



2024:DHC:6682-DB



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment reserved on: 21 August 2024**Judgment pronounced on: 02 September 2024**+ **W.P.(C) 13273/2018****WELL TRANS LOGISTICS INDIA PVT. LTD. Petitioner****Through: Dr. Rakesh Gupta, Mr.
Somil Agarwal & Mr.
Dushyant Agarwal, Advs.****versus****ADDL.COMMISSIONER OF INCOME TAX &
ORS****..... Respondents****Through: Mr. Shlok Chandra, Sr.SC
with Ms. Madhavi Shukla,
Jr.SC, Ms. Priya Sarkar,
Jr.SC and Mr. Sudarshan
Roy, Adv.****CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****RAVINDER DUDEJA, J.**

1. The instant writ petition has been filed with the following prayer:-

“1. To set-aside the impugned notice dated 22.03.2018 issued u/s 148 of the Income Tax Act, 1961 for A.Y. 2011-12 issued by respondent no. 1 and letter dated 13.11.2018 by Joint Commissioner of Income Tax, Special Range -9, New Delhi.

2. To issue a writ, direction or order in the nature of Certiorari, Mandamus or any other appropriate writ, direction or order quashing the impugned notice dated 22.03.2018 issued u/s 148 of the Income Tax Act, 1961 by respondent 1 and letter dated 13.11.2018 by the Joint Commissioner of Income Tax i.e. respondent 1.

3. To stay the operation of the further proceedings in pursuance to



2024:DHC:6682-DB



notice dated 22.03.2018 issued u/s 148 and letter dated 13.11.2018 as an Interim Relief.”

FACTUAL BACKGROUND:

2. Petitioner is engaged in the business of freight forwarding. In consideration of the services performed in the business carried on by the petitioner company, customers make payment of the service charges and other charges, to the petitioner company, both by cheques and/or through banking channels including electronic transfers and in some cases by cash and in many cases by the combination of cheques and cash.
3. Petitioner company filed its return of income for the Assessment Year [“AY”] 2011-12 on 30.09.2011. Respondent No. 1 reopened the assessment of AY 2011-12 under Section 147 of the Income Tax Act, 1961 [“Act”] by issuing notice under Section 148 of the Act on the ground that income has escaped assessment.
4. Petitioner company after filing the return of income in response to notice under Section 148 of the Act, requested for the reason recorded, which was supplied vide letter dated 20.07.2018 by the respondent.
5. It has been stated that on the sole basis of information received from the Deputy Director of Income Tax [“DDIT”], vide letter dated 29.11.2013 and extracted in the Reason, the respondent formed ‘reason to believe’ that income to the extent of cash deposited in the bank account of the petitioner company has escaped assessment.
6. The petitioner filed objections to the reopening of the assessment vide its letter dated 11.11.2018, submitting, *inter alia*, that “reason” recorded is solely based on the DDIT’s letter and that too dated



2024:DHC:6682-DB



29.11.2013 and that there is no independent exercise of quasi-judicial power on the part of the Assessing Officer and that the belief of escapement of income was in fact the belief of DDIT and not of the respondent Assessing Officer. It was also submitted by the petitioner in its objections that the cash deposits in the bank account, being part of books of accounts and being out of service charges income, which has already been accounted for as income in the profit and loss account, could not have led for forming 'reason to believe' of escapement of income. It was also submitted in the objections that there is no date on the reason recorded and hence it cannot be ascertained as to whether the reason was recorded prior to the issue of notice under Section 148 of the Act.

7. The objections were disposed of vide letter dated 13.11.2018 without dealing with any of the objections raised by the petitioner company as to the reopening of the assessment. Instead, the respondent Assessing Officer mentioned that the Assessee had not filed the details asked for in the assessment proceedings.

8. Feeling aggrieved, petitioner filed the present writ petition for quashing for impugned notice dated 22.03.2018 issued under Section 148 of the Act.

9. Respondents filed counter affidavit stating that petition is misconceived and is not maintainable. It is stated that the impugned notice has been issued in consonance with the provisions of the statute and the same satisfied the jurisdictional requirement prescribed under the law. It has also been stated that the writ petition cannot be entertained as there is an equally efficacious remedy of appeal available



2024:DHC:6682-DB



to the petitioner.

10. It has been further stated that the reasons recorded specifically take note that credible information has emerged on account of enquiry conducted by DDIT, whereby, it was found that a total cash of Rs. 5,76,91,714/- has been deposited in petitioner's different bank accounts for the financial year 2010-11. It is further stated that petitioner has failed to explain the source of cash deposited into its bank accounts as no details of parties, in respect of whom the said cash had been received, was furnished by the petitioner.

11. It is further stated that on a perusal of the return filed by the petitioner and the report of DDIT, Investigation Unit-1(1), Revenue had reasons to believe that the income to the tune of Rs. 3,22,07,477/- for the AY 2010-11 had escaped assessment.

