

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.8083/Del./2019
Assessment Year 2010-2011

Shri Bishan Sharup Gupta, New Delhi – 110 037. PAN AAPP9354A C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi-085.	vs.	The Income Tax Officer, Ward – 45 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri Ved Prakash Mishra, Sr. D.R.

Date of Hearing :	17.02.2021
Date of Pronouncement :	19.02.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-15, Delhi, Dated 28.12.2018, for the A.Y. 2010-2011, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.12,19,594/-.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that in this case information from ADIT (Inv.), New Delhi vide his letter Dated 26.08.2016 has been received. On perusal of the report, it was seen that M/s. Yogesh Trading Co. has maintained Bank account in Mahamegha Urban Cooperative Bank, Ghaziabad which bears Account No.xxxxxx13022 and reflects the credit of Rs.1.37 crores. As per the report, transaction was found to be without any economic rationale and it is suspected that money laundering activities were being carried-out. The assessee has not filed return of income for the A.Y. 2010-2011. The A.O. has recorded reasons for reopening of the assessment, copy of which is filed at pages 1 to 4 of the PB and after taking administrative approval Dated 31.03.2017, issued notice under section 148 of the I.T. Act, 1961 on Dated 31.03.2017 which was served upon the assessee, however, no return has been filed in response to the notice under section 148 of the I.T. Act. During the

assessment proceedings summons under section 131 of the I.T. Act, 1961 was issued for personal deposition of the assessee. The assessee appeared before the A.O. and statement of Shri Bishan Sharup Gupta [Assessee] Proprietor of M/s. Yogesh Trading Co. was recorded in which he has explained that he has maintained two bank accounts i.e., Ramgarhia Cooperative Bank, Paharganj, Delhi bearing Account No.xxxxxx2211 and Oriental Bank of Commerce, Chandni Chowk bearing Account No.xxxxxx1421. The assessee stated that he is working as Commission Agent and Broker and received commission. The A.O. estimated the commission income of Rs.9,67,594/- and treated the same as undisclosed income of the assessee. The A.O. also noted that assessee has made cash deposit of Rs.2,52,000/- in his Oriental Bank of Commerce bearing Account No.xxxxxx1421 and in the absence of any explanation, the same was added to the income of the assessee. Thus, the A.O. made total addition of Rs.12,19,594/-. The assessee challenged the reopening of

the assessment as well as addition on merits before the Ld. CIT(A), however, the appeal of assessee has been dismissed.

4. Learned Counsel for the Assessee referred to the copy of the reasons PB-1 to 4 of the Paper Book to show that A.O. in the reasons has mentioned that there is an escapement of income to the tune of Rs.1.37 crores and the same has escaped assessment under section 147(b) of the I.T. Act, 1961. He has submitted that A.O. has recorded wrong, incorrect and non-existing reasons because no such account xxxx13022 have been maintained by assessee with Mahamegha Urban Cooperative Bank, Ghaziabad and no amount of Rs.1.37 crores belongs to the assessee. He has submitted that A.O. also did not make any addition of this amount in the re-assessment order, therefore, A.O. has failed to apply his mind to the information so received and recorded wrong and incorrect facts in the reasons recorded for reopening of the assessment, therefore, reopening of the assessment is liable to be quashed.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions. In the present case the A.O. received information from Investigation Wing that assessee being a proprietary concern maintained Bank Account of M/s. Yogesh Trading Co., New Delhi with Mahamegha Urban Cooperative Bank bearing Account No.xxxxxx13022 having credit of Rs.1.37 crores. The A.O, therefore, recorded reasons for reopening of the assessment that income chargeable to tax has escaped assessment in a sum of Rs.1.37 crores. The A.O. also noted that the income has escaped assessment under section 147(b) of the I.T. Act, 1961. It may be noted that Section 147(b) does not exist in the Statute for the assessment year under appeal i.e., 2010-2011. It is also a fact that assessee did not maintain any such Bank Account with Mahamegha Urban Cooperative Bank, Ghaziabad. It is also a fact that no amount of Rs.1.37 crores alleged to have been escaped assessment belonging to the assessee. The A.O, therefore, recorded wrong, incorrect and non-existing reasons in the

reasons for reopening of the assessment. Thus, the reopening of the assessment have been done without application of mind and liable to be quashed. Same view have been taken by ITAT, Delhi E-Bench, Delhi in the case of Shri Natarajan Monie, Gurgaon vs., ITO, Ward-2(5), Gurgaon in ITA.No.1817/Del./2017 vide Order Dated 07.12.2020 after following several decisions of different High Courts and quashed the reopening of the assessment in the matter. The issue is, therefore, covered by the aforesaid Order of the Tribunal. The same is reproduced as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “E” : DELHI*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER*

*ITA.No.1817/Del./2017
Assessment Year 2011-2012*

<i>Shri Natrajan Monie, S-19/001, The Close South, Nirwana Country, Sector-50, Gurgaon. PAN AAFPN2890N</i>	<i>vs.</i>	<i>The Income Tax Officer, Ward – 2 (5), Gurgaon.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>
<i>For Assessee :</i>	<i>Shri Kapil Goel, Advocate</i>	
<i>For Revenue :</i>	<i>Ms. Rinku Singh, Sr.DR</i>	

<i>Date of Hearing :</i>	<i>03.12.2020</i>
<i>Date of Pronouncement :</i>	<i>07.12.2020</i>

ORDER**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 30.01.2017, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961, addition of Rs.59,50,000/- on account of cash deposit, confirming addition of Rs.1,50,000/- out of Rs.9,85,000/- and addition of income of Rs.7,72,461/- from MCX Business.

2. *We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.*

3. *Briefly the facts of the case are that this is a NMS Case. Notice under section 148 of the I T Act, 1961 was issued to the assessee on 11.02.2015, after duly recording the reasons. The assessee did not file his return of income. The A.O. issued statutory notice for completion of the assessment. The assessee filed information before A.O. which were discussed by the A.O. with the Counsel for Assessee. The A.O. noted that as*

per information available with him, assessee had received salary on which TDS had been deducted by the employer. The assessee has also made investment of Rs.10 lakhs in the purchase of Mutual Funds and deposited cash of Rs.52 lakhs in his ICICI Bank account in assessment year under appeal. Further the assessee had also made contract in commodity exchange exceeding Rs.10 lakhs. During the course of assessment proceedings the assessee furnished copy of Form No.16, Form No 26AS, statement of his bank accounts maintained with different Banks, copy of the computation of income and documents relating to MCX business made with Aditya Birla Commodities Broking Ltd. The assessee also filed copy of the sale deed of property at Gurgaon Dated 21.03.2011 sold by assessee for a consideration of Rs.1.20 crores. The A.O. issued detailed show cause notice to the assessee and after considering the reply of the assessee, made certain additions and computed the total income at Rs.84,37,210/-. The net income of the assessee is computed as under :

1.	<i>Income from salary as discussed in para 3.1.</i>	<i>Rs. 4,34,338/-</i>
2.	<i>Income from interest as discussed in para 3.2.</i>	<i>Rs. 1,59,237/-</i>

3.	<i>Income from MCX business as discussed in para 3.3.</i>	<i>Rs. 7,72,461/-</i>
4.	<i>Income from unexplained cash deposits as discussed in para 3.4</i>	<i>Rs. 59,50,000/-</i>
5.	<i>Income from unexplained cash credits as discussed in para 3.5(i).</i>	<i>Rs. 9,85,000/-</i>
6.	<i>Income from profit on redemption of MF/FD as discussed in para 3.5(ii)</i>	<i>Rs. 1,32,174/-</i>
	<i>TOTAL</i>	<i>Rs.84,37,210/-</i>

3.1. *The assessee challenged the reopening of the assessment as well as additions on merit before the Ld. CIT(A). However, the appeal of assessee has been partly allowed.*

4. *Learned Counsel for the Assessee referred to the reasons recorded for reopening of the assessment which have been provided to the assessee under RTI Act, copy of which is placed on record. He has submitted that A.O. in the reasons mentioned that assessee has made investment of Rs.2 lakhs for purchase of mutual fund and transaction of commodities exchange contract of Rs.10 lakhs in assessment year under appeal. He has submitted that A.O. has recorded wrong, incorrect and non-existing reasons and did not apply his mind to the material on record before recording reasons for reopening of the assessment. He has submitted that assessee did not make any fresh investment during subject period in mutual fund and even the A.O. did not make any addition on account of*

