ali, Shri Ajay Kumrani and Shri Topilal Bareth, Advocates.

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Order

1. Challenge in the present writ petition is the notice dated 20.03.2019 issued by the Respondent No.3. Vide the said notice, the respondents have initiated proceedings for reassessment as per Section 147 of the Income Tax Act, 1961 (in short, the Act).
2. Brief facts of the case is that, for the assessment year, 2013-14, the petitioner had submitted their return electronically on 29.09.2013. However, subsequently, it is said that some survey was conducted as per Section 133 (A) of the IT Act. In the course of survey, the respondents found that there were many

incriminating materials and documents which were impounded. In the course of scrutiny, the Assessment Officer (in short, AO) assessed total income of the petitioner at Rs.10,71,67,261/- as against the returned income of Rs.5,19,81,710 /-. It is for this reason that notice under Section 148 of the Act was served upon the petitioner. Thereafter, the petitioner sought reasons from the respondents in respect of "Reasons to believe that some income of the assessee has escaped assessment". The Department later on provided the petitioner with the reasons.

3. Thereafter, the petitioner raised objection against the decision of reassessment. The objection so raised by the petitioner was rejected by the AO vide communication dated 13.11.2019 giving intimation of the further proceeding with the matter.
4. The petitioner primarily challenges the order on the ground that notice under Section 148 of the Act initiating reassessment is barred by limitation and therefore, proceedings drawn is per se illegal. The proviso to Section 147 of the Act clearly provides that no action of reassessment can be initiated after expiry of four years from the end of the relevant assessment year. There was nothing which has been suppressed by the petitioner at the time of the assessment. There was nothing which the petitioner had not made available to the department at the time of submission of their return. Moreover, the documents which is said to have used for the purpose of reassessment of the income were already available with the department, therefore, it cannot be said that there was failure on the part of the petitioner in making full and true disclosure. Since there was no suppression nor was there any

fresh material obtained by the department and the entire documents being already in possession of the department, the requirement as is required under Section 151 of the Act is not made out and the reassessment proceedings deserves to be held as barred by limitation.

5. Further contention of the petitioner is that, the reasons to believe recorded by the department again is baseless for the simple reason that there is no finding by the authorities as regards any suppression of material facts during the course of scrutiny of assessment under Section 143(iii) of the Act. It was further contended by the petitioner that law is also well settled that even if there is a change of opinion, the proceeding of reassessment under Section 147 of the Act could not have been initiated.
6. It was also contended that the reasons to believe provided by the department are all vague, ambiguous and without any basis and there being no tangible material to support the reasons to believe. There is also no objective finding or reasons given by the authorities while giving reasons and also while rejecting the objections preferred by the petitioner.
7. The counsel for the petitioner relied upon **(2018) 404 ITR 0010 Supreme Court** in case of **Income Tax Officer Vs. Taxman India Pvt. Ltd.**, in **(2006) 283 ITR 212** in case of **Taxman India Vs. Income Tax Officer** passed by Delhi High Court, judgment of Bombay High Court in WP No. 546 of 2018 **Rajbhushan Omprakash Dixit Vs. Dy. Commissioner, Income Tax** wherein it has all been held that if the AO, for some reason, did not advert to

such material or did not utilize the same, it cannot be said that the assessee failed to disclose truly and fully all material facts.

8. Another judgment following the same principle of law relied upon by the petitioner was WP No.1917 of 2019, Marico Ltd. Vs. Assistant Commissioner of Income Tax, decided by the Bombay High Court. The petitioner also relied upon **(1998) 229 ITR 0229 in case of Commissioner of Income Tax Vs. Banwarilal Banshidhar of the Allahabad High Court** and **(2009) 19 DTR 0305 in case of Commissioner of Income Tax Vs. GK Contractors** to substantiate their contention that once when the AO have estimated on the basis of the higher profit rate subsequent reliance on the books of account again and to hold that there were yet certain income which has escaped assessment is not sustainable.
9. According to the petitioner, the action of reassessment by the respondents is also in contravention to the principles of law laid down by the Supreme Court in case of **Commissioner of Income Tax Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 SC** and for all the aforesaid reasons, the counsel for the petitioner prays for quashment of the notice under Section 148 of the Act holding it to be barred by limitation.
10. Per contra, the counsel for the department opposing the petition submitted that a plain perusal of the reasons to believe provided by the department to the petitioner it would clearly reveal that there was sufficient tangible material found out in the course of scrutiny which has led to the initiation of the proceeding under Section 147