12. It is stated that in this case, scrutiny assessment under Section 143(3) was never done, so there was no occasion for the AO to enquire about the true nature and source of credits. It is stated that there is an independent application of mind before recording the reason. Hence, the petitioner's contention that the reason recorded was solely based on DDIT's letter dated 29.11.2013 and that the "reason recorded is mechanical and without application of mind" is not correct.

13. With regard to the date of recording of reason, it has been stated that the reason stated to the Assessee is an annexure to the proposal for obtaining approval under Section 151 of the Act and that notice under Section 148 of the Act was issued on 22.03.2018 and approval under Section 151 of the Act was granted by PCIT on 21.03.2018.

14. It has thus been prayed that the present writ petition ought to be



2024:DHC:6682-DB



dismissed.

15. In its rejoinder, petitioner company reiterated that reassessment proceedings have been initiated without independent application of mind by the AO and therefore liable to be quashed.

SUBMISSIONS

16. While relying upon the several decisions of this Court, learned counsel for the petitioner has submitted that the reason recorded as to the belief of escapement of income should be an independent belief of the Assessing Officer and should not be borrowed belief of some other Authority and therefore, reasons recorded must reflect the due and independent application of mind. It is further submitted that recording of reasons to believe is just not an empty or idle formality but forms a sole foundation of the assumption of jurisdiction under Section 147 and validity of assumption of jurisdiction under Section 147 has to be seen with reference to the reasons recorded only.

17. Referring to the reasons recorded by the Assessing Officer in the present case, it is submitted that the Assessing Officer has merely relied upon the information received from DDIT and has not given any independent reason for forming the belief and therefore there is no independent application of mind.

18. Countering the above submissions, learned counsel representing the Revenue has argued that it was only through information received from the Investigating Wing that the Revenue came to know about the nature and source of credits and after going through the records, the Assessing Officer formed the belief regarding the assessment of income. It is submitted that in the reasons for issuance of notice under



2024:DHC:6682-DB



Section 148 (Annexure-A), it is clearly recorded that the reasons to believe the escapement of income of the Assessee was based on the return of income filed and the report of the DDIT, which clearly reveals the application of mind by the Assessing Officer and hence the petitioner's contention that the reason recorded was solely based on DDIT's letter or that reassessment was opened mechanically and without application of mind is not correct. It is argued that the information supplied by the DDIT (Investigation) was examined in the light of information available on record in the form of the ITR and therefore "reasons to believe" do not suffer from any illegality. The learned counsel further submits that the adequacy or sufficiency of the material on the basis of which the belief was formed by the Assessing Officer for the reopening of the assessment could not be inquired into at this stage.

19. It is in the above background that the Court is called upon to examine whether the reasons recorded by the Assessing Officer for reopening the assessment for the afore-mentioned assessment year satisfies the requirement of law.

ANALYSIS & CONCLUSION

20. There are large number of cases explaining the legal requirement that is to be satisfied by the Assessing Officer for valid assumption of jurisdiction under Section 147 of the Act to reopen the assessment. The power to reopen the assessment under Section 147 is a potent power and cannot be exercised lightly. Said power cannot be invoked casually or mechanically. Formation of belief by the Assessing Officer that income has escaped assessment is the heart of the



provision. The reasons recorded must be based on some tangible material and the same should be evident from the reading of the reasons and this constitutes the mandatory requirement of Section 147 of the Act.

21. It is well settled through number of decisions that concluded assessments cannot be reopened merely on suspicion and the Assessing Officer must have “reason to believe” that income has escaped assessment and this is quite different from merely having a reason to suspect. The Supreme Court in the case of **ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC)**, had explained the same in the following words:-

"The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are 'reason to believe' and not reason to suspect' The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied."

22. Dealing with an identical question, this Court in the case of **Principal Commissioner of Income Tax vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677**, on the facts of the said case observed as under:-

“19. A perusal of the reasons as recorded by the Assessing Officer reveals that there are three parts to it. In the first part, the Assessing Officer has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the



2024:DHC:6682-DB



form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the Assessing Officer did with the information so received. He says: "The information so received has been gone through". One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The Assessing Officer adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing.

21. The third and the last part contains the conclusion drawn by the Assessing Officer that in view of these facts, "the alleged transaction is not the bona fide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the assessment year 2004-05 due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment..."

22. As rightly pointed out by the Income-tax Appellate Tribunal, the "reasons to believe" are not in fact reasons but only conclusions, one after the other. The expression "accommodation entry" is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the Assessing Officer and the formation of belief is absent. The reasons must be self-evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

XXXXXX

XXXXXX

XXXXXX

26. The first part of section 147(1) of the Act requires the Assessing Officer to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe



that is subject matter of examination. The Assessing Officer being a quasi- judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

XXXXXX

XXXXXX

XXXXXX

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the Assessing Officer one after the other. There is no independent application of mind by the Assessing Officer to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report. Indeed it is a "borrowed satisfaction". The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."

