IT: Where AO reopened assessment on ground that he had deposited certain amount in bank account which was not reflected in return as per IT System of department, in view of fact that assessee had filed return manually which had been duly acknowledged and in said return assessee had furnished proper details in respect of contractual receipts deposited in bank account, impugned reassessment proceedings deserved to be quashed

[2018] 91 taxmann.com 463 (Jaipur - Trib.)

IN THE ITAT JAIPUR BENCH

Narain Dutt Sharma

v.

Income-tax Officer, Ward- 6 (1), Jaipur*

VIJAY PAL RAO, JUDICIAL MEMBER
AND VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
IT APPEAL NO. 203 (JP.) OF 2017
[ASSESSMENT YEAR 2007-08]
FEBRUARY 7, 2018

Section 139, read with section 147, of the Income-tax Act, 1961 - Return of income (E filing of returns) - Assessment year 2007-08 - For relevant year assessee filed its return declaring certain taxable income - After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that assessee had deposited certain amount in bank account source of which was not explained - Assessing Officer at time of recording reasons for reopening assessment mentioned that amount deposited in bank could not be verified because assessee had failed to file return of income for relevant year as same was not reflected in IT system of Department - It was noted from records that assessee had filed return manually which had been duly acknowledged - It was also found that assessee had furnished proper details in respect of contractual receipts deposited in bank account - Whether, on facts, requirements of proviso to section 147 had not been fulfilled and, thus, impugned reassessment proceedings deserved to be quashed - Held, yes [Paras 18 and 19] [In favour of assessee]

FACTS

- For relevant year assessee filed its return declaring certain taxable income. After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that assessee had deposited certain amount in bank account the source of which was not explained.
- The Assessing Officer at the time of recording reasons for reopening the assessment mentioned that amount deposited in bank could not be verified because assessee had failed to file return of income for relevant year as same was not reflected in the IT system of Department.
- The Assessing Officer thereupon passed reassessment order making addition of

amount deposited in bank accounts to assessee's taxable income.

- The assessee filed instant appeal raising a plea that it had filed return for relevant year manually. As regards merit of the case, the assessee submitted that amount deposited in bank account represented its contractual receipts duly disclosed in return of income filed under section 44AD.

HELD

- In the instant case, the notice under section 148 in exercise of powers under section 147 has been issued after the expiry of period of four years from the end of the impugned assessment year *i.e.*, Assessment year 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year.
- The contention of the revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impugned assessment year and the same was not reflected in the IT system. *Per contra*, the assessee submitted that return of income for the assessment year 2007-08 was filed manually. It is relevant to note that the return of income so filed manually is with ITO who is the same officer who has subsequently issued the notice under section 148 and therefore, revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of reassessment proceedings and where there is no fault on the part of the assessee in filing his return of income. [Para 13]
- Interestingly, during the course of reassessment proceedings, the ITO in his reassessment order stated clearly in the return of income filed under the head business, assessee has declared income under section 44AD. It is relevant to note the said return of income was not filed in pursuance to issuance of notice under section 148 but the same was the return of income which was originally filed by the assessee under section 139 of the Act. It is therefore clear that the whole foundation of the revenue's reasoning is contradictory and self-defeating where at the time of issuance of notice under section 148, it says that the assessee has failed to file his return of income and subsequently, during the proceedings under section 147, it admits that the assessee has filed his return of income originally under section 139. On this ground itself, the assumption of jurisdiction under section 147 cannot be sustained and the subject proceedings are liable to be quashed. [Para 14]
- The reasons recorded by the ITO refers to information gathered from AIR database of the revenue department whereby certain data/information regarding purchase of units and its linkage with the assessee's saving bank account during the financial year 2006-07 has been reported by the concerned Bank. As per ITO, said information is not verifiable for the reason that assessee has failed to file its return of income for the subject assessment year as per the revenue's department IT system. The basis of formation of belief by the ITO that the assessee's income for the impugned assessment year has escaped assessment is therefore the receipt of certain AIR information from an external source *i.e.*, banking institution with which the assessee maintains his saving bank account and the fact that assessee has failed to file his return of income for the impugned assessment year. [Para 16]

- In the instant case, pursuant to receipt of AIR information from an external agency that cash has been found deposited in assessee's savings bank account, there has been no further examination by the Assessing Officer as to whether the cash so found deposited in the assessee's bank account has been reflected or has any connection with the reported turnover in the return of income so filed by the assessee. The reason for the said action on part of the Assessing Officer is not hard to found out as the Assessing Officer has concluded that the assessee has not filed any return of income after looking at the Department's IT system and without verifying the physical records maintained by the department which shows that the assessee has filed the return of income. When such a conclusion has already been reached, where is the question of examination of such information and its linkage with the return of income.
- There is a clear contradiction on part of the Assessing Officer to hold that assessee has not filed his return when the records so filed shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the Assessing Officer has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a *prima facie* opinion that income of the assessee had escaped assessment for the impugned assessment year. In absence of necessary nexus between the tangible material and formation of belief, the reassessment proceedings cannot be sustained. [Para 18]
- In light of above discussions, the jurisdiction required as provided in section 147 read with the proviso has not been fulfilled in the instant case. In the result, the reassessment proceedings are hereby quashed and set-aside. [Para 19]
- In the result, the appeal of the assessee is allowed.

CASES REFERRED TO

Harikishan Sunderlal Virmani v. *Dy. CIT* [2017] 394 ITR 146 (Guj.) (para 7), *Bir Bahadur Singh Sijwali* v. *ITO* [2015] 53 taxmann.com 366/68 SOT 197 (URO) (Delhi - Trib.) (para 8), *Gurpal Singh* v. *ITO* [2016] 71 taxmann.com 108/159 ITD 797 (Asr. - Trib.) (para 8), *Amrik Singh* v. *ITO* [2016] 70 taxmann.com 26/159 ITD 329 (Asr. - Trib.) (para 8), *Hindustan Lever Ltd.* v. *R.B. Wadker* [2004] 137 Taxman 479/268 ITR 332 (Bom.) (para 9), *CIT* v. *Indo Arab Air Services* [2015] 64 taxmann.com 257 (Delhi) (para 10) and *Sagar Enterprises* v. *Asstt. CIT* [2002] 124 Taxman 641/257 ITR 335 (Guj.) (para 11).

P.C. Sharma and **Prashant Sharma**, Advs. *for the Appellant.* **Ajay Malik** (Addl. CIT) *for the Respondent.*

ORDER

Vikram Singh Yadav, Accountant Member - This is an appeal filed by the assessee against the order of ld. CIT (A)-Jaipur dated 05.01.2017 for Assessment Year 2007-08.

2. In ground No. 1 of the appeal, the assessee has challenged the initiation of proceedings u/s. 147 of the Act for deposition of cash of Rs. 1057000 in the saving bank account during the financial year 2006-07 based on AIR Information and not filing of return of income by the assessee.

3. It was submitted by the ld. AR that the AO had initiated the reassessment proceedings only on the basis of information as per AIR which as per his presumption was not verifiable due to non appearance

of assessee's Income tax return for AY 2007-08 in the Income tax department IT system. It was submitted that the ld. AO completely ignored his own records as the return for the AY 2007-08 was already available with him as filed by the assessee manually on 21.05.2008 vide acknowledgment no. 2611000925 with ITO-6(1) Jaipur. It was submitted that the reasons to believe are de hors, vague and does not lead to formation of belief for the escapement of income on the part of the assessee. It was submitted that the reasons to believe has no nexus and live link with the escapement of income of the assessee. It was submitted that the assessee had deposited cash amounting to Rs. 10,57,000/- in bank account out of the contractual receipts duly disclosed in the return of income filed u/s. 44AD of the Act. It was submitted that the Assessing Officer has formed the belief without verifying the facts and circumstances and as such the reassessment proceedings are bad in law and without application of mind on the facts available on record.

4. It was further submitted that even the requisite sanction u/s. 151 obtained is nothing but a mechanical sanction by the higher authorities without applying their mind towards the facts of the case.

5. It was further submitted that the Assessing Officer has proceeded to reassess the income of the appellant having borrowed the satisfaction from the information generated from AIR without establishing that as to whether there was an escaped income on the part of the appellant and more so, in the facts and circumstances, when the deposited cash in bank is duly covered from the contractual receipts declared by the assessee in his return of income.

6. It was submitted that the AO has not brought on record how the cash deposit in the bank account by the assessee was in the nature of income which had escaped assessment merely on the basis of AIR information and non filing of ITR ignoring the fact that the ITR was already available with his office and the contractual receipts so disclosed in the return of income was sufficient to cover the alleged sum of Rs. 1057000/-. This was a false assumption of the part of the AO for invoking the provisions of section 147 of the Act without bringing on record as to how the cash deposit represented income which has escaped assessment.

7. In support of his contentions, the ld AR relied on the decision of Hon'ble Gujarat High Court in case of *Harikishan Sunderlal Virmani* v. *Dy. CIT* [2017] 394 ITR 146 for the legal proposition that where the information and material is received from another agency, the AO is required to consider the material on record in the case of the assessee and thereafter required to form an independent opinion that the income has escaped assessment and without forming such an opinion, solely and mechanically, relying upon the information received from other source, there could not be any reassessment.

8. Further, the ld. AR relied on the decision of Co-ordinate Bench in case of *Bir Bahadur Singh Sijwali* v. *ITO* [2015] 53 taxmann.com 366/68 SOT 197 (URO) (Delhi - Trib.) for the proposition that mere fact that deposits had been made that the bank account does not indicate that these deposits constitute income which has escaped assessment. It was submitted that following the said decision, similar view has been taken by the Co-ordinate Benches in case of *Gurpal Singh* v. *ITO* [2016] 71 taxmann.com 108/159 ITD 797 (Asr. - Trib.) and *Amrik Singh* v. *ITO* [2016] 70 taxmann.com 26/159 ITD 329 (Asr. - Trib.)

9. It was further submitted that the confirmation of account of the AO that the source of cash deposit of Rs. 10,57,000/- was unexplained by the ld. CIT (A) is based on subsequent finding of the AO during the course of assessment proceedings and not at the time of formation of belief for initiation of the proceedings u/s. 147 of the Act. It was submitted that the ld. CIT (A) has ignored the settled position of law that the reasons as recorded for re-opening the assessment were required to be examined on a standalone basis only and nothing can be added/deleted to the reasons so recorded as decided by Hon'ble Bombay High Court in the matter of *Hindustan Lever Ltd.* v. *R.B. Wadker* [2004] 137 Taxman 479/268 ITR 332.

10. The ld. AR further relied on the decision of Hon'ble Delhi High Court in case of *CIT* v. *Indo Arab Air Services* [2015] 64 taxmann.com 257 where it was held that when the Assessing Officer had received certain information from Enforcement Directorate that in books of assessee, there were huge cash deposits which were not explained, he could not reopen assessment on basis of said information alone without even examining as to whether amount in question was reflected in return filed by assessee.

11. The ld. AR has further relied on decision of Hon'ble Gujarat High Court in case of *Sagar Enterprises* v. *Asstt. CIT* [2002] 124 Taxman 641/257 ITR 335 where it was held that notice issued u/s. 148 on the basis of factually incorrect basis that the assessee had not filed its return could not be sustained even on the basis of alternative reason since it could not be said that certainty as to which factor weighted with the concerned officer when he issued the impugned notice and when the respondent authority was himself unsecure as to the year of taxability of the income which is stated to be undisclosed income.

12. The ld DR has vehemently argued the matter and relied upon the orders of the lower authorities.

13. We have heard the rival contentions and purused the material available on record. Firstly, it is noted that in the instant case, the notice under section 148 in exercise of powers under section 147 has been issued on 23.03.2014 after the expiry of period of four years from the end of the impunged assessment year i.e, AY 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year. The contention of the Revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impunged assessment year and the same was not reflected in the IT system. Per contra, the ld AR has submitted that return of income for the AY 2007-08 was filed by the assessee manually with ITO Ward 6(1) Jaipur vide acknowledgment no. 2611000925 on 21.05.2008. It is relevant to note that the return of income so filed manually is with ITO Ward 6(1) who is the same officer who has subsequently issued the notice u/s. 148 of the Act and therefore, Revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the Revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of reassessment proceedings and where there is fault on the part of the assessee in filing his return of income.

14. Interestingly, during the course of reassessment proceedings, the ITO in his reassessment order stated clearly in Para 5 that "in the return of income filed under the head Business, you have declared income of Rs. 175,510 on gross receipts of Rs. 21,93,870 u/s. 44AD." It is relevant to note the said return of income was not filed in pursuance to issuance of notice u/s. 148 but the same was the return of income which was originally filed by the assessee u/s. 139 of the Act. It is therefore clear that the whole foundation of the Revenue's reasoning is contradictory and self-defeating where at the time of issuance of notice u/s. 148, it says that the assessee has failed to file his return of income and subsequently, during the proceedings u/s. 147, it admits that the assessee has filed his return of income originally under section 139. On this ground itself, the assumption of jurisdiction u/s. 147 cannot be sustained and the subject proceedings are liable to be quashed.

15. Now, coming to the reasons which have been recorded by the ITO Ward 6(1), Jaipur for initiating proceedings u/s. 147 of the Act which are reproduced as under:

> "As per AIR information generated from the system, the assessee has made investment of Rs. 1057000/- for purchase of units and SB Account during FY 2006-07 relevant for AY 2007-08.
>
> Since as per system no return of income has been filed for A Y 2007-08 the above transaction is not verifiable. I have, therefore, reasons to believe that on account of not filing of return by the assessee, income chargeable to tax has escaped assessment. Therefore, it is requested to accord

approval for issuance of notice u/s. 148 of the Act."

16. The reasons so recorded by the ITO refers to information gathered from AIR database of the Revenue department whereby certain data/information regarding purchase of units and its linkage with the assessee's saving bank account during the financial year 2006-07 has been reported by the concerned Bank. As per ITO, said information is not verifiable for the reason that assessee has failed to file its return of income for the subject assessment year as per the Revenue's department IT system. The basis of formation of belief by the ITO that the assessee's income for the impunged assessment year has escaped assessment is therefore the receipt of certain AIR information from an external source i.e., banking institution with which the assessee maintains his saving bank account and the fact that assessee has failed to file his return of income for the impunged assessment year. In this regard, we refer to the decision of the Hon'ble Gujarat High Court in case of *Harikishan Sunderlal Virmani* (*supra*) where it was held as under:

"5.03……It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information and material received from other source, AO is required to consider the material on record in the case of the assessee and thereafter is required to form an independent opinion that the income has escaped assessment. Without forming such an opinion, solely and mechanically, relying upon the information received from other source, there could not be any reassessment for verification."

17. Similar proposition has been laid down by the Hon'ble Delhi High Court in case of *Indo Arab Air Services* (*supra*) wherein it was held as under:

"20. Keeping the above legal position in view when the cases on hand are examined, it is seen that as far as Indo Arab is concerned while the AO set out the information received from the ED, he failed to examine if that information provided the vital link to form the 'reason to believe' that income of the Assessee had escaped assessment for the AY in question. While the AO has referred to the fact that the ED gave information regarding cash deposits being found in the books of the Assessee, the AO did not state that he examined the returns filed by the Assessee for the said AY and detected that the said cash deposits were not reflected in the returns.

In fact, the AO contradicted himself in the reasons recorded by him by noticing the information of the ED to the above effect and then stating that on perusal of the records for the AY in question it was noticed that the Assessee "had not disclosed these transactions in its books of account." Further the AO refers to the ED's information that Mr. Chetan Gupta, partner of the Assessee, failed to explain the sources of the cash deposits as shown in the books of account. However, that by itself could not have led the AO to even prima facie conclude that income of the Assessee had escaped assessment. The explanation or the lack of it of the entries in the books of account may have certain relevance as far as ED is concerned but that by itself does not provide the vital link for concluding that for the purposes of the Act any part of cash deposits constituted income that had escaped assessment. There is a long distance to travel between a suspicion that income had escaped assessment and forming reasons to believe that income had escaped assessment. While the law does not require the AO to form a definite opinion by conducting any detailed investigation regarding the escapement of income from assessment, it certainly does require him to form a prima facie opinion based on tangible material which provides the nexus or the link to having reason to believe that income has escaped assessment."

18. In the instant case, pursuant to receipt of AIR information from an external agency that cash has been found deposited in assessee's savings bank account, there has been no further examination by the AO as to whether the cash so found deposited in the assessee's bank account has been reflected or has any connection with the reported turnover in the return of income so filed by the assessee. The reason

for the said action on part of the AO is not hard to found out as the AO has concluded that the assessee has not filed any return of income after looking at the Department's IT system and without verifying the physical records maintained by the department which shows that the assessee has filed the return of income. When such a conclusion has already been reached, where is the question of examination of such information and its linkage with the return of income. As we have noted above, there is a clear contradiction on part of the AO to hold that assessee has not filed his return when the records so filed before us shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the AO has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a prima facie opinion that income of the assessee had escaped assessment for the impunged assessment year. In absence of necessary nexus between the tangible material and formation of belief, the reassessment proceedings cannot be sustained in the instant case.

19. In light of above discussions, we are of the view that the jurisdictional required as provided in section 147 read with the proviso has not been fulfilled in the instant case. In the result, the reassessment proceedings are hereby quashed and set-aside. In the result, ground no. 1 of the assessee's appeal is allowed.

20. Having decided the jurisdiction issue as above, we do not think it would be relevant and necessary to examine the grounds and contentions on merit. Hence, rest all grounds are not adjudicated upon and the same are dismissed as infructious.

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

sunil

---

*In favour of assessee.