IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.42/Del./2018
Assessment Year 2009-2010

Smt. Swati Verma, W/o. Sh. Nagendra Kishore Verma, 173, 1st Floor, Sukhdev Vihar, New Delhi – 110 025. PAN ACBPV4477H	vs	The Income Tax Officer, Ward-3(4), Noida.
(Appellant)		(Respondent)

For Assessee :	Shri Sunil Kumar, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing	13.07.2018
Date of Pronouncement :	01.08.2018

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-1, Noida, dated 29.09.2017, for the A.Y. 2009-2010.

2. Briefly, the facts of the case are that as per AIR information, the assessee had purchased an immovable property for Rs.1,00,96,750/- on 30.12.2008 during the

F.Y. 2008-09. To verify transaction, information was called under section 133(6) of the I.T. Act, 1961 on 19.10.2015 and the same was issued to the assessee. The assessee did not make compliance regarding the source of investment made in purchase of immovable property. In absence of PAN, information regarding filing of the return for the A. Y.2009-2010 under appeal and verification of source of investment made in purchase of immovable property. So, treating unexplained investment of Rs.1,00,96,750/- under section 69 of the I.T Act. 1961 as escaped assessment for A.Y.2009-2010 under appeal, reopening proceeding under section 147 of the I.T. Act.1961 were initiated with the approval of the Competent Authority. Notice under section 148 of the I.T. Act. 1961 was issued to the assessee. In compliance to the notice. The assessee submitted that return originally filed for A.Y. 2009-2010 on 30.07.2009 may be treated as return filed in compliance to the notice under section 148 of the I.T. Act, 1961. The A.O. issued statutory notices and called

for explanation of assessee. The assessee submitted before A.O. that the flat situated at A-1/404, Purvanchal Silver City, Sector-93, Noida was purchased for Rs.1,00,96,750/- by the assessee along with her husband and sale deed was executed on 30.12.2008. The expenses on account of purchase of stamp duly and related expenses of Rs.4,99,200/- was incurred. It was also submitted that all the payments for purchase of flat were made by the husband of the assessee Shri Nagender Kishore Verma in A.Y 2009-2010. His case is also reopened for verification of payments and order under section 147 r w.s 143(3) dated 12lh March 2015 was passed by the O/o. Assessing Officer. Since, assessee has not made any payment for purchase of flat, no addition can be made in hands of assessee and notice for reopening of the assessment may be dropped. The A.O. accepted the explanation of assessee and did not make any addition on account of unexplained investment in purchase of the aforesaid flat. The A.O. however, made addition of Rs.1,50.000/- on account of

disallowance of interest on borrowed capital and made addition of Rs.72,332/- on account of disallowance of claim of LTA. The income was assessed at Rs.10,14,020/- against returned income of Rs.7,91,690/-. The assessee challenged the reopening of the assessment as well as both the additions before Ld. CIT(A). However, the appeal of assessee has been dismissed.

3. I have heard the learned Representatives of both the parties and perused the material on record.

4. Learned Counsel for the Assessee did not press ground No.2 of appeal of assessee, the same is dismissed.

5. The assessee in the present appeal has challenged the reopening of the assessment under section 147/148 of the I.T. Act and above two additions. The assessee also challenged the order of the A.O. as the same was passed without jurisdiction, therefore, it is null and *void abinitio*. Learned Counsel for the Assessee submitted that assessee is an individual and regularly assessed to tax and furnished return of income under section 139(1) for assessment year under

appeal on 30.07.2009 which was accepted under section 143(1). The A.O, however, on the basis of AIR information initiated the re-assessment proceedings without any material and without any independent findings. The assessee has not made any investment in purchase of the property which is accepted by the A.O. Therefore, it is a case of non-application of mind by the A.O. and the reasons for reopening of the assessment does not exist. He has relied upon the Judgment of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd., vs. CIT (2011) 336 ITR 136 (Del.) and relied upon Order of ITAT, Delhi SMC-2-Bench, Delhi in the case of Smt. Rajni, Vill. Kanharwas, Distt. Rewari vs. ITO, Ward-2, Rewari in ITA.No.854/Del./2016 and ITA.No.855/ Del./2016 Dated 06.01.2017. Copies of the reasons recorded for reopening of the assessment are filed at page-59 of the paper book. He has, therefore, submitted that A.O. was not justified in reopening of the assessment in the matter.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee purchased the property. The A.O. issued notices under section 133(6), for which, no compliance was made. In the absence of PAN and other information, A.O. rightly came to the belief that the said investment in purchase of the immovable property has escaped assessment.

