

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 210/VIZ/2020  
(Asst. Year : 2011-12)**

Kasapu Ramesh Babu,  
D.No. 10-38-9, Ramnagar,  
Visakhapatnam.

Vs. ITO, Ward-1(4)  
Visakhapatnam.

PAN No. AUKPK 6318 B  
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, CA.  
Department by : Shri B.Satyanarayana Raju, Sr.DR

Date of hearing : 02/02/2021.  
Date of pronouncement: 12/02/2021.

**ORDER**

**PER N.K. CHOUDHRY, JUDICIAL MEMBER**

This appeal has been preferred by the assessee against the order dated 21/09/2020 impugned herein passed by the Id.CIT(A)-1, Visakhapatnam u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2011-12.

**2.** Brief facts of the case are that the Assessee being an individual filed his return of income for the assessment year under consideration by declaring 'NIL' income on 31/07/2018 in pursuance to the notice issued u/sec. 148 of the Act. The AO completed the assessment u/sec. 143(3) r.w.s. 147 and made the addition of Rs. 24,40,160/- and 2,45,130/- qua bank deposits and ICICI credit card payments respectively.

**3.** Being aggrieved, the Assessee preferred first appeal before the Id. CIT(A), who while holding the proceedings u/s 147 of the Act as valid, partly sustained the assessment order by deleting the additions of Rs. 12,20,080/- (out of Rs. 24,40,1601/-) and Rs.2,45,130/- in respect of bank deposits and credit card payments respectively.

**4.** The Assessee challenged the impugned order before this Tribunal by raising the following grounds of appeal:-

- “1. That under the facts and circumstances of the case the additions made by the AO (in short ‘AO’), vide orders passed u/s. 143(3) r.w.s. 147 of IT Act, that to the extent sustained partly by the Id. CIT(A) (in short ‘CIT(A)’), are against the facts of the case and provisions of law.*
- 2. The Id. CIT(A) is not correct in dismissing the ground when the assessee challenged that the notice issued u/sec. 148 of the I.T. Act is not valid in the eyes of the law, therefore the consequential assessment is bad in law.*
- 3. The Id. CIT(A) could not have summarily concluded and dismissed the ground pertaining to the validity of issue of notice u/sec. 148 and the consequential order passed u/sec. 143(3) r.w.s.147 of the I.T. Act when the assessee challenged that the AO has not material at his disposal construed that he has reason to believe that income chargeable to tax has escaped assessment.*
- 4. The Id. CIT(A) is not correct in sustaining the addition to the extent of Rs. 12,20,080/-, pertaining to the deposits in the bank account no.5307 with HDFC, considering the facts of the case and the submissions made in this regard.*
- 5. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the orders passed u/sec. 143(3) of the I.T. Act are to be quashed in the interest of justice.”*

**5.** At the outset, it was submitted by the Ld. AR that before going through the order on merit, it is essential to go through the reasons recorded in re-opening of the assessment proceedings. The Assessee has raised the legal issue which requires to be addressed first, hence we considered it appropriate to decide the legal issue first.

**6.** Having heard the parties and considered the material available on record. The Assessee has raised the issue that the proceedings u/s 147 in the instant case have been initiated on the basis of suspicion and there was absolutely no material on record, by which it can be said that there was any reason(s) to believe before the AO qua escapement of income. On the contrary the Ld. Sr. DR refuted the claim of the Assessee and supported the reopening of case as valid.

**7.** The reasons recorded u/sec.147 on 27/08/2018 by the AO are reproduced herein (rearranged by Bench for better appreciation) for the sake of brevity and ready reference:-

*“As per the data available in ITS view under CIB data, the assessee has made deposits to the tune of Rs. 24,40,160/- in the Nationalized Bank during the financial year 2010-11 relevant to the assessment year 2011-12 and the assessee has not filed any return of income for the A.Y. 2011-12.*

*In view of the above, it is opined that the sources of income for the deposits made by the assessee during the F.Y. 2010-11 are to be verified.*

*Therefore, I have reason to believe that, income of Rs. 24,40,160/- chargeable to tax has escaped assessment within the meaning of section 147 of the I.T.Act, 1961.*

*In your case the time deposit and draft deposit of above one lakh its ICICI Bank from April 2010 to September 2010.”*

**8.** In response to the reasons recorded, the Assessee filed his reply by mentioning the following facts:

“Sir,

*As per the letter issued dated 27/08/2018, Letter No. ITBA/AST/F/17/2018-19/10111802113(1), it's been mentioned that there have been deposits to the tune of Rs. 24,40,160/- in my bank accounts.*

*To the best of my knowledge, I am completely unaware and had any clue of any such deposits being made by me in any of my accounts. Also, it's been mentioned that time deposit and draft deposit of above one lakh are there in ICICI Bank. To the best of my knowledge I don't have an account with ICICI Bank.*

*Kindly provide me further details, like bank name & account number with clarity which could enable me to help you with more accurate info from my side.*

*Kindly do the needful.*

*Regards,*

*Ramesh Babu Kasapu.*

*AUKPK6318B”*

**9.** In the reasons recorded dated 27/08/2018, the AO has alleged that as per the data available in ITS view under CIB data, the Assessee had made deposits to the tune of Rs. 24,40,160/- in the Nationalised Bank during the F.Y. 2010-11, against which Assessee has not filed any return of income for the A.Y. 2011-12. Further, AO opined that the source of income for the deposits made by the Assessee during the F.Y. 2010-11 are to be verified. Therefore, he has a reason to believe that income of Rs.24,40,160/- is chargeable to tax has escaped assessment within the meaning of section 147 of the Act. The AO further alleged that the time deposit and draft deposit of above one lakh its (*in*) ICICI Bank from April 2010 to September 2010.

**10.** Whereas, the Assessee has claimed that as per the best of his knowledge he is completely unaware and had any clue of any such deposits being made by him in any of his accounts. The Assessee further claimed that to the best of his knowledge, he doesn't have any account with ICICI bank and therefore requested to provide further

details like bank name and account number with clarity which could enable him to help with more accurate information from his side.

**11.** Subsequently, the AO issued letter dated 28/12/2018 and referred HDFC bank account Nos. 12431000005307 & 00421020003931. The AO further had shown some amounts more than Rs. One lakh stands to be deposited in the unknown account having PAN number of the Assessee as AUKPK6318B. The Assessee replied the said letter and refuted the claim of the AO.

**12.** Let us to peruse the relevant provisions of law:

"147. *If the AO has reason to believe that any income chargeable to tax has escaped assessment for any A.Y., 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 proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the a.y. concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Provided that where an assessment under subsection (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.*

*Explanation 1.- Production before the assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

*Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment namely:-*

*(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax.*

- (b) *Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the assessing officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.*
- (c) *Where an assessment has been made, but-*
- (i) *income chargeable to tax has been under assessed; or*
  - (ii) *such income has been assessed at too low a rate; or*
  - (iii) *such income has been made the subject of excessive relief under this act; or*
  - (iv) *excessive loss or depreciation allowance or any other allowance under this act has been computed."*

**13.** The law on the provisions of section 147 is very clear. Section 147 authorizes the Assessing Officer to assess or re-assess the income if he has reason to believe that such income chargeable to tax has escaped assessment and has duly recorded the reasons. It is also well settled that the reasons to believe must be bona fide and based upon relevant material on which a person could have formed the reasonable belief.

**14.** We have analysed the facts and circumstances of the case. It is settled law that the reasons recorded for issuing notice u/sec. 148 of the Act is a foundation of a case to be launched against the Assessee. In the present case, the first part is only information and the second part of the so-called reasons is mere an opinion and third part mentioned is a reason to believe and fourth part seems to be factual position qua deposit of amount, but without verification.

From the reasons recorded it further shows that the AO at the initial stage in the reasons recorded narrated that as per the data available in ITS view, the Assessee has made deposits to the tune of Rs. 24,40,160/- in the Nationalised Bank during the F.Y. 2010-11, however in last para it has been mentioned that in Assessee's case, the time deposit and draft deposit of above one lakh in ICICI Bank from April

2010 to September 2010. However, while making the addition the AO came to a conclusion that the Assessee has made deposits in bank without specifying the name of bank. The mind of the AO was not clear as to whether the Assessee has deposited the amount in the Nationalised Bank or ICICI Bank. If one part of the reasons recorded treated as true to the effect that the Assessee has made certain deposits in the Nationalised Bank, then the ICICI or HDFC bank cannot be considered as Nationalised Bank. However, in the last line, the AO has stated that Assessee has made certain deposits in ICICI bank and later on in letter dated 28/12/2018 referred HDFC bank account Nos. 12431000005307 & 00421020003931. Whereas ultimately in the assessment order, made the addition of Rs. 24,40,160/- without specifying the bank name.

It nowhere reflects that the Assessing officer has ever applied his own mind and independently arrived at a belief that on the basis of the material which he had before him, income had escaped assessment and made any exercise to find out the real controversy and/or material to substantiate the initiation of process u/s 147 of the Act and ever incorporated the material before re-opening the assessment and satisfied himself before issuing the notice u/s 148 of the Act. It is clear that the Assessing Officer failed to make any exercise for reopening of the case independently and with corroborative material. The reasons recorded cannot be a vague and there is lot of difference between reasons to believe and reasons to suspect. The reasons to believe must form an definite base and has to be considered in sanctity.

**15.** Punjab and Haryana High Court in the case of Commissioner of Income Tax vs. Smt. Pramjit Kaur [2009] 311 ITR 38 (P&H) while analyzing the reasons recorded, held as under :-

*“7. It is undisputed that the Assessing Officer had initiated reassessment proceedings on the basis of information received from the survey circle that the assessee had got prepared a demand draft for a sum of Rs.83,040 which was not accounted in the books of account of the assessee. The Assessing Officer had not examined and corroborated the information received from the survey circle before recording his own satisfaction of escaped income and initiating reassessment proceedings. The Assessing Officer had thus acted only on the basis of suspicion and it cannot be said that the same was based on the belief that the income chargeable to tax had escaped income. The Assessing Officer has to act on the basis of " **reasons to believe**" and not on " **reasons to suspect**". The Tribunal had, thus, rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and, therefore, the issuance of notice under s. 148 of the Act for reassessment proceedings was not valid.”*

**16.** The Hon'ble High Court has held that the Assessing Officer has to act on the basis of "**reasons to believe**" and not on "**reasons to suspect**". In the instant case, the initiation of proceedings u/s 147 of the Act are based upon no evidence and/or un-corroborative material. The Assessing Officer further failed to establish the nexus with the reasons recorded and alleged material available with the AO before initiation of proceedings and Bank Statements later received and got verified by the AO and/or produced by the Assessee. In our considered view, the competent authority is also required to indicate some link or nexus with the material available, while recording reasons for belief that the amount acquired is chargeable to tax has escaped the assessment, which in this case the AO failed to establish. Even the Ld. CIT(A) was absolutely unjustified in upholding the reopening of the assessment u/s 147 of the Act, without appreciating the facts of the case, explanation submitted and evidences placed on record judiciously.

**17.** In cumulative effect on the aforesaid analyzations, observations and peculiar facts and circumstances, we do not have any hesitation to



hold that the proceedings u/s 147 of the Act itself are vague, consequently the assessment order is liable to be quashed, hence ordered accordingly. Resultantly the order under challenge is set aside.

**18.** As we have already quashed the assessment order and set aside the order under challenge, therefore do not consider it appropriate to travel to the other issue(s) raised by the Assessee which in our considered opinion shall be academic exercise only.

**19.** In the result, appeal filed by the Assessee stands allowed.

Order Pronounced in open Court on this 12<sup>th</sup> day of Feb., 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(N.K. CHOUDHRY)**  
Judicial Member

**Dated: 12<sup>th</sup> February, 2021.**

**vr/-**

Copy to:

1. The Assessee - Kasapu Ramesh Babu, D.No. 10-38-9, Ramnagar, Visakhapatnam.
2. The Revenue - ITO, Ward-1(4), Visakhapatnam.
3. The Pr.CIT-1, Visakhapatnam.
4. The CIT(A)-1, Visakhapatnam.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.