A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 518 of 2022

Petitioner :- Uphill Farms Private Limited
Respondent :- Union Of India And Another
Counsel for Petitioner :- Vedika Nath,Nishant Mishra
Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Jayant Banerji,J.

1. Heard Shri Nishant Mishra, learned counsel for the petitioner and Shri Manu Ghildyal, learned Standing Counsel for the respondent-Income Tax Department.

2. By order dated 11.04.2022, this Court specifically directed the respondent no.2, vide paragraph 10 of the order, as under :-

> *"10. In view of the aforesaid, we direct the respondent no.2 to file a short counter affidavit by means of his personal affidavit stating as to how the notice under Section 148 of the Act, 1961 issued by him to the petitioner was a valid notice and how the respondent no.2 could get jurisdiction to issue notice under Section 148 of the Act, 1961 when the very basis of issuing notice, ie., 'reason to believe', recorded by him was totally unfounded, non-existent and wholly baseless."*

3. Today, a counter affidavit dated 22.04.2022 on behalf of the respondent no.2 has been filed by Kumari Sukanya Kirti, Assistant Commissioner of Income Tax, Circle 5(3)(1), Noida. In paragraph 3 thereof, the respondent no.2 has stated as under :-

> *"3. That, vide order dated 11.04.2022, the Hon'ble Court has specifically sought reply to the following questions:-*
>
> *(i) how the notice under Section 148 of the Act, 1961 issued by him to the petitioner was a valid notice?*
>
> *(ii) how the respondent no.2 could get jurisdiction to issue notice under Section 148 of the Act, 1961 when the very basis of issuing notice, ie., 'reason to believe', recorded by him was totally unfounded, non-existent and wholly baseless."*

4. Perusal of the counter affidavit shows that there is not even a whisper with respect to the query of the Court (as itself mentioned by the respondent no.2 in paragraph 3(ii) of her counter affidavit). On the other hand, in the re-assessment order, it has been specifically mentioned that "on perusal of the documentary evidence submitted by the assessee in reference to the information available on record, no inference is drawn in connection with the amount of Rs.45 lakhs". It shall not be out of place to mention that the petitioner submitted objection to the 'reason to believe' recorded by the assessing authority. In his objection, the petitioner has specifically stated that the petitioner has not entered into any transaction amounting to Rs.45 lakhs during the year under consideration which has been made basis for recording the "reason to believe" and to issue notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961'). The petitioner has also produced documentary evidences to show that no transaction of Rs.45 lakhs as alleged was entered by the petitioner. Despite of these facts, on totally baseless and unfounded grounds, a notice under Section 148 of the Act, 1961 was issued by the respondent no.2 and, in a most arbitrary manner, the objection of the petitioner was not considered by the asssessing authority and was arbitrarily rejected.

5. Despite our order dated 11.04.2022, the **respondent no.2 has deliberately filed an evasive affidavit (counter affidavit)** in which there is no whisper with regard to the second query of the Court.

Reason to Believe – Meaning, Scope and Consequence:-

6. In the case of **State of Uttar Pradesh & Others vs. Aryaverth Chawal Udyog & Others** reported in **(2015) 17 SCC 324** (paragraphs 28 to 30), the Hon'ble Supreme Court has held as under:

> *"28. This Court has consistently held that* ***such material on which the assessing Authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant****. It must bring home the appropriate rationale of action taken by the assessing Authority in*

pursuance of such belief. ***In case of absence of such material, this Court in clear terms has held the action taken by assessing Authority on such "reason to believe" as arbitrary and bad in law****.*

In case of the same material being present before the assessing Authority during both, the assessment proceedings and the issuance of notice for re-assessment proceedings, it cannot be said by the assessing Authority that "reason to believe" for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See: Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1980) 4 SCC 71).