7. I have considered the rival submissions. It is well settled law that validity of initiation of re-assessment proceedings is to be determined on the basis of the reasons recorded for reopening of the assessment. The assessee has filed copy of reasons recorded under section 147 of the I.T. Act at page-59 of the paper book and the same is reproduced as under:

"Office of the Income Tax Office, Ward-3(4), Noida.

1.	*Name & address of the assessee*	*Smt. Swati Verma A-1/404, Block-2, Purvanchal Silver City, Sector-93, Noida – 201 301.*
2.	*Status*	*Indl.*
3.	*PAN*	*Not available*
4.	*Assessment Year*	*2009-10*

Reasons for initiating proceedings u/s. 147 of the I.T. Act, 1961 for A.Y. 2009-10.

AIR information in case of Smt. Swati Verma who purchased an immovable property for Rs.1,00,96,750/- on 30.12.2008, has been received in this office for verification of non PAN financial transaction related to A.Y. 2009-10. A letter dated 19.10.2015 was issued to assessee for verification and served upon assessee by the speed post. As per AIR information assessee purchased an immovable property for Rs.1,00,96,750/- during the year.

Further, assessee has not given any reply which establishes that assessee is willfully concealed her income by way of not disclosing the source of investment made in acquisition of an immovable property.

Considering the above fact, I have reason to believe that assessee has nothing to say amount of Rs.1,00,96,750/- is escaped from assessment within the meaning of provisions of Section 147 of the I.T. Act, 1961. Therefore, proceedings u/s 147 for the assessment year

under consideration is to be initiated with the approval of the Pr. Commissioner of Income Tax, Noida as per provisions of section 151(2) of the Income Tax Act, 1961. Accordingly, proposal is being submitted to the Pr. Commissioner of Income Tax, Noida.

Yours faithfully,
Sd/-xxx
(P C. Sharma)
Income Tax Officer,
Ward-3(4), Noida."

7.1. Learned Counsel for the Assessee relied upon the Order of ITAT, Delhi SMC-2-Bench, Delhi in the case of Smt. Rajni, Vill. Kanharwas, Dist. Rewari vs. ITO, Ward-2, Rewari (supra), in which, in para-12, the Tribunal held as under :

"12. With the assistance of the Ld. Representatives, I have gone through the record carefully. Section 147 of the Act contemplates that "if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assessee or re-assess such

income.....' A perusal of this section would show that in order to harbor a belief that income has escaped assessment, the AO ought to have formed an opinion on the basis of the material possessed by him exhibiting the facts that income has escaped assessment. A perusal of the reasons extracted above would indicate that the Ld. AO has basically not made reference to any material possessed by him except the AIR communicated to him. It is pertinent to observe that he has not analysed the information in right perspective and he sought to reopen by conceiving a fact that the assessee failed to respond to the query raised about this investment. As noticed in the submissions of Ld. Counsel for the assessee, I am of the view that there was no proceedings pending before the AO when he sought the clarification of the assessee vide alleged query notice dated 23rd January, 2012. The ITAT Amritsar Bench has dealt with this issue elaborately and recorded a finding that under the income tax Act, there is no such procedure to conduct an enquiry for collecting the information without

pendency of assessment proceedings. If this reasoning is being excluded from the copy of the reasons given by the AO, then, nothing will remain with the AO except the information transmitted by AIR Wing. Apart from the above, it is to be seen that in the reasons the AO has nowhere alleged escapement of income. The thrust of the reasoning would show that he want to make an enquiry about the investment. No doubt, for reopening of an assessment, he has to just form a prima facie opinion and not to arrive at a firm conclusion, but, the formation of a prima facie opinion should also depict escapement of income. It is also pertinent to observe that when all these pleas were raised before the first appellate authority, then, the Ld. First appellate authority has not dealt with a single proposition and rather dealt with the issue in an altogether different manner whether notice u/s 148 was served or not, copy of reasoning was provided or not, the procedure contemplated through the decision of the Hon'ble Supreme Court in the case of GKN Driveshaft was followed or not. The Ld. CIT(A)

has not addressed the contention of the assessee that reopening of assessment in itself is bad because there is no nexus between reasons vis-à-vis formation of belief exhibiting the escapement of income. Taking into consideration all these aspects, I am of the view that the AO is not justified in reopening of the assessment afresh. I allow this ground of appeal and quash the assessment. As far as other issues are concerned, since reopening of assessment has been held as bad and not in accordance with the law, therefore, I deem it not necessary to deal with the other grounds of appeal as they have become infructuous."

7.2. The Hon'ble Delhi High Court in the case of Pr. CIT vs. G & G Pharma India Ltd., (2016) 384 ITR 147 (Del.) has held as under :

The basic requirement of law for reopening an assessment is application of mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to

conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analyzing materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.

The assessee filed returns for the assessment year 2003-04 which was processed under section 143(3) of the Income-tax Act, 1961. Based on information received from the Directorate of Investigation about four entries, stated to have been received by the assessee on a single date, i.e., February 10, 2003, from four entities which were termed as accommodation entries, the Assessing Officer issued notice to the assessee for reassessment for the assessment year 2003-04 on March 19,2010 stating that it was evident that the assessee- company had introduced its own unaccounted money in its bank by way of accommodation entries. The assessee's appeal was dismissed by the Commissioner (Appeals). The Tribunal concluded, from the

reasons recorded, that the Assessing Officer issued notice only on the basis of information received from the Investigation Wing but without coming to an independent conclusion for reason to believe that income had escaped assessment and allowed the appeal of the assessee. On appeal :

Held, dismissing the appeal, that once the date on which the so-called accommodation entries were provided was known, it would not have been difficult for the .Assessing Officer, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the assesses, which must have been tendered along with the return, which was filed on November 14, 2004 and was processed under section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own

unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analyzing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment. The order of the Tribunal was proper. No question of law arose."

7.3. The Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax vs. Meenakshi Overseas Pvt. Ltd., (2017) 395 ITR 677 (Del.) has held as under :

"For the assesses rear 2004-05, the assessee was assessed under section 143(1) of the Income Tax Act, 1961 in November, 2004. Based on the information received from the Director (Investigation) that the assessee had received accommodation entries, notice under section 148 was issued in March, 2011 after taking approval from the

appropriate authority under section 151(1). The Assessing Officer recorded that he had reasons to believe that income had escaped assessment. He recorded reasons that according to the report of the Investigation Wing, during the assessment year 2004-05, the assessee had taken accommodation entries from an entry operator paying unaccounted cash which had escaped assessment due to the failure of the assessee to disclose truly and fully all material facts necessary for assessment of the amount concerned. The assessee requested that the original return filed under section 139 be treated as return filed in compliance with the notice under section 148. The Assessing Officer treated the credit received from the holder of the entry giving account as unexplained income and other credit entries, that purportedly remained "unverified, unsubstantiated and unexplained", which he found in the statement of the assessee's bank account as unexplained credits under section 68 and added the sums as income from undisclosed sources to the assessee's income. He

passed an order under section 143(3) read with section 147. The Commissioner (Appeals) dismissed the assessee's appeal. The Appellate Tribunal held that, (a) the Assessing Officer had issued a notice under section 148 solely on the basis of information received from the Director {Investigation), (b) he had concluded that the tabulated instrument in investigation report was in the nature of accommodation entry, without further verification, examination or any other exercise, and, (c) he had not mentioned the nature of transaction which was effected for the purported accommodation entry and had not even mentioned the date of recording the reasons. It further held that the Assessing Officer had not applied his mind at the time of initiating the proceedings for reassessment under section 147 and accordingly allowed the appeal of the assessee.

On appeal:

Held, dismissing the appeal that while the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation. In the assessee's case, the crucial link between the information made available to the Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the conclusion in the investigation report received from the Director (Investigation) It was a "borrowed satisfaction". The expression "accommodation entry" was used to describe the information set out without explaining the basis for arriving at such a conclusion. The basis for the statement that the entry was given to the assessee on his paying "unaccounted cash " was not disclosed. Who was the accommodation entry giver and how he could be said to be a "known entry operator" were not mentioned. The source for all the conclusions was the investigation report. The

tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment. No error had been committed by the Appellate Tribunal in concluding that the initiation of the reassessment proceedings under section 147/148 to reopen the assessments for the assessment year 2004-05, was not legal."

7.4. The Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (I) Ltd., (2017) 396 ITR 5 (Delhi) has held as under :

"The assessee filed its return for the assessment year 2008-09 and assessment was made under section 143(1) of the Income-tax Act, 1961. The Assessing Officer issued a

notice for reassessment based on information received from the Investigation Wing that the assessee was the beneficiary of certain accommodation entries, which were given in the garb of share application money or expenses or gifts or purchase of shares during the period relevant to the assessment year 2004-05. He recorded that the assessee had not filed a return for the assessment year 2004-05, as there was no return available in the database of the Department, and that consequently he had not offered any income for taxation. On appeal:

Held, dismissing the appeal; that no link between the tangible material and the formation of the reasons to believe that income had escaped assessment, could be discerned. The information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the Assessing Officer, who had deprived himself of that opportunity by proceeding on the erroneous premise that the asses see had not filed a return

for the assessment year, 2004-05, when in fact it had. In his assessment order, the Assessing Officer had, instead of adding a sum of Rs.78 lakhs, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crores and the basis for such addition had not been explained. No error was committed by the Appellate Tribunal in holding that reopening of the assessment under section 147 was bad in law. No question of law arose."

