

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 154 of 2019**

Mohan Lal Kishore Kumar Kothari S/o Sukh Raj Aged About 78 Years
21, Mahavir Colony, Durg, Chhattisgarh.

---- Petitioner

Versus

1. The Principal Commissioner Of Income Tax Raipur-2, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.
2. The Income Tax Officer Ward- 1(4), Bhilai, District Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mool Chand Jain, Advocate along with Mr. Ashok Patil, Advocate
For respective Respondents	:	Mr. Amit Chaudhary, Advocate Smt. Naushina Ali, Advocate, and Shri Ajay Kumrani, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/12/2019

1. The challenge in the present writ petition is the invocation of Section 147 of the Income Tax Act, 1961 (in short, the Act) and the notice in this regard issued under Section 148 dated 27.03.2019.
2. The brief facts of the case is that for the assessment year 2012-13, the petitioner had submitted his return on 31.08.2012. Though the return was filed as early as in the year 2012, the respondents now have decided to go in for a reassessment of the income of the petitioner and have in the process issued Annexure P/2 dated 27.03.2019. It is this reassessment proceeding, which has been initiated, which is under challenge in the present writ petition.
3. According to the petitioner, first of all, the issuance of a notice under Section 148 is bad in law for the reason that inspite of the specific

application being filed by the petitioner seeking copy of the reasons recorded by the Assessing Officer (in short A.O.) has not been provided, which according to the A.O. satisfies as regards income having escaped assessment. The further contention of the petitioner is that the entire action of the respondents gets vitiated only on the ground of the reasons to believe income having escaped assessment not being provided to the petitioner as is required as per the judgment of the Hon'ble Supreme Court in the case of **“G.K.N. Driveshaft Ltd.” 259 ITR 19 (S.C.)**.

4. The further contention of the petitioner is that the proceedings drawn by the respondents is without proper application of mind and is only on the basis of a correspondence made or a report submitted by the D.I. (INV), which is not sufficient enough for initiating a proceeding under Section 147 as it only amounts to a change of opinion, which otherwise does not permit initiation of reassessment. According to the petitioner, the A.O. has to himself conduct some sort of inquiry, scrutiny or investigation and thereafter there has to be a subjective satisfaction of the A.O. ascertaining income having escaped assessment. It was also the contention of the petition that the action on the part of the respondents is also bad for the reason that firstly they have not supplied the reasons to believe of being satisfied of income having escaped assessment. Secondly, in the absence of reasons being provided, the petitioner could not submit proper objections and in the process, the objection has not been decided in an objective manner. Thus, since the entire proceedings have been initiated mechanically without proper application of mind the same therefore deserves to be set-aside/quashed.

5. The petitioner in support of his contention also relied upon the judgment of the Hon'ble Supreme Court in the case of “**Dy. (C.I.T.) v. Sunita Finlease Ltd.**” (2011) 11 Taxman.com Chhattisgarh High Court wherein, it has been held that the directions given by the Board is binding, so far as the circulars issued by the Board requiring the A.O. to record details of inquiries made by the A.O. For the said reasons, the initiation of reassessment proceeding deserves to be set-aside/quashed.
6. Per contra, counsel for the Department opposing the petition submits that the reasons recorded was also duly served upon the petitioner and the petitioner had also on receipt of the same submitted their objections to the same.
7. The counsel further submits that the reasons recorded for reopening of the case under Section 147 speaks for itself and would justify the decision taken. According to the learned counsel, the Assessing Officer has given all the reasons to believe that there has been an income which has escaped assessment and the said decision of the Assessing Officer does not warrant any interference at this juncture. The counsel for the Department also relied upon the judgments reported in **2015(15) SCC 248 (Deputy Commissioner of Income Tax and Another v. Zuari Estate Development and Investment Company Limited)** and **2008(14) SCC 208 (Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited)** in support of its contention.
8. According to the learned counsel for the Department from the documents collected from the respondents, it was revealed that the

petitioner has not declared any income under the head “Capital Gains” under part BT-1, whereas at the same time the petitioner has claimed long term Capital Gains under schedule E-1, which arose on sale of shares. According to the Department, the said sale of shares was of a Shell Company and which has been done only with an intention of evading tax.

9. It is necessary at this juncture to point out that recently the Hon'ble Supreme Court in the case of **“Principal Commissioner, Income Tax (Central)-1 v. NRA Iron & Steel Pvt. Ltd.”** came down heavily upon such transactions being made through cloak of share capital/premium and the Hon'ble Supreme Court specifically held that the such transactions must be subjected to careful scrutiny. The Hon'ble Supreme Court in paragraphs No. 13 & 14 held as under:

“13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company – Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.”

10. The plain reading of Section 147 of the Income Tax Act by itself would reveal that during the course of scrutiny, if it is found that any income chargeable to tax has escaped assessment. The intention of the Law makers clearly reflect that it is the subjective satisfaction of the Assessing Officer to form an opinion that certain income chargeable to tax has escaped assessment.
11. 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.

12. 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.

13. 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.

14. 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.”

15. 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.”

16. 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.”

17. 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 i.e. 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.
18. 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.
19. 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, 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.

20. 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.
21. The contention of the petitioner that they had not been provided with the reasons recorded for issuance of notice under Section 148 is not acceptable or is not tenable for the reasons that Annexure P/7-a document filed by the petitioner themselves in the writ petition in the very first line it has been mentioned that they have received the reasons recorded for issuance of the notice under Section 148. In view of the same, the said contentions of the petitioner stands rejected.
22. For the aforesaid reasons, the writ petition fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge