ORDER   OD-7

ITAT/297/2024
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

THE PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS.
BOOTHNATH VINTRADE PRIVATE LIMITED

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 14th November, 2025.

<u>Appearance:</u>
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
… for Appellant

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Kausheyo Roy, Adv.
Ms. Alisha Das, Adv.
Ms. Elina Dey, Adv.
…for Respondent

The Court: Learned Counsel appearing for the appellant submits that though the involvement of tax in this matter is only Rs. 21 lakhs i.e. much below the threshold limit of Rs. 1 crore as per Circular No. 5 of 2025 dated 15th March, 2025, however, it falls within the exception clause.

Perused the order of the Tribunal. From the order of the Tribunal, it is observed that:

> *5. We have heard the rival contentions and gone through the records. From the reference made to the reasons to believe recorded by the Ld. AO and the observations noted*

in the assessment order as extracted above, we note that in the instant case, the justification of Ld. AO is not amenable to reason since he did not satisfy the basic criteria of independent application of mind on the material supplied by the Investigation Wing, Kolkata. It is evident from the reasons recorded by the Ld. AO that the report supplied by the DCIT (Investigation), Kolkata not even verified by him and accordingly, the justification for initiating proceedings u/s. 147 of the Act ceases to exist.

5.1. Further, the statute requires that two ingredients are to be satisfied for assuming jurisdiction u/s. 147 of the Act. There should be prima facie "reason to believe" and there must be evidence that "Income has escaped assessment". The failure to satisfy or fulfill these conditions simultaneously would vitiate the entire proceeding. It is imperative that the significant word in the enactment relating to reassessment is 'belief' and not 'suspicion'. These essential elements are obviously and glaringly missing in the instant case which renders the reassessment proceedings as well as the order passed ex-facie null in law.

5.2. It is settled that before an AO can be said to have had reasons to believe that some income has escaped assessment, he should have relevant material before him from which he could have drawn such conclusion. His vague imagination that there might have been some escapement of income from assessment is not sufficient [CHHUGANMAL RAJPAL VS. S. P. CHALIHA (1971) 79 ITR 603 (SC)]. It is emphatically settled in this regard that there can be no doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and *that the Assessing Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Ld. AO would be acting without jurisdiction, if the reason for the belief that the conditions required to be satisfied do not exist or is not material or relevant to the belief required by the section [SHEO NATH SINGH VS. AAC. (1971) 82 ITR 147 (SC). In the case of PCIT Vs. Meenakshi Overseas (P) Ltd. [2017] 82 taxmann.com 300 (Del.) wherein it has been held as under:*

"where reassessment was resorted to on basis of information from DIT (Investigation) that assessee had received accommodation entry but and there was no independent application of mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified."

5.3. Ld. AO simply based his belief on the alleged report supplied by the DCIT, (Investigation), Kolkata for assuming jurisdiction u/s. 148 of the Act without adducing on record any evidence in support thereof and without any independent application of mind on the issue. It is an inalienable principle of law that the reasons recorded u/s. 148 of the Act should be based on credible material which must have a live link or nexus with the belief that there was escapement of income. There should be an independent application of mind on such material before recording the reasons and issuing notice u/s. 148 of the Act. The belief should be held in good faith and objectively; it cannot be a mere pretence.

> *6. Considering the facts on record and the contents of the reasons to believe recorded by the Ld. AO coupled with his general and casual observations without the conduct of any examination or verification as well as judicial precedents referred above, we hold that the crucial link between the information made available to the AO and the formation of belief is absent. There is no independent application of mind by the AO. Accordingly, the initiation of proceedings u/s. 147 r.w.s. 148 to reopen the assessment does not satisfy the requirements of the law. Ground no. 4 of appeal is on the legal issue is allowed. Since no submissions have been made by both the parties on the merits of the case and the legal issue is allowed in favour of the assessee and remaining grounds are rendered academic in nature, hence, not adjudicated upon.*
>
> *7. In the result, the appeal of the assessee is allowed.*

As no substantial question of law arises from the order of the Tribunal dated 17th April, 2024, the appeal being ITAT No. 297 of 2024 along with IA No. GA 1 of 2024 is disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

DB