investment of Rs.2 lakhs for purchase of mutual funds. He has submitted that as regards transaction of commodity exchange contract of Rs.10 lakhs, A.O. has made addition of Rs.7,72,461/- on account of profit on the MCX business instead of Rs.11,80,571/- as mentioned in the show cause notice. The A.O. thus, recorded wrong, incorrect, non-existing facts / reasons and did not apply his mind to the information, which itself is also incorrect. He has referred to page-14 of the PB which is the details supplied to the assessee which may be the basis for reopening of the assessment and referred to item Nos.5, 6 and 9 which are information received from CIB Code for deposit of cash of Rs.2 lakhs with the Bank, contract of Rs.10 lakhs or more in commodity exchange and payment of Rs.2 lakhs or more for purchase of units of mutual funds. He has submitted that these are incorrect information and did not relates to the assessee. He has, therefore, submitted that reopening of the assessment is illegal and bad in law and as such reopening of the assessment is liable to be quashed. He has submitted that no notice under section 142(1) or any query under section 133(6) have been issued. No letter have been delivered to the assessee.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below as regards reopening of the assessment.

6. We have considered the rival submissions and perused the material on record. It is well settled Law that validity of the re-assessment proceedings is to be judged with reference to the reasons recorded for reopening of the assessment. The copy of the reasons for reopening of the assessment are placed on record which reads as under :

1.	Name and Address of the Assessee	Monie Natrajan 1408, Beverley Part-II, DLF-II, Gurgaon.
2.	PAN	AAFPN2890N
3.	Status	INDL
4.	Ward/Circle/Range	Ward-2(5), Gurgaon
5.	Assessment Year	2011-12
6.	Date	11.02.2015

Reasons for initiating proceedings u/s. 147/148 of the Income Tax Act, 1961.

Information has been received through NMS (P-1 category) that during the period under consideration, the assessee had made investment of Rs.200000/- for purchase of mutual fund and transaction in commodity exchange contract of Rs.10,00,000/- during the assessment year 2011-12. As per record assessee do not have file return of income for the Assessment year 2011-12. The income chargeable to tax amounting to Rs.1200000/- which is chargeable to tax has escaped assessment and any other income found during the course of assessment proceedings which is chargeable to tax has escaped assessment. I have reasons to believe that the above said income/transaction of Rs.1200000/- and any other income found during the course of assessment proceedings which is chargeable to tax has escaped assessment which needs examination in the light of the information in my possession.

Notice under section 148 of the Income Tax Act, 1961 is being issued.

Sd/- Shamsheer Singh
Income Tax Officer
Ward 2(5), Gurgaon.”

6.1. In view of the above reasons, the A.O. has mentioned that he has information received through NMS that assessee has made investment of Rs.2 lakhs for purchase of mutual funds and transaction of commodity exchange contract of Rs.10 lakhs in assessment year under appeal and thus, there is an escapement of income of Rs.12 lakhs. The A.O. also noted in the reason that this information needs examination. However, no material is produced before us if the A.O. made any investigation on the information supplied to him through NMS if there is any escapement of income in the case of assessee. Learned Counsel for the Assessee categorically stated at Bar that assessee has not made any fresh investment in assessment year under appeal in mutual fund. The written submissions to that effect is also placed on record. Learned Counsel for the Assessee has also categorically stated that A.O. has not made any addition of Rs.2 lakhs in assessment year under appeal which fact is corroborated by the net income computed by A.O. as reproduced above. It is, therefore, clear that neither assessee has made any investment of Rs. 2 lakhs for purchase of

mutual fund in assessment year under appeal nor the A.O. has made any such addition in the assessment year. Therefore, such information received by A.O. was totally wrong, incorrect and non-existing and thus the fact mentioned in the reasons recorded for reopening of the assessment as regards investment made in purchase of mutual fund is wrong, non-existing and incorrect. The A.O. has recorded wrong, incorrect and non-existing reasons for reopening of the assessment which is not permissible under Law. As regards the transaction in commodity exchange contract of Rs.10 lakhs, Learned Counsel for the Assessee referred to para-3.3 of the assessment order in which the A.O. has made addition of Rs.7,72,461/- on account of profit on the MCX business. The A.O. has also mentioned in the same para that in the show cause notice he has mentioned such income at Rs.11,80,571/- which is appearing at page-3 of the assessment order, but, after examination this figure was also found incorrect and A.O. has ultimately restricted the addition to Rs.7,72,469/- i.e., for income only but no addition is made of transaction of MCX Investment.