29. ***The standard of reason exercised by the assessing Authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion****. The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened. (See: Binani Industries Ltd. v. CCT,(2007) 15 SCC 435; A.L.A. Firm v. CIT, (1991) 2 SCC 558). If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion".*

If an assessing Authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for re-assessment. ***Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing Authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some income has escaped assessment****.*

30. ***In case of there being a change of opinion, there must necessarily be a nexus that requires to be established between the "change of opinion" and the material present before the assessing Authority.*** *Discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to reinitiate proceedings under Section 21(1) of the Act on the basis of change in subjective opinion (CIT v. Dinesh Chandra H. Shah, (1972) 3 SCC 231; CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360)."*

(emphasis supplied)

7. In the case of **The Commissioner of Sales-Tax U.P. vs. M/s. Bhagwan Industries (P) Ltd., Lucknow, AIR 1973 SC 370 (Paras 9 & 10)**, Hon'ble Supreme Court has held as under:

"9. The controversy between the parties has centered on the point as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1957-58. Question in the circumstances arises as to what is the import of the

> *words "reason to believe", as used in the section.* ***In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court, for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence.***
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> *10. It may also be mentioned that at the stage of the issue of notice the consideration which has to weigh is* ***whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment. The question as to whether that material in sufficient for making assessment or re-assessment under section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary.****"*
>
> *(Emphasis supplied)*

8. A Division Bench of this Court, while dealing with the validity of the re-assessment notice under Section 148 in **Writ Tax No.874 of 2010 (M/S Parmarth Steel And Alloys Pvt. Ltd. vs. State of U.P. and Others**, decided on 28.03.2022, held as under (Para 17) :

> *"17. It is settled principles of law that proceedings under Section 21 of the Act, 1948 can be initiated if the material on which the Assessing Authority bases its opinion, is not arbitrary, irrational, vague, distant or irrelevant. There must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in Section 21 of the Act, 1948. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and*

have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. The question as to whether that material in sufficient for making assessment or re-assessment under section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary.

9. In the case of **Sheo Nath Singh vs. Appellate Assistant CIT, (1972) 3 SCC 234 (Para-10)**, Hon'ble Supreme Court while considering the similar provisions of Section 34 (1-A) of the Indian Income Tax Act, 1922, held as under:-

"…….. There can be no manner of 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 Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court."

10. In the case of **Union Of India And Others vs M/S. Rai Singh Dev Singh Bist & others, AIR 1974 SC 478 : (1973) 3 SCC 581 (para-5)**, Hon'ble Supreme Court held as under:-

"…….. before an Income-tax Officer can be said to have had reason to believe that some income had escaped assessment, he should have some relevant material before him from which he could have drawn the inference that income has escaped assessment. His vague feeling that there might have been some escape of income from assessment is not sufficient… ……."

11. In the case of **ITO vs. Lakhmani Mewal Das, (1976) 3 SCC 757 (para-11 and 12)**, Hon'ble Supreme Court has held as under:-

"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 cannot 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."

12. In the case of **M/s. S. Ganga Saran and Sons (P) Ltd. Calcutta vs. ITO and others, (1981) 3 SCC 143 (Para-6)**, Hon'ble Supreme Court held as under:-

"6. It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under

section 147 (a). First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under section 147 (a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147 (a). It there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to he struck down as invalid."

13. In the case of **Income Tax Officer, Ward No.62 vs. TechSpan India (P.) Ltd. and another, (2018) 6 SCC 685 (Paras 14 to 18)**, Hon'ble Supreme Court held as under:

"14. The language of Section 147 makes it clear that the assessing officer certainly has the power to re-assess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words 'reason to believe' in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the assessing officer who may even initiate such re-assessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.

15. Section 147 of the IT Act does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law

differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to re-assess and not the power to review.

16. To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The words "change of opinion" implies formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

17. It is well settled and held by this court in a catena of judgments and it would be sufficient to refer ***Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd. (2010) 320 ITR 561(SC)*** *wherein this Court has held as under: (SCC p.725, para 5-7)*

> *"5….where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe"….. Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.*
> *6. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place.*
> *7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."*

18. Before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings."

14. In the case of **Radha Krishna Industries vs. State of H.P., (2021) 6 SCC 771**, Hon'ble Supreme Court reiterated the law laid down in its earlier judgments in the case of **Kelvinator of India**

Limited (supra) and **TechSpan India** (P.) Ltd. (supra) and held that *the power to reopen an assessment must be conditioned on the existence of "tangible material" and that "reasons must have a live link with the formation of the belief".*

15. In view of the above discussion, **we summarize the principles, powers and limitations on exercise of powers under Section 147/148 by Income Tax Officers/ Authorities under the Income tax Act, 1961, as under**:-

(a) The assessing officer under Section 147 of the Act, 1961 has the power to re-assess any income which escaped assessment to tax for any assessment year subject to the provisions of Sections 148 to 153. The power to reassess under Section 147 of the Act, 1961 has been incorporated so as to empower the Assessing Authorities to re-assess any income on the ground which escaped his knowledge.

(b) Reassessment of income under Section 147 of the Act, 1961 cannot be made on **change of opinion**. The words "change of opinion" implies formulation of opinion and then a change thereof. If the Assessing Officer has earlier made assessment for the same Assessment Year expressing an opinion of a matter either expressly or by necessary implication then on the same matter, a reassessment proceedings for the alleged escapement of income from assessment to tax, cannot be initiated as it would be a case of "change of opinion". If the assessment order is non-speaking, cryptic or perfunctory in nature, then it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion". If the assessing Authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for re-assessment.

(c) The words **"reason to believe"** suggest that the belief must be bona fide and must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. His vague feeling that there might have been some escapement of income from assessment is not sufficient. The

reasons for the formation of the belief must be based on tangile material and must be based on 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 assessment year. In other words, such material on which the assessing Authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. If the grounds for formation of "reason to believe" are of an extraneous character, the same would not warrant initiation of proceedings under Section 147 of the Act, 1961.

(d) If, there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of income of the assessee has escaped assessment, it can take action under Section 147 of the Act, 1961. If the grounds taken for initiating reassessment proceedings under Section 147 of the Act, 1961 are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. The belief must be held in good faith and should not be a mere pretence.

(e) The question as to whether the material on the basis of which the assessing authority has formed the belief for "reason to believe" is sufficient, for making assessment or reassessment under Section 47 of the Act, 1961, would be gone into after the notice is issued to the assessee and he is heard or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in his possession as well as fresh material procured as a result of inquiry, if any, which may be considered necessary.

16. Perusal of the impugned notice under Section 148 of the Act, 1961 and other impugned orders clearly shows that the "reason to believe" recorded by the assessing authority, failed to pass the standard of reason exercised by the assessing authority to be that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The reasons recorded were totally unfounded and consequently the jurisdictional notice under Section

148 of the Act, 1961 issued by the assessing authority was without jurisdiction. Once the notice under Section 148 of the Act, 1961 issued by the assessing authority was without jurisdiction, the subsequent proceedings, including re-assessment order, cannot be sustained.

17. For all the reasons afore-stated, the impugned notice dated 31.03.2021 under Section 148 of the Act, 1961 issued by the respondent no.2, the order dated 09.03.2021 rejecting the objection of the petitioner, the re-assessment order dated 31.03.2022 under Section 147 of the Act, 1961 for the Assessment Year 2013-14 and the demand notice dated 31.03.2022 issued under Section 156 of the Act, 1961 cannot be sustained and are hereby quashed.

18. For all the reasons aforestated, the writ petition is **allowed** with cost of Rs.5000/-, which the respondents shall deposit with the High Court Legal Services Committee, High Court, Allahabad within three weeks from today, failing which the amount shall be recovered as fine.

Date :25.04.2022
SK/NLY