



2025:DHC:4660-DB



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

% Judgment delivered on: 30.05.2025

+ **W.P.(C) 11198/2019**

SANJAY KAUL

.....Petitioner

versus

**THE INCOME TAX OFFICER WARD 24 (4), NEW DELHI
& ORS.**

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Deepak Kapoor, Advocate.

For the Respondents : Ms. Hemlata Rawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The Petitioner has filed the present petition under Article 226 read with Article 227 of the Constitution of India, impugning a notice dated 30.03.2019 [**impugned notice**] issued by the Respondent No.1 under



Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of Assessment Year [**AY**] 2014-15.

2. By way of the present petition, the Petitioner has essentially challenged the action of the Respondent No.1 to reopen the proceedings for AY 2014-15. It is the petitioner's case that the Respondent No.1 did not have any reason to believe that the petitioner's income for the AY 2014-15 had escaped assessment and that the impugned notice was issued merely based on conjecture and surmises as opposed to any tangible material.

FACTUAL BACKGROUND

3. The Petitioner was working as an employee in M/s Laureate Education Pvt. Ltd. and filed his return for AY 2014-15 declaring taxable income of Rs. 7,86,72,780/-. The petitioner paid a tax of Rs. 2,07,95,141/- on the declared income.

4. Thereafter, the Petitioner's case was selected for scrutiny and notices under Section 143(2) and Section 142(1) of the Act were duly served on the Petitioner. The Petitioner had earned long-term capital gains amounting to Rs. 9,81,71,989/- in the previous year relevant to AY 2014-15. The Petitioner had also incurred short term capital loss on the sale of its shares in India Infotech and Software Ltd. [**IISL**] and SRK Industries Ltd. [**SRK**] amounting to Rs. 4,25,94,622/-. The net capital gains offered by the Petitioner for taxation was Rs. 5,55,36,505/-.

5. After examining the documents and hearing the Petitioner, the Respondent No.1 passed the Assessment Order dated 25.07.2016 under Section 143(3) of the Act, accepting the return of income of the Petitioner. However, on 30.03.2019, the Respondent No.1 issued the impugned notice



as he had reason to believe that the income of the Petitioner had escaped assessment for the AY 2014-15.

6. The Petitioner responded to the impugned notice issued by the Respondent No.1 stating that the return originally filed under Section 139(1) of the Act shall be treated as filed in response to the said impugned notice. The Petitioner also requested the Respondent No.1 to provide the reasons for the issuance of the impugned notice, that is, initiating proceedings under Section 147 of the Act. The Respondent No.1 provided a copy of the reasons for initiating the proceedings under Section 147 of the Act, in addition to the sanction obtained from the Additional Commissioner of Income Tax/Respondent No.2.

7. The Petitioner filed detailed objections to the impugned notice *vide* letter dated 12.09.2019 to the Respondent No.1, who disposed of the objections raised by the Petitioner *vide* Order dated 24.09.2019. The Respondent No.1 maintained that the reopening of the assessment proceedings under Section 147 of the Act by way of issuance of the impugned notice for AY 2014-15, was in accordance with law. Hence, the present petition has been filed by the Petitioner seeking setting aside of the reassessment proceedings initiated by issuance of the impugned notice.

SUBMISSIONS BY THE PETITIONER

8. Learned Counsel for the Petitioner submitted that the Petitioner raised objections to the issuance of the impugned notice, however, Respondent No.1 *vide* Order dated 24.09.2019 upheld the reopening of the assessment under Section 147 of the Act for AY 2014-15, without considering the objections raised by the Petitioner. It was submitted that for initiation of



proceedings under Section 147 of the Act, Respondent No.1 has solely placed reliance on the report of the Investigation Wing of the Income Tax Department without any independent enquiry.

9. It was submitted that there is no evidence to show that the Petitioner was in any manner linked to or involved in the wrongful acts highlighted in the report of the Investigation Wing. It was further submitted that the concluded assessment of the Petitioner cannot be reopened merely based on generalization and preponderance of probabilities, unless there is specific evidence or material to controvert validity and correctness of the documentary evidence produced by the Petitioner.

10. Learned Counsel for the Petitioner submitted that the Respondent No.1 in its Counter Affidavit, has failed to comply with the directions passed by this Court *vide* Order dated 21.11.2019 as it has not disclosed how the Petitioner is connected with Mr. Anil Kedia, Director of M/s Excel Stock Broking Pvt. Ltd. [**Excel**], whose statement was recorded under Section 131 of the Act. It was further submitted that there is nothing in Mr. Anil Kedia's statement which links the Petitioner to Excel and that the Petitioner has never had any dealings with Excel nor with Mr. Anil Kedia. It was also submitted that the Petitioner instead carried out its trade on the Bombay Stock Exchange [**BSE**] through his registered broker, namely, Elite Wealth Advisors Limited [**Elite**].

11. It was submitted that the shares were traded at the online trading platform of the BSE and time stamped contracts were issued by the registered broker. It was further submitted that the Petitioner paid the entire consideration for the purchase of share through proper banking channels and received the proceeds of the same in his bank account.



12. In view of the foregoing submissions, learned Counsel for the Petitioner submitted that the Assessing Officer [AO] had no reason to believe that income had escaped assessment for AY 2014-15 for initiating proceedings under Section 147 of the Act.

SUBMISSIONS BY THE RESPONDENTS

13. Learned Counsel for the Revenue submitted that the primary reason for the reopening of the assessment is the tangible material received from the Office of the Assistant Director of Income Tax (Inv.) – Unit 3(1) *vide* letter dated 14.03.2018 informing about the investigation conducted by the Directorate of Investigation, Patna in the case of IISL.

14. It was submitted that the Investigation Report issued by the Office of Principal Director of Income Tax (Inv.), Kolkata categorically lists the scrips involved in tax evasion by way of bogus trading. It was further submitted that the Demat Account of the Petitioner shows trading by the Petitioner in the shares of 4 companies, including IISL and SRK, and all of them were floated for providing accommodation entries, as per the aforementioned Reports. It was also submitted that it was humanly impossible to investigate each and every broker firm involved in the trading of shares of these companies, and hence, merely because Elite could not be investigated, it cannot be said that the Petitioner was not a beneficiary of the accommodation entries.

15. It was submitted that the Petitioner has failed to appreciate that at the stage of issuance of notice under Section 148 of the Act, the standard of formation of belief is only human probabilities and not proof beyond reasonable doubt. It was further submitted that through investigation and



statement of the individuals, who have admitted being involved in the rigging of the shares for the purpose of tax evasion, it was clear that there existed reason to believe that income has escaped assessment for AY 2014-15. It was also submitted that the report by the Investigation Wing is considered as tangible material to form reason to believe that income has escaped assessment.

ANALYSIS AND CONCLUSION

16. The reasons recorded by the AO for initiating the reassessment proceedings under Section 147 of the Act by issuing the impugned notice are reproduced as under:

“In this case information has been received from the office of Addl. DIT ITO (Inv.) Unit-3(1), New Delhi vide letter No.482 dated 14.03.2018 that a search action u/s 132(1) of the I.T. Act, 1961 was conducted by Directorate of Investigation Patna in the case of Indian Infotech & Software Ltd. (INDIINFO), whose BSE listed penny stock have been rigged in synchronized way to provide accommodation entry to various beneficiaries. During the course of search action, entry operators as well as beneficiaries had admitted that shares of Indian Infotech & Software Ltd have rigged up to provide bogus accommodation. Statement of Sh. Ani1 Kedia, Director of the share broking company M/s. Excel Stock Broking Pvt. Ltd. was recorded on oath wherein he accepted that his broking company is involved in manipulative trading of shares and they have provided accommodation entry of bogus accommodation entry to various beneficiaries. In his statement recorded on oath Sh. Anil Kedia in response to question No. 13 replied as under:-



"Yes, I admit the fact. All these companies are being controlled by mostly by our group individuals or some other accommodation entry operator with the sole purpose of facilitating accommodation entries of pre-arranged bogus LTCG/STCL. These companies have been used for trading through our share broking company for facilitating such accommodation entries of pre-arranged bogus LTCG/STCL to different beneficiaries."