Therefore, A.O. has recorded wrong, incorrect and non-existing facts in the reasons recorded for reopening of the assessment that assessee has made transaction in commodity exchange contract of Rs.10 lakhs. It may also be noted here that A.O. in the assessment order in para-2 has mentioned that assessee has made investment of Rs.10 lakhs in purchase of mutual funds which fact is also incorrect and is contradictorily recorded in the reasons for reopening of the assessment for Rs.2 lakhs only. The A.O. in the assessment order has also recorded same statement that assessee has made contract in commodity exchange exceeding Rs.10 lakhs which fact was ultimately found incorrect by the A.O. himself and he has made part addition as against the income mentioned in the show cause notice. These facts clearly show that A.O. did not apply his mind to the information received through NMS and also recorded wrong, incorrect and non-existing facts in the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee has also referred to page-14 which is supplied to the assessee under RTI which according to

assessee was asked under the RTI Act. The first page of the RTI reply PB-10 shows that assessee has asked for the copy of the reasons for reopening of the assessment as well as details which are basis of reopening of the case under section 148 of the I.T. Act, 1961. Page-14 is the material supplied by the A.O. which is the information summary in which information is supplied to assessee through CIB Code that there is a deposit in cash aggregating to Rs.2 lakhs or more with the Banking company, contract of Rs.10 lakhs or more in commodities exchange ,Rs. 2 lakhs or more paid for purchase of units of Mutual Fund. Rule 114E of the I.T. Rules provides the statement of financial transactions required to be furnished under sub-section (1) of Section 285BA of the Act in Form 61-A. This Rule provides that return or the statement shall be provided in respect of receipt from any person of an amount of Rs.2 lakhs rupees or more for acquiring units of mutual fund and other statements in different cases of the amount more than Rs.10 lakhs in different categories. It, therefore, appears that the information which A.O. has received as per page-14 of the PB was the details to be

submitted under Rule 114E of the I.T. Rules. It may not be actual figure received by the A.O. as per NMS information. The actual figure might be different as is noted above. Therefore, such information received by the A.O. is not in accordance with Law and would not provide any information to the A.O. to record reasons for reopening of the assessment as regards escapement of income for making the investment in purchase of mutual funds or transaction of different commodity exchange contract. Thus the entirety of facts clearly show that A.O. recorded wrong, incorrect and non-existing reasons for reopening of the assessment without application of mind. It may also be noted that A.O. himself has mentioned in the reasons that whatever information he has received through NMS needs examination in the light of information in his possession, but, he did not make any examination prior to recording reasons for reopening of the assessment and totally vague, non-existing, wrong and incorrect facts have been mentioned in the reasons recorded for reopening of the assessment. Further, the reopening of the assessment would be invalid if the A.O. wanted to make

investigation out of information. Such exercise should have been prior to recording of the reasons. In support of our findings, we rely upon the following decisions.

6.2. *The Hon'ble Punjab & Haryana High Court in the case of CIT vs., Atlas Cycle Industries [1989] 180 ITR 319 (P&H) held as under :*

“Held, (i) that the Tribunal was right in cancelling the reassessment as both the grounds on which the reassessment notice was issued were not found to exist, and, therefore, the Income-tax Officer did not get jurisdiction to make the reassessment.”

6.3. *The Hon'ble Delhi High Court in the case of Pr. CIT vs., SNG Developers Ltd., [2018] 404 ITR 312 (Del.) in which it was held as under :*

“Held, dismissing the appeal, that the reasons recorded by the Assessing Officer for reopening the assessment under section 147, issuing a notice

under section 148 did not meet the statutory conditions. As already held by the Appellate Tribunal, there was a repetition of at least five accommodation entries and the total amount constituting the so-called accommodation entries would therefore, not work out to Rs.95,65,510. It was unacceptable that the Assessing Officer persisted with his "belief" that the amount had escaped assessment not only at the stage of rejecting the assessee's objections but also in the reassessment proceedings, where he proceeded to add the entire amount to the income of the assessee. Therefore there was non-application of mind on the part of the Assessing Officer. The Appellate Tribunal was justified in confirming the order of the Commissioner (Appeals) and holding that the reopening of the assessment was bad in law."