7.5. The Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd., vs. CIT (2011) 336 ITR 136 (Del.) has held as under :

"The assessee-company was engaged in the business of manufacture and trading of pharmaceuticals products. The Assessing Officer accepted the returned income of the assessee but initiated reassessment proceedings under section 147 of the Income-tax Act, 1961, in respect of club fees, gifts and presents and provision for leave encashment. While completing the reassessment however,

he did not make additions on account of these items but instead reduced the deductions under sections 80HH and 80-1. The Commissioner (Appeals) held that in the original assessment the powers of the Assessing Officer were limited to the extent of prima facie adjustment only. On the merits of the additions, the Commissioner (Appeals) followed his order of assessment year 1996 97. On appeal the Tribunal held that the assumption of jurisdiction by initiating reassessment proceedings was valid and reassessment could not be annulled. It was a separate issue that after validly assuming jurisdiction the points on which reassessment was proposed were not added/disallowed. At the same time under section 147 the Assessing Officer could also assess such income which had escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147 . On appeal :

Held, that section 148 was supplementary and complementary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax had escaped assessment. All these conditions were required to be fulfilled to assess or reassess the escaped income chargeable to tax. Under Explanation 3 if during the course of the proceedings the Assessing Officer comes to the conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped

income, and which he intends to take into account, he would be required to issue a fresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which was not permissible. The Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated but he was not justified when

the reasons for the initiation of those proceedings ceased to survive."

7.6. The reasons recorded for reopening of the assessment shows that A.O. received the information that assessee purchased immovable property for which verification is required for Non-PAN financial transaction related to A.Y. 2009-2010. The A.O. in order to verify the transaction, issued notice to the assessee. However, in the absence of any reply from the side of the assessee, A.O noted that same established that assessee has willfully concealed her income by way of not disclosing the source of the investment. The A.O. in the reasons did not record if he has reason to believe that income chargeable to tax has escaped assessment which is mandatory condition for reopening of the assessment. The A.O. also noted in the re-assessment order that assessee, in reply to the notice under section 148, submitted that return originally filed for assessment year under appeal on 30.07.2009 may be treated as return filed in compliance to the notice under section 148 of the

I.T. Act. Copy of the return originally filed by assessee along with other annexures are filed in the paper book, which shows that assessee has filed original return of income within time mentioning her PAN, supported by computation of income, in which the major source of income of the assessee is income from salary, on which, tax at source have been deducted and supported by Form-16. Therefore, A.O. has wrongly mentioned in the reasons for reopening of the assessment that the transaction of purchase of property requires verification because of Non-PAN financial transaction relate to assessment year under appeal. The A.O instead of verifying the facts from the Income Tax Department, recorded incorrect and non-existing reasons in the reasons for reopening of the assessment. Further, when original return of income was filed on time and according to the assessee it was processed under section 143(1), there were no provision under the Act to conduct any enquiry from the assessee without pendency of the assessment proceedings. Therefore, assessee is not under any obligation to file any reply before A.O. when no assessment proceedings were

pending. Therefore, it was duty of the A.O. to verify the facts property and then apply his mind to the information and material on record, thereafter, may record reasons for reopening of the assessment based on relevant and cogent material on record. The A.O. at the assessment stage accepted the explanation of assessee that no investment have been made by assessee in purchase of the property. Therefore, the A.O. did not apply his mind to the information received for purchase of immovable property. The basic requirement was application of mind by the A.O. to the material produced before him before issuing notice of re-assessment. Without analyzing and forming a prima facie opinion on the basis of material produced, it was not possible for the A.O. to conclude that he had has reason to believe that income chargeable to tax has escaped assessment. The A.O. did nothing in the matter and without verification of information or examination or conducting any exercise, accepted the same without applying his mind to the information. The A.O. in the reasons for reopening of the assessment, reopened assessment merely because assessee has

nothing to say in the matter which is irrelevant to the reopening of the assessment. Since the A.O. did not apply his mind to the information and that A.O. did not record in the reasons that he has reason to believe that income chargeable to tax has escaped assessment, therefore, A.O. recorded incorrect and non-existing reasons for reopening of the assessment in the matter. Thus, the A.O. without any justification has assumed the jurisdiction under section 147/148 of the I.T. Act which is bad in law and is liable to be set aside. In view of the facts of the case and discussion above in the light of judgments relied upon above, I am of the view that the A.O. has no justification to assume jurisdiction under section 147 of the I.T. Act as per law. Accordingly, I set aside the orders of the authorities below and quash the reopening of the assessment under section 147 of the I.T. Act. Resultantly, entire additions are deleted. In view of the above finding on legal issue, there is no need to decide the remaining grounds on merit because the same are left with academic discussion only.

8. In the result, appeal of assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st August, 2018

VBP/-

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.