The beneficiaries of short term capital loss are entities which are having regular business activities and they perceive that they are going to have huge profits in their books. To reduce their profits, assessee take entry of short term capital so as to set off the profits and avoid paying taxes on the same.

Assessee is one of the beneficiaries of taking entry in the form of STCL and traded in the penny scrip Indian Infotech & Software Ltd.

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Assessee filed its return of income for the A.Y. 2014-15 declaring an income of Rs.7,86,72,780/- on 30.09.2014. The case of the assessee was selected for scrutiny and the assessment was completed on 25.07.2016 at returned income.

Assessee has also booked STCL in the scrip "SRK Industries Ltd". Vide letter No.75A/2015-16/257-263 Investigation Report in the case of Project Bogus LTCG/STCL through BSE Listed penny stocks was circulated from the office of the Pr. Director of Income Tax (Inv.), Kolkata wherein after details enquiry and investigation the scrip of S R K Industries Ltd was identified as one of the ESE listed penny stocks..."



17. From a bare perusal of the above, it is clear that the AO's reason for initiating the reassessment proceedings under Section 147 of the Act by issuing the impugned notice relies on the information received from the Investigation Wing, which reported that the shares of IISL was a penny stock and it was being rigged to provide bogus accommodation entry to the beneficiaries.

18. Further, the AO found that the Petitioner also traded in the stock of SRK, which was flagged as one of the BSE listed penny stock companies in the Investigation Report circulated from the office of Principle Director of Income Tax (Inv.), Kolkata. The AO analyzed the performance of the shares of IISL and SRK and reached the conclusion that the stock trading by the Petitioner was nothing but an arrangement made for reducing the tax liability by claiming bogus short term capital loss in order to set off the profits made in the relevant AY.

19. The primary issue that arises is whether the AO, on the basis of the aforesaid material, had sufficient reason to believe that the petitioner's income for AY 2014-15 has escaped assessment.

20. Before delving into the merits of the present case, it is imperative to discuss the settled position of law on the aforesaid issue as laid down in various judicial precedents.

21. The Hon'ble Supreme Court in the landmark case of **ITO & Ors. v. Lakhmani Mewal Das, (1976) 3 SCC 757** held as under:

“8. The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist



reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression “reason to believe” does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law see observations of this Court in the cases of *Calcutta Discount Co. Ltd. v. Income Tax Officer* [AIR 1961 SC 372 : (1961) 2 SCR 241 : 41 ITR 191] and *S. Narayanappa v. CIT* [AIR 1967 SC 523 : (1967) 1 SCR 590 : 63 ITR 219] while dealing with corresponding provisions of the Indian Income Tax Act, 1922).

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11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the



income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words “definite information” which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

12. 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. The live link or close nexus which should be there



between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.”

22. In the case of **CNB FINWIZ LTD. v. DCIT, CIRCLE 6(1); Neutral Citation 2025:DHC:4035-DB**, this Court held as under:

“43. As explained by the Supreme Court in **The Income-Tax Officer, I Ward, District VI, Calcutta and Ors. v. Lakhmani Mewal Das** and several other decisions, “reasons to believe” cannot be conflated with “reasons to suspect” that an assessee’s income has escaped assessment. Whilst it is not necessary for the AO to arrive at a firm conclusion that the assessee’s income for the relevant assessment year has escaped assessment – that conclusion is to be drawn during the assessment proceedings – it is necessary that the AO has reasons to believe based on tangible material that has a live nexus with the belief that income has indeed escaped assessment. Concluded and closed assessments cannot be reopened merely on suspicion.”

23. From the above decisions, it is clear that the AO’s reasons to believe that income has escaped assessment must be based on tangible material that has a direct nexus with the belief so formed. Once an assessment is closed, it



cannot be opened merely based on suspicion. Therefore, the import of the expression ‘reason to believe’ as laid down in the aforementioned judgements should be considered before reopening assessment under Section 147 of the Act.

24. In the present factual matrix, it is the Petitioner’s case that no income has escaped assessment and there was no tangible material based on which the AO could have formed reason to believe otherwise. Further, the Petitioner contends that the material relied upon by the Revenue to initiate reassessment proceedings bears no live nexus to the Petitioner to show that he was a part of the arrangement for generating bogus short term capital loss.

25. On the other hand, the Revenue contends that the reports furnished by the Investigation Wing and the statement of Mr. Anil Kedia, the Director of Excel, constitute sufficient tangible material to form reason to believe that Petitioner’s income had escaped assessment for AY 2014-15. It is further contended that the Investigation Wing is a part of the Income Tax Department and their conclusion is based on thorough analysis of the available material.

26. This Court has analyzed the following information based on the reasons rendered by the AO for the issuance of the impugned notice, in addition to the submissions made by the parties:

- The Petitioner’s case was reopened based on the information received from the Office of the Assistant Director of Income Tax(Inv.) – Unit 3(1), New Delhi *vide* letter dated 14.03.2018, which revealed that the BSE listed penny stock of IISL has



been rigged in a synchronized way so as to provide accommodation entry to multiple beneficiaries.

- Further, an Investigation Report circulated from the office of the Principal Director of Income Tax (Inv.), Kolkata had identified the scrips of SRK as one of the BSE listed penny stocks.
- Thereafter, the Statement of Mr. Anil Kedia was recorded on oath wherein he accepted that his brokerage firm was involved in the manipulation of trading of shares, in order to provide bogus accommodation entry to various beneficiaries. It is noted that Mr. Anil Kedia also provided a list of penny stock companies in which shares were rigged, which includes both IISL and SRK.
- During the relevant year under consideration, the Petitioner had traded in the scrips of both IISL and SRK, which led to short term capital loss.

27. It is clear from the information received from the Investigation Wing and Mr. Anil Kedia, that the same was general in nature and did not point towards the involvement of the Petitioner in the arrangement of providing accommodation entry by contriving bogus short term capital loss. From the aforementioned information, it cannot be concluded that all the transactions with respect to the shares of IISL and SRK were sham in nature. Further, there is nothing to show that the information produced above was applicable to the Petitioner.



28. In the reasons provided for issuance of the impugned notice, the AO stated that the Petitioner had purchased the shares of SRK on 21.08.2013 at the average price of Rs. 167.63 per share and sold off at the average price of Rs. 35.05 per share on 24.03.2014, whereas the shares of IISL were purchased on 21.08.2013 at the average price of Rs. 41.10 per share and sold off at the average price of Rs. 8.26 per share on 06.03.2014. The AO concluded that through investments in the said shares, the Petitioner created bogus short term capital loss in order to evade tax liability.

29. Mere purchasing and selling of the shares by the Petitioner would not in itself lead to the conclusion that the transactions were fraudulently contrived to secure accommodation entries for evading tax liability. The conclusion arrived at by the AO is based on the suspicion created by the information that the shares of IISL and SRK are penny stocks.

30. However, the said information cannot be sufficient reason for the AO to believe that the Petitioner's income for AY 2014-15 had escaped assessment as it lacked specific material regarding Petitioner's income escaping the assessment. The impugned notice was issued based on general information derived from the report of the Investigation Wing and the statement of Mr. Anil Kedia, but no specific information regarding the Petitioner's involvement in the alleged arrangement for evading tax liability for AY 2014-15. Further, the materials based on which the said report was prepared have also not been placed on record by the Revenue.

31. As held in **CNB FINWIZ LTD. v. DCIT, CIRCLE 6(1)** (*supra*) relying upon the decision of the Supreme Court **ITO & Ors. v. Lakhmani Mewal Das** (*supra*), the "reason to believe" cannot be conflated with "reason to suspect" in arriving at the conclusion that the Petitioner's income



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has escaped assessment for AY 2014-15. As the concluded assessments cannot be reopened merely based on suspicion, we find that there is no tangible material to form the “reason to believe” that the Petitioner’s income has escaped assessment in the present case.

32. Accordingly, the impugned notice is set aside. The Appeal is allowed in the aforesaid terms.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 30, 2025
‘ST’/‘SMS’