6.4. *The Hon'ble Delhi High Court in the case of Shamshad Khan vs., ACIT [2017] 395 ITR 265 (Del.) in which it was held as under :*

“Held, allowing the petition, that the form for recording the reasons for initiating the proceedings under section 148 of the Act for obtaining approval of the Commissioner itself proceeded on the erroneous basis that the quantum of income which had escaped assessment was Rs.28,75,000 whereas the assessee had filed returns showing income of merely Rs.20,56,145 and it was on this basis that the Additional Commissioner and the Commissioner granted their approval for reopening the assessment. Even though the assessee highlighted this fundamental error at the initiation of the case by stating that his income was mentioned as Rs.20,56,145 instead of Rs.69,71,191, this was summarily rejected stating that it was a clerical mistake and that the latter figure would be treated as his income. If the

correct income i.e. Rs.69,71,191 was put before the Commissioner at the time of seeking his approval, he might have taken a different view. There was nothing on record to show that the clerical mistake of substituting Rs.20,56,145 for Rs.69,71,191 was ever brought to the notice of the Commissioner either before or after approval or sanction under section 151(1) of the Act. The initiation of the case for reopening of the assessment was erroneous and without application of mind especially since the Assessing Officer had not examined the return filed, which would have revealed that the assessee had filed regular returns, had sufficient opening balance in his account and the withdrawals therefrom substantiated the donation made. Therefore, the reopening of the assessment was unsustainable in law and the notice issued under section 147 of the Act was to be quashed.”

6.5. *The Hon'ble Bombay High Court in the case of Siemens Information Systems Ltd., vs., ACIT & Others [2007] 293 ITR 548 (Bom.) held as under :*

“The petitioner had several EOU/STP units engaged in the business of export of software. In response to the notice for reopening the assessment for the assessment year 1999-2000, the petitioner, objecting to the issuance of the notice, stated that the reasons furnished by the authority had quoted the provisions of section 10A as amended by the Finance Act, 2000, with effect from the assessment year 2001-02 and as such could not have been made applicable to the assessment year 1999-2000 and the notice had been issued under the mistaken belief about the correct position of law. However, opportunity to show cause was given to the petitioner as to why the loss claimed should not be disallowed to be carried forward. On a writ petition :

Held, *allowing the petition, (i) that it would be clear from the reasons given that the authority proceeded on the presumption that the law applicable was the law after the amendment and not the law in respect of which the petitioner had filed the return for the year 1999-2000. This by itself clearly demonstrated that there was total non-application of mind on the part of the authority and consequently, the notice based on that reason would amount to non-application of mind.*

(ii) That the income derived by the assessee from an industrial undertaking to which section 10A applies could not be included in the total income of the assessee. Therefore, the petitioner was right in filing the return by excluding the income in terms of section 10A.”

6.6. *In the case of Pr. CIT vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.) the Hon’ble Delhi High Court held as under:*

"In the present case too, the information received from the Inv. Wing cannot be said to be tangible material per se without a further enquiry being undertaken by the learned assessing officer"

6.7. In the case of *Pr. CIT vs., Meenakshi Overseas (P) Ltd.*, 395 ITR 677 (Del.), the Hon'ble Delhi High Court held as under :

"Reassessment notice condition precedent recording of reasons to believe that income has escaped assessment mere reproduction of investigation report in reasons recorded absence of link between tangible material and formation of ceding illegal Income Tax Act, 1961, Sec.147, 148"

6.8. In the case of *Pr. CIT vs., G And G Pharma India Ltd.*, [2016] 384 ITR 147 (Del.), the Hon'ble Delhi High Court held as under :

"Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped"

assessment - No independent application of mind to information received from Directorate of Investigation and no prima facie opinion formed- reassessment order invalid”.

6.9. *In the case of Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), the Hon’ble Delhi High Court held as under :*

“No independent application of mind by the Assessing officer but acting under information from Inv. Wing - Notice U/s. 147 to be quashed”.

6.10. *The crux of the above Judgments had been that in case incorrect, wrong and non-existing reasons are recorded by the A.O. for reopening of the assessment and A.O. failed to verify the information received due to non application of mind to information, reopening of the assessment would be unjustified and is liable to be quashed. Considering the totality of the facts and circumstances of the case and in the light of material on record, we are of the view that reopening of the assessment is illegal and bad in Law and is liable to be quashed. We, accordingly, set aside the Orders of the*

authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. In view of the above, there is no need to decide other issues raised in the present appeal which are left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

7. *In the result, appeal of the Assessee allowed.”*

6.1. Considering the totality of the facts and circumstances of the case and reasons recorded above, following the Order of the Tribunal in the case of Shri Natarajan Monie, Gurgaon vs., ITO, Ward-2(5), Gurgaon (supra), we set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 19th February, 2021
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.