23. Coming back to the present case, the reasons recorded by the Assessing Officer for issuance of notice under Section 148 for reopening of assessment under Section 147 of the Act for AY 2011-12 are extracted below:-

"Annexure 'A'

Reasons for Issue of Notice U/s 148 for reopening of assessment u/s 147 of IT Act 1961 for the A.Y. 2011-12 in the case of M/s Well Trans Logistics Pvt. Ltd.

An information in the case of assessee company was received from the DDIT, Investigation, Unit (1), Delhi vide letter F. No. DDIT(Inv.)/Unit-1(1) 2013-14/541 dated 29.11.2013 in which the following information was provided:

"An inquiry in this case was conducted by this office. It was found that the assessee company is engaged in the business of freight forwarding in which it is approached by interested exporters/importers for transporting their cargo from one place to another and in this process, the company facilitates



2024:DHC:6682-DB



the transportation by booking the services with shipping line, transporters and custom brokers. It was submitted by the assessee that it holds following bank accounts:

Sr. No.	Bank	Account No.
1.	ICICI Bank	103705000028
2.	ICICI Bank	629405039955
3.	HDFC Bank Ltd.	02738300000016
4.	HSBC Bank	130062276002
5.	ICICI Bank Ltd.	057805000811
6.	ICICI Bank	643805051012

As per submission made by the assessee company, total cash of Rs. 3,76,91,714/- has been deposited in its different bank accounts in F.Y. 2010-11 respectively. The assessee was asked to explain the source of cash, details of parties along with address from whom cash has been received. However, the assessee failed to furnish the same. Subsequently, the statement of Shri Sumit Bhayana, Director holding 67% shares of the assessee company was recorded on oath on 04.10.2013.

The assessee while recording statement on oath was confronted with the issue of cash deposits in their bank account and was asked to explain the source of cash. The assessee accordingly admitted that the cash deposited into the bank accounts are business receipts which has been received from brokers acting on behalf of exporters/importers and this consists of 10 to 15% of their business. The assessee was subsequently asked to give details viz. name and address of such brokers from which cash was received. The assessee admitted that no details in respect of such brokers are admitted that no commission is paid to such brokers, as they themselves negotiate the deal with exporters/importers and after setting aside their margin of profit, the business is assigned to the assessee company.

On perusal of the profit & Loss' account for F.Y. 2010-11. it was further observed that an amount of Rs. 93,71,791/- has been debited as expense under the head commission paid. The assessee was accordingly asked to explain such expense. In response to this the assessee admitted that in cases where business is directly with exporters/importers, in small percentage of such cases, brokers introduces the assessee company with concerned exporters/importers and in such cases commission are paid to brokers and TDS is also deducted.

The assessee was also asked to explain the rotation of funds in their own bank accounts as alleged in the STR. In response to this, the assessee admitted that they have branches in Delhi, Ludhiana & Mumbai and the funds are transferred into their own bank accounts



2024:DHC:6682-DB



to meet various expenses or any other immediate requirement of funds at a particular place.

In this regard, it is important to note that the assessee company has failed to explain the source of cash deposited into their bank accounts as no details in respect of the parties from whom such cash has been received has been furnished. From the statement recorded on oath, it has also come to the fore that no commission has been given to brokers in cases where payments has been received in cash and at the same time where payments have been received in cheques, the commission has been paid to brokers. This further creates suspicion regarding the genuineness of cash transactions in the bank accounts of the assessee company. This fact was also confronted to the assessee, however the assessee reiterated the earlier stand that in cases where payments are received in cash, the brokers assign the business after setting aside profit margin."

After going through the Return of Income filed and the reports of DDIT. Investigation, Unit-I(1), Delhi, I have reason to believe income to the tune of Rs. 5,76,91,714/- of the assessee company for the A.Y. 2011-12, has escaped assessment.

Since more than 4 years from the end of the relevant assessment year have elapsed, approval of Pr. Commissioner of Income Tax, Delhi-09, is solicited in terms of the Provisions of Section 151(1) of the Act."

24. We may note that the Assessing Officer after reproducing the information received from DDIT, (Investigation) Unit, drew the conclusion of escapement of income. In the case of **Asst. CIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 IR 500 (SC)**, the Supreme Court had explained that expression "reason to believe" would mean justification to know or suppose that income had escaped assessment. While, it is correct that it is not necessary for the Assessing Officer to finally ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has.

25. In the present case, as may be seen, there is no "close nexus" or "live link" between tangible material and the reason to believe that



2024:DHC:6682-DB



income has escaped assessment. The information received from the Investigating Unit of the Revenue cannot be the sole basis for forming a belief that income of the assessee has escaped assessment. Having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.

26. Clearly, in this case, the Assessing Officer has not acquired any material to form such belief. There is not even a line of reason which may justify the formation of the belief. Consequently, we are satisfied that reopening of assessment for the assessment year in question by the Assessing Officer does not satisfy the requirement of law in terms of Section 147 & 148 of the Act.

27. Consequently, the writ petition is allowed. The impugned reassessment notice dated 22.03.2018 issued under Section 148 of the IT Act and further proceedings, if any, initiated pursuant to the said notice dated 22.03.2018 are set aside.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

02 September 2024/RM