of the Act. According to the department, in the course of scrutiny it has been found that there has been payment by way of cash transaction of an amount of more than Rs. 2.53 Crores and where the transaction made were in cash exceeding Rs.20,000/- in a day on the same person which is otherwise not allowed under Section 40(A)(iii) of the Act. It is this transaction made in cash transaction of an amount of more than Rs. 2.53 Crores which has escaped assessment and which were detected only in the course of scrutiny and thereafter, after taking appropriate approval as is required under the Act from the competent authority under Section 151(1) of the Act the proceeding has been initiated. Therefore, the proceeding are not barred by limitation.

11. The counsel for the respondents relied upon the judgments passed in the case of **“M/s. Phool Chand Bajrang Lal and Another v. Income Tax Officer and Another”**1993(4)SCC 77, **“Income Tax Officer, Jodhpur v. Purushottam Das Bangur and Another”** 1997(3)SCC 253, **“Income Tax Officer, Calcutta v. Selected Dalurband Coal Co. Pvt. Ltd.”** 1997(10)SCC 68, **“Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited”** 2008 (14) SCC 208, and **“Deputy Commissioner of Income Tax and Another v. Zuari Estate Development and Investment Company Limited”** 2015 (15)SCC 248.
12. So far as the issue of the notice of reassessment being barred by limitation is concerned, it would be relevant at this juncture to reproduce Section 151(1) of the I.T. Act for ready reference:

"151. Sanction for issue of notice.—

(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice."

13. The plain reading of the aforesaid provision would clearly reflect that only requirement for initiating a proceeding under Section 147 beyond a period of 4 years is the subjective satisfaction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on the reasons recorded by the Assessing Officer explaining the circumstances, under which according to the Assessing Officer it is a fit case for issuance of a notice under Section 148.
14. The aforesaid Section does not envisage the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to separately give reasons while approving the reasons recorded by the Assessing Officer. He has only to be satisfied with the reasons recorded by the Assessing Officer and which has been forwarded to him for necessary sanction and approval.
15. Given the said facts, now if we come to the findings of the Assessing Officer or the reasons recorded by the Assessing Officer, it would clearly reveal that as per the Assessing Officer, an amount of more than Rs. 2.53 Crores has escaped assessment and that this amount of more than Rs.2.53 crores were payments made in cash towards expenditure exceeding more than Rs.20,000/- in a day, which otherwise is impermissible under the I.T. Act. The said reasons were thereafter placed before the

Principal Commissioner, who in turn has given sanction for the same.

16. From the plain reading of the aforesaid provision of law, what is clearly reflected is that there has to be subjective satisfaction of the officer concerned to the reasons assigned by the Assessing Officer. Section 151(1) does not provide for any specific conditions, which has to be taken note of or which has to be complied upon by the Principal Commissioner or as the case may be while according sanction for initiating a proceeding under Section 147.
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 submitted to the department 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 same would not bar the department from initiating proceedings under Section 147 of the Act in case if the department finds at a later stage 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 certain 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 certain income escaping assessment, it would be sufficient for initiating proceedings under Section 147 of the Act.

20. 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.”

21. 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.”

22. 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.”

23. 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.
24. 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 loose 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.

25. In view of the aforesaid provisions of law, if we look into the proceedings under challenge, it would clearly reveal that there are sufficient reasons given by the Assessing Officer, which according to him is “**Reasons to believe**” of an income of more than Rs.2.53 Crores, which are chargeable to tax has escaped assessment and which has come to the notice of Department at a later stage in the course of scrutiny.
26. Given the said facts and circumstances of the case, this Court has no hesitation to reach to the conclusion that the case in hand cannot be said to be one which is barred by limitation as the proceedings drawn by the Assessing Officer seems to be with sufficient material in record showing income, which otherwise is chargeable to tax having escaped assessment.
27. For the aforesaid reasons, the writ petition fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge