

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 90/JP/2020  
Assessment Year: 2011-12

AVG Construction Pvt. Ltd., 1 <sup>st</sup> Floor, Trade Center No. 10, Opp. JP Underpass, Sahkar Marg, Lal Kothi, Jaipur.	बनाम Vs.	I.T.O. Ward-6(2), Jaipur.
PAN No.: AADCA 2264 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashok Kr. Gupta (Adv)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/08/2021  
उदघोषणा की तारीख / Date of Pronouncement : 02/09/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Jaipur dated 13/12/2019 for the A.Y. 2011-12. In this appeal, the assessee has only challenged ground No. 4 before us, which reads as under:

- “4. The addition made on other issues which were different from the issues on which reassessment proceedings initiated;  
The Id. CIT(A) has grossly erred in confirming the action of Ld. AO in making additions in respect of issues in respect of which proceedings were not initiated and no additions were made on the issues on which re-assessment proceedings were initiated.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Apart from ground No. 4 of the appeal, the Id. AR appearing on behalf of the assessee has not raised or pressed arguments on any of other grounds or any other application so moved or pending before us, therefore, in this eventuality, we dismiss all the grounds except ground No. 4 or applications so filed or raised by the assessee as not pressed.

4. Ground No. 4 raised by the assessee relates to challenging the order of Id. CIT(A) in confirming the action of the A.O. in making additions in respect of issues in respect of which proceedings were not initiated and no additions were made on issues on which reassessment proceeding were initiated. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

- "1. Appellant is a corporate (company) assessee incorporated on 07.09.2000, having the main object of purchase, construction and sale of residential flats i.e. Assessee Company is a Builder.*
- 2. The assessee is an income tax assessee since its incorporation and filling their income tax return regularly*

*and continuously and discharged their income tax liability. The assessee had filed their ITR for the A.Y. 2011-12 by declaring total income as Rs. 24180/- on dated 21.09.2011 vide Acknowledgement Number 28810503120911 voluntarily Annexed at Page no. 31-39 of PB-I,*

- 3. The Questioned matter was triggered through an information calling from Income Tax Department in form of Notice u/s 133(6) of IT Act, whereas sought an information regarding a sale of immovable property at Rs. 7,00,000/- valued u/s 50C at Rs. 728230/- and sale at 11,00,000/- valued at 12,00,064/- which was duly replied supported with copies of registered sale deed along with other supporting financial documents existed on Page No. 41-42 of PB-1.*
- 4. Subsequently Notice Under Section 148 issued on dated 30.03.2018 Annexed at Page No. 43 of PB-I which was sufficiently replied on dated 17.05.2018 and asked to provide "reasons recorded" annexed at Page no. 44 of PB-I.*
- 5. Accordingly, reasons have been supplied with the Notice u/s 142(1) mentioning show cause notice, on dated 22.11.2018 annexed at Page No. 45 and 46 of PB-I along with Notice u/s 143(2) Annexed at Page No. 47 of PB-I.*
- 6. Show Cause Notice and Queries of Notice U/s 142(1) have been sufficiently replied through letter dated 29.11.2018 existed at Page 49 of PB-I, describing Gross Receipts of the assessee appellant for the year under questioned as*

*shown in audited financial statement on page no. 35 of Paper Book-I named Trading and Profit and Loss Account, Rs. 96,07,000/- have been shown receipts from Sale of Flats represented various immovable properties had held as stock in trade (Goods) including two of such properties on which behalf reasons have been recorded namely sales value of Rs. 11,00,000/- valued u/s 50C is 12,00,064/- and sales value of Rs. 19,51,000/- valued u/s 500 is 21,83,258/- which copies of registration deed existed on page no. 62 of PB-I and page no. 110 of PB-II respectively.*

*Thereby by this reply it has been established that questioned transaction of immovable properties have been sufficiently included under the "Sale of Flats" head as represented under Trading and Profit And Loss Account as part of Audited Financial Statement. Henceforth the issue on which basis the matter was reopened has been sufficiently explained and sorted out.*

- 7. Another show cause notice has been issued on dated 10.12.2018 existed at Page No. 48 of PB-I specifying a different issue which is neither directly nor indirectly connected to the issues on which behalf the matter was re-opened. Means there by such new issue is related to Expenses side while first issue was related to Income side.*
- 8. These new issues were related to Labor charges claimed of Rs.18,00,000/- and Administration Charges of Rs. 498200/- and alleged that supporting evidences could not have been produced before the Ld. AO which*

*were sufficiently replied with all evidences including ledger account and bank statements which are tagged at page No. 97-109 of PB-I.*

9. *Considering such supporting the Ld. AO made lump sum addition of Rs. 10,00,000/- stating the reasons for not accepting the claims of the assessee appellant through their verdicts at Para No.2 of Page No. 2 of assessment order existed at Page No. 30 of PB-I."*

The contents of the written submissions filed before the Id. CIT(A) is reproduced as under:

*"2.1 From perusal of the reasons recorded (PB: 5) it is submitted that the notice issued u/s 148 is void and therefore complete proceedings are bad in law. The reasons, evidently, are recorded in most mechanical manner due to the following defects:*

*2.1.1 While forming the belief that income has escaped assessment Id. AO believed that there was failure on part of the assessee to disclose fully and truly all material facts. It is submitted that the proviso to section 147 is applicable only when the assessment u/s 143(3) or section 148 has taken place prior to such formation of belief of escapement of income. Thus, invoking of the first proviso indicates mechanical reopening without proper analysis of facts and law.*

*2.1.2 It is pertinent to note that in the reasons recorded for issuing notice u/s 148, AO mentioned as under IPB:5]:*

*"It was.....Act, 1961."*

*It is not clear from the above reasons recorded by AO that Whether the provisions of explanation 2(a) or 2(b) of section 147 are applicable or both the sections are applicable", Id. AO had written "escaped assessment within the meaning of section 147". It is submitted that explanation =2(R) contains the situation where no return of income was furnished by the assessee. In the present case the assessee had, well within the time, furnished his return of income [P8:6] which is evident from AO Page 2 and, therefore, explanation 2(a) does not apply on the assessee. In view of above it will be apt to hold that Id. AO had no clarity under which scenario he is reopening the assessment.*

*2.2 From perusal of the assessment order,IPB:1-2], it is clearly mentioned that no addition was made by the Id. AO on the ground of reasons recorded and AO believed that income is escaped assessment. The assessment u/s 147 is void and complete proceedings are bad in law. 'The assessment, evidently, done in most mechanical manner due to the following defects:*

*2.2.1 We reproduced the provisions of section 147, on that basis AO believes the income escaped assessment:-*

*"If the..... Assessment year) :"*

*the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with*

*respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment and which has come to his notice subsequently, in the course of proceedings under section 147.*

*2.2.2 We further submits, that the bare reading of the language of section 147, rather makes it clear, that of course the sine qua non for assumption of jurisdiction is, that the AO should have a reason to believe, that any income chargeable to tax, has escaped assessment, for any assessment year, and on such jurisdiction coming into existence, he is to proceed under that section, but then, he is to assess or reassess "such income", obviously the income, regarding which he has "reason to believe" to have escaped assessment, for any assessment year, and while so assessing, such "income" of course may make assessment with respect to other income, which also may have escaped, and which comes to his notice subsequently, in the course of the proceedings, but then, if while exercising powers under section 147, the AO comes to conclusion, that the income, with respect to which he has entertained "reason to believe" to have escaped assessment, did not escape, or that it was not liable to tax, then merely because he had initiated proceedings, would not confer on him the continued jurisdiction, to assess the other incomes, which have come to his notice subsequently, in the course of proceedings, to have escaped assessment. In the present case, since the "reason to believe" entertained by the AC) was, with respect to the assessee having assessee made immovable property sale transaction wherein liability to pay capital gain u/s 50C arises. As per records, the assessee has sold immovable properties of Rs. 11,00,000/- and Rs.*

*19,51,000/-, which have been valued at Rs. 12,00,064/- and Rs. 21,83,258/- respectively for the purpose of stamp duty valuation by the Sub-Registrar, while it has been found, that section 50C is not applicable in the present case, and it was clearly established, and the AC) himself also found the same has been explained by the assessee, that being the position, the jurisdiction commenced, came to an end, at that point itself, and did not confer any jurisdiction on the AO, to further continue with the assessment proceedings, simply because, he was of the opinion, that other escaped income had come to his notice, subsequently, in the course of the proceedings.*

The Id AR has relied on the following judicial pronouncements:

- (i) CIT Vs Atlas Cycle Industries (1989) 180 ITR 319
- (ii) CIT Vs Ram Singh (2008) 306 ITR 343 (Raj)
- (iii) CIT Vs Jet Airways (I) Limited (2011) 331 ITR 236 (Bom)
- (iv) Ranbaxy Laboratories Ltd. Vs CIT (2011) 336 ITR 136 (Delhi)
- (v) M/s Prime Chem Oil Limited Vs ACIT (2018) 209 ITR 309
- (vi) Torm Shipping India (P) Ltd. Vs ITO ITA No. 1272 & 1273/Mum/2013 (2017) 183 All India TTJ 145
- (vii) ACIT Vs M.K. Exim (India) Ltd. ITA No. 410/JP/2010 (2015) 173 All India TTJ 377



(viii) Shri Shambhu Dayal Sarraf Vs ITO ITA No. 558/JP/2013 order dated 02/07/2018.

5. On the other hand, the Id DR has relied on the orders of the revenue authorities. She has relied on the following judicial pronouncements:

- (i) Majinder Singh Kang Vs CIT (2012) 25 taxmann. Com 124 (P&H)
- (ii) CIT Vs Mehak Finvest (P) Ltd. (2014) 52 taxmann.com 51 (P&H)
- (iii) N. Govindaraju Vs ITO (2015) 60 taxmann.com 333 (Kar.)

6. We have considered the rival contentions and carefully perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per the facts of the present case, we noticed that the assessee derived income from purchase, construction and sale of residential flats. The assessee filed its return of income declaring total income of Rs. 24,180/-. The case of the assessee was reopened U/s 148 of the Income Tax Act, 1961 (in short, the Act) on the basis of information that the assessee had made immovable properties transactions. Thereafter the A.O. completed the assessment U/s 143(3) r.w.s. 147 of the

Act on 17/12/2018 determining total income of the assessee at Rs. 10,24,180/- by making addition of Rs. 10,00,000/-. The Id. CIT(A) has restricted the addition to Rs. 5,00,000/-.

7. We observed from perusal of record that while forming the belief that income has escaped assessment the AO believed that there was failure on part of the assessee to disclose fully and truly all material facts. It is submitted that the proviso to Section 147 is applicable only when the assessment u/s 143(3) or section 148 has taken place prior to such formation of belief of escapement of income. It is pertinent to mention here that in the reasons recorded for issuing notice u/s 148, AO mentioned as under:

*"It was gathered that the assessee made immovable property sale transaction wherein liability to pay capital gain u/s 50C arises. As per records, the assessee has sold immovable properties of Rs. 11,00,000/- and Rs. 19,51,000/-, which have been valued at Rs. 12,00,064/- and Rs. 21,83,258/-respectively for the purpose of stamp duty valuation by the Sub-Registrar. Further, on perusal of the Trading & Profit and Loss Account, the sale of flats of Rs. 96,07,000/- were shown but the details of sale of immovable properties has not been furnished. Thus, I have reason to believe that the income of Rs. 33,83,322/- has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961."*

From perusal of the reasons recorded, we noticed that whether the provisions of explanation 2(a) or 2(b) of section 147 are applicable or

both the sections are applicable". The AO had written "escaped assessment within the meaning of section 147". The explanation 2(a) contains the situation where no return of income was furnished by the assessee. In the present case the assessee furnished his return of income, which is evident from assessment order page No. 2, therefore, provisions of explanation 2(a) of Section 147 of the Act does not apply on the assessee.

8. We also observed that no addition was made by the AO on the ground of reasons recorded and AO believed that income is escaped assessment. For ready reference, we reproduce Section 147 of the Act as under:

*"If the [Assessing] Officer, [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, **assess or reassess such income and also** any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :"*

The above provisions interprets the aspect of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assess or

reassess any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment and which has come to his notice subsequently, in the course of proceedings under section 147 of the Act.

9. From bare reading of the language of section 147 of the Act, rather makes it clear that of course the sine qua non for assumption of jurisdiction is, that the AO should have a reason to believe, that any income chargeable to tax, has escaped assessment, for any assessment year, and on such jurisdiction coming into existence, he is to proceed under that section, but then, he is to assess or reassess "such income", obviously the income, regarding which he has 'reason to believe" to have escaped assessment, for any assessment year, and while so assessing, such "income" of course may make assessment with respect to other income, which also may have escaped, and which comes to his notice subsequently, in the course of the proceedings, but then, if while exercising powers under section 147, the AO comes to conclusion that the income, with respect to which he has entertained "reason to believe" to have escaped assessment, did not escape, or that it was not liable to tax, then merely because he had initiated proceedings, would

not confer on him the continued jurisdiction, to assess the other incomes, which have come to his notice subsequently, in the course of proceedings, to have escaped assessment. In the present case, since the "reason to believe" entertained by the AO was with respect to the assessee having assessee made immovable property sale transaction wherein liability to pay capital gain u/s 50C arises. As per records, the assessee had sold immovable properties of Rs. 11,00,000/- and Rs. 19,51,000/-, which have been valued at Rs. 12,00,064/- and Rs. 21,83,258/- respectively for the purpose of stamp duty valuation by the Sub-Registrar, while it has been found that section 50C is not applicable in the present case and it was clearly established and the AO himself also found the same has been explained by the assessee, that being the position, the jurisdiction commenced, came to an end, at that point itself and did not confer any jurisdiction on the AO to further continue with the assessment proceedings, simply because, he was of the opinion, that other escaped income had come to his notice, subsequently, in the course of the proceedings. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of **Bankipur Club Ltd. vs. CIT (1971) 82 ITR 831 (SC)** wherein it was held that:

*"This court has repeatedly ruled that the information referred to in section 34(1)(b) must be what the Income-tax Officer receives after he makes the original order of*

*assessment. It must come to his knowledge subsequent to the assessment sought to be reopened. In these cases it is submitted that all the facts were placed before the Income-tax Officer when he passed the original orders of assessment. The fact that the club had received certain amounts as guest charges from its members had been placed before the Income-tax Officer. It is not the case of the Income-tax Officer that he did not come to know all the relevant facts when he made the original orders of assessment. It is also not his case that at the time he made those orders he was not aware of the true legal position. It was for the Income-tax Officer to show that he had received some information subsequent to his passing the original orders of assessment. No such material was placed before the Tribunal. That being so, the Tribunal, in our opinion, was right in holding that the Income-tax Officer was incompetent to initiate proceedings under section 34(1)(b). The High Court has given no reason to come to the conclusion that there was any subsequent information, on the basis of which the Income-tax Officer could have reassessed the assessee under section 34(1)(b)."*

The Hon'ble Jurisdictional Rajasthan High Court in the case of **Commissioner of Income-tax v. Shri Ram Singh (Raj-HC)2008, 306 ITR 343** wherein it was held that:

**"32.** *The result of the aforesaid discussion is that the question framed, in the order dated 23rd May, 2006, is required to be, and is, answered in the manner, that the Tribunal was not justified in holding, that the proceedings for reassessment under section 148/147 were initiated by the AO, on non-existing facts because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the AO was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with*

*respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.*

We also draw strength from the decision of Hon'ble Bombay High Court in the case of CIT Vs Jet airways (I.) Ltd. 331 ITR 236 (Bom) wherein the Hon'ble Court has held as under:

**"16.** *Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to*

*do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.*

- 17.** *We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field."*

Considering the totality of facts and circumstances of the case, submissions of the parties as well as the judicial pronouncements referred in this regard, we are of the view that on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that



income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. Therefore, we found merit in the contention of the Id. AR and the case

laws relied upon by the Id DR are not applicable in the case of the assessee, therefore, we quash the proceedings initiated U/s 147 of the Act.

10. In the result, this appeal of the assessee stands allowed partly.

Order pronounced in the open court on 02<sup>nd</sup> September, 2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/09/2021

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- AVG Construction Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-6(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 90/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar