

C.D. Singh Vs. Ito

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Court : Allahabad

Decided On : Apr-16-2000

Reported in : (2002)77TTJ(All)282

Appeal No. : ITA Nos. 568 to 571/All/1999 16 April 2000 A.Y. 1992-93 to 1995-96

Appellant : C.D. Singh

Respondent : ito

Advocate for Pet/Ap. : S.K. Garg, *for the Assessee* B. Dogra, *for the Revenue*

Judgement :

ORDER

By the Bench

In these four appeals the assessee has, in addition to challenging the consolidated order of the Commissioner (Appeals) with respect to various additions and findings on merits including as to whether income included in assessee's assessments did belong to assessee or the Hindu undivided family styled as M/s Ram Dihal & Sons (HUF), Jaunpur, has challenged the very validity of initiation of the proceeding under section 147 of the Income Tax Act, 1961 (hereinafter referred to as Act), by way of following grounds.

Ground No. 1.1

Because the learned Commissioner (Appeals) has erred in law and on facts in upholding the validity of action under section 147 and the assessment made thereunder.

Ground No. 1.2

Because there existed no material which could lead to the 'formation of belief' that as far as the appellant was concerned, his income had escaped assessment within the meaning of section 147 of the Act, and consequently the initiation of proceedings thereunder as also the assessment made in pursuance thereof are void ab initio.

2. The grounds on merits, except nature and quantum of various additions, numbered as ground Nos. 2 to 12 are also common, Ground No. 13 is of general nature, which requires no separate adjudication.

3.1. These appeals were heard for the first time on 1-2-2001, when the assessee challenging the validity of initiation of proceedings under section 147 of the Act and the consequential actions including the assessment dated 31-3-1998, for all the four years by submitting that :

(i) The mandatory requirement of recording of the reasons as envisaged by the provisions of section 148 of the Act has not been met with because, no reason had been recorded before issuing notice under section 148 of the Act.

(ii) Notices under section 148 had not been served on the assessee.

3.2. The assessee's counsel reserving his right to make submissions against the validity of the reasons, if recorded (because the copy of the same had not been furnished to the assessee), further submitted that there was no material or information with the Income Tax Officer which could led him to form his belief or on the basis of which he could have reasons to believe that assessee's any income chargeable to tax for or any of these assessment years had escaped assessment. In support of his submissions the counsel relied on the decisions in following cases :

(a) Sheonath Singh v. Appellate Assistant Commissioner : [1971]82ITR147(SC) ;

(b) ITO v. Lakhmani Mawal Das : [1976]103ITR437(SC) ;

(c) Ganga Saran & Sons (P) Ltd. v. ITO : [1981]130ITR1(SC) ; and

(d) K. M. Bansal v. CIT : [1992]195ITR247(All) .

4. The learned Departmental Representative, on the other hand, supported the order of the Commissioner (Appeals) on the ground that the proceedings under section 147 of the Act were validly initiated by meeting the mandatory requirements with respect to recording of reasons and service of the notices under section 148 of the Act.

Since the assessee had not been supplied a copy of the reasons, if any recorded, the learned Departmental Representative was directed to furnish the copies of reasons recorded and also to provide a copy of the same to the assessee.

5.1. Since the learned Departmental Representative was having the assessee's assessment records with him, he was prompt in providing two sets of photocopies of order-sheets and the notices under section 148 of the Act, for all these four assessment years to the Bench and one set to the assessee's counsel Mr. S.K. Garg, advocate. Originals were produced before the Bench for verifying the authenticity of the photocopies. After verification the photocopies were found to be correct.

6. The assessee's counsel after going through the entry dated 16-1-1997, on the order sheets, which is common for all four assessment years, wanted to make further submissions with respect to the issue as to whether this entry amounted to the recording of reasons as envisaged in the provisions of section 148(2) of the Act or not and since, this entry referred to 'the receipt of information from the Asstt. DIT(Inv.), Allahabad, vide his letter F. No. Asstt. DIT(Inv.), Allahabad, December, 1996, received through Addl. CIT, Allahabad range, Allahabad, to the Income Tax Officer, Ward-1, Mirzapur, who had transmitted the same to Income Tax Officer, Ward-2, Mirzapur', the counsel for the assessee pleaded that for enabling him to make proper submissions a copy of Asstt. DIT(Inv.), Allahabad's letter under

reference may also be provided. According to him the entry dated 16-1-1997, on the order-sheets, by itself, does not amount to 'the reasons recorded' because, it does not refer to any definite material for arriving at the belief or to have reasons to believe that income chargeable to tax had escaped assessment.

7.1. On this, the learned Senior Departmental Representative was directed to provide copies of relevant letters (referred in the order-sheets entry dated 16-1-1997) to the Bench as well as to the counsel for the assessee before the next date of hearing and the parties were left free to make further arguments on the validity of initiation of the proceedings under section 147 of the Act.

7.2. The learned Senior Departmental Representative furnished the certified photocopies of letter F. No. Addl. DIT(Inv.)/Ahd/1995-96.1131 issued by Addl. DIT(Inv.), Allahabad on 20-12-1995, and letter F.No. Asstt. DIT(Inv.)/Ahd/1133, dated 14-12-1995 issued by Asstt. DIT(Inv.) Allahabad.

8. The parties were finally heard on 15-3-2001.

9.1. Assessee's counsel Sh. S.K. Garg, advocate, after referring to order-sheets entry dated 16-1-1997 (common for all the four assessment years) and letter of Asstt. DIT(Inv.), Allahabad, and Asstt. DIT(Inv.), Allahabad dated 20-12-1995, and 14-12-1995, respectively, submitted that the report of the Asstt. DIT(Inv.), does not give any conclusive or definite finding as to whether there has been escapement of any income from assessment or as to which income had escaped assessment. Relying on the observations of Addl. DIT(Inv.) in para 3 of his order and of Addl. DIT (Inv). in last para of his letter, Shri S.K. Garg submitted that both these authorities had just advised or directed the Income Tax Officer having jurisdiction over the appellant's case to thoroughly scrutinise the case of the appellant, case of M/s Guru Nanak Service Station, case of M/s R.K Traders and case of M/s Ram Dihal & Sons with respect to the source of the investment and its nexus with the appellant in the relevant assessment years. According to the learned counsel these directions/advises are nothing but the directions were making roving enquiries on the points listed in the tax evasion partition and subsequently, investigated by the Addl. DIT(Inv.). According to him since the Asstt. DIT(Inv.) had also not reached any definite or conclusive conclusion as to whom the various

alleged investments/income relates and also as to in whose hands in income, if there was any, was to be taxed and also with respect to what income and from which source was taxable and if which source was taxable and if taxable (sic) as to in whose hands.

The counsel, therefore, submitted that the reports of the Addl. DIT(Inv.) as well as the Addl. DIT(Inv.) do not refer to any definite income or to definite escapement. In other words, the counsel submitted that the reports instead of giving definite findings as to the escapement of income from assessment and also as to the hands in which the same could be taxed, have simply recommend the roving enquiries on the points mentioned therein while completing the assessment of various parties one of whom happens to be the present appellant.

9.2. On the basis of above analysis of the details of two letters (supra) the learned counsel submitted that none of these can be said to be an information or material so as to lead the Income Tax Officer to entertain a definite belief or to have 'reasons to believe' that any income for any of the four assessment years had escaped assessment.

9.3. The counsel further submitted that since the Income Tax Officer, before issuing the notices under section 148, had not made any kind of enquiry, the proceedings under section 147 have been initiated simply for making roving enquiries, and on the basis of mere suspicion, which is not permitted in law.

9.4. The counsel further submitted that it is also settled law that there must be live link between the reasons/material/formation of belief, but the same is lacking in the present case. It is not any and every material however vague and indefinite or distant, remote and far-fetched, which would warrant the formation of belief relating to the escapement of income of the assessee from assessment and if there is no rational and intelligible nexus between the reasons and the belief, the inescapable conclusion would be that the Income Tax Officer could not have reasons to believe and in such a case the notice issued under section 148 would be liable to be struck down as invalid.

9.5. The counsel, after applying the above legal proposition to the order-sheet entry dated 16-1-1997, submitted that there is no nexus between the reasons and the belief, because the reasons only refers to the letters of the Addl. CIT (Inv.) and Addl. DIT(Inv.) none of which refer to any income having escaped assessment. Mere direction for making roving enquiries on certain points or investments or business activities cannot be equated to escapement of income from assessment. He, therefore, submitted that the alleged reasons are vague and the proceedings have been initiated for making roving enquiries not permissible in law. Consequently, the assessments framed as a result of initiation of such invalid proceedings are bad in law and non est.

Counsel again reiterated his reliance on the decisions mentioned in para No. 3 (supra).

10. The learned Departmental Representative, on the other hand, supported the validity of the initiation of the proceedings under section 147 of the Act and relied on the decision in the following cases :

(i) ITO v. Biju Patnaik : [1991]188ITR247(SC) ;

(ii) Midland Fruit & Vegetable Products (India)(P) Ltd. v. CIT : [1994]208ITR266(Delhi) ;

(iii) ITO v. Selected Dalurband Coal Company (P) Ltd. : [1996]217ITR597(SC) ;
and

(iv) Drill Rock Engg. Co. (P) Ltd. v. ITO .

11. Before considering the rival submissions and settled law with respect to the validity of initiation of reassessment proceedings, we consider it necessary to extract the brief facts, which are necessary for the disposal of the legal issue and as have been revealed from the records available before us.

12. The facts, common for all the four assessment years are that the appellant assessee, permanently resident of Village. Beerampur, Tehsil, Kerakat, Distt. Jaunpur, during the period relevant to assessment years under appeal was

working as a Junior Engineer with the Irrigation Deptt., Govt. of U.P. The ADI (Inv.), Allahabad, received a tax evasion petition (normally called complaint) against the appellant Shri Chandra Dhari Singh (C.D. Singh), who at that time was having a residential House No. 28C/8A, Sarvodya Nagar, Allahpur, Allahabad, in the name of his wife but he himself was posted at some other place.

12.1. The Addl. DIT(Inv), after making detailed enquiries with respect to the allegations made in the complaint, which were strongly denied by the appellant by way of written submission as well as verbal submissions made during his appearance, forwarded his report to Assistant Commissioner Circle, Income Tax Officer, Ward-1, Mirzapur, and Income Tax Officer, Jaunpur (through proper channel) requesting them to make thorough scrutiny of the cases of the appellant and three other concerns, namely M/s Guru Nanak Service Station, M/s R.K. Traders and M/s Dihal & Sons, with respect to the sources of various investment and their nexus with the appellant. The Addl. DIT, Investigation, Allahabad, letters dated 14-12-1995, is reproduced as under :

'F, No. Addl. DIT(Inv.)/Ahd/1133

Office of the Asstt. DIT(Inv.),

Allahabad.

dt. : 14-12-1995

To,

The Asstt. Commr. of Income Tax,

(Circle), /Income Tax Officer-W-1, /Mirzapur/Income Tax Officer,

Jaunpur.

Through: Addl. DIT(Inv.), Allahabad

Sir,

Sub - Sri Chandra Dhari Singh, r/o 28-C/8A, Sarvodya Nagar, Allahpur, Allahabad T.E.P. report regarding.

A tax evasion petition was received in this office against Sri Chandra Dhari Singh, Junior Engineer, r/o 28C/8A, Sarvodya Nagar, Allahpur, Allahabad. The complainant had alleged that Sri Chandra Dhari Singh was running several bank accounts in various names in a large number of banks for example bank of Baroda, Allahpur, Allahabad, Allahabad Bank, Allenganj, Allahabad, Allahabad Bank, Alopibagh, Allahabad, Allahabad Bank, Lodikalan Mirzapur, New Bank of India, Bajirao Katra, Mirzapur etc. He has constructed a house at 28-C/BA, Sarvodya Nagar, Allahpur, Allahabad in the name of his wife Smt. Usha Singh and has also constructed a double storied house at V.P.O. Birampur, Karakat Distt. Jaunpur. He owns Ambassador Car No. UTE-6464 in his own name and a Maruti Car No. UP-63-6999 in the name of his son Sri Sanjai Singh and also owns licenced revolver and rifle. Extensive enquiries were made to verify the allegations. Before we write about the result of the inquiries, it will not be out of place to mention a brief history of Sri Chandra Dhari Singh.

Sri Chandra Dhari Singh is a Junior Engineer who was working in the Tubwell Construction Division. He has been posted as Junior Engineer in Irrigation Department since 22-9-1973. His basic pay as on 1-10-1995 is Rs. 2,120. Presently, he is working in the office of the Executive Engineer, Laghu Dal Nahar Khand, Mirzapur since 9-9-1995. As per his own statement dated 4-10-1995, the only source of income of Sri Chandra Dhari Singh is salary from Irrigation Department, U.P. He claims to be a co-partner in M/s Ram Dihal & Sons Hindu undivided family, Jaunpur.

It appears that Sri Chandra Dhari Singh has made huge amounts of money from unaccounted source and has invested all this money in Benami names in various bank accounts, house properties, business operations (namely M/s Guru Nanak Service Station Bhujwa Chowk, Mirzapur and M/s R.K. Traders, Mirzapur. It appears that he has also made huge investments in the so-called Hindu undivided family M/s Ram Dihal & Sons, Mirzapur.

Following is the result of the enquiries conducted by the Investigation Wing :

1. Sri Chandra Dhari Singh is operating a bank a/c in his own name in the bank of Baroda, Tiliharganj, Mirzapur, a copy of the bank statement is enclosed. In this account Rs. 40,000 was deposited on the date on which account was opened i.e., 8-7-1988. On (sic) Rs. 39,900 was withdrawn. The account has not been operated since then. The explanation of Sri Chandra Dhari Singh in respect of the cash deposits may be obtained by the assessing officer while scrutinising the case.

Sri Chandra Dhan Singh was also operating a bank account in the name of his brother Sri Chandra Bhushan Singh in bank of Baroda, Allahpur, Allahabad (S.B. A/c No. 2285) a copy of the said account is enclosed. Sri Chandra Dhari Singh was also operating an account No. 2140 in the name of Shri Shree Prakash Singh an Allahabad Bank. Alopi Bagh, Allahabad A perusal of the records reveal that this account was opened in the name of Sri Shree Prakash Singh and his address was recorded as Patrahia Colony, Mirzapur. For the opening of this account, the above person was introduced by Sri Chandra Dhari Singh, S/o Sri Ram Dihal Singh. After some time the old Patrahia Colony address was changed and a new address namely 28-C/8A, Sarvodya Nagar, Allahpur, Allahabad was inserted. It appears that this account was opened by Sri Chandra Dhari Singh himself and he was using this account for his own purposes and deposited in this account sourced from his unaccounted income. This account was actually operated till 29-1-1992 when Sri Shree Prakash was under the influence and control of Shri Chandra Dhari Singh. After the dispute in 1992 Shri Chandra Dhari Singh stopped using this account. The assessing officer is, therefore, requested to seek explanation of Sri Chandra Dhari Singh with respect to the sources of all the deposits in this account while scrutinizing the case.

Sri Chandra Dhari Singh also operated an account in his own name in new Bank of India, Bajirao Katra, Mirzapur, a copy of the bank statement is enclosed. Following is a summary of the account.

The account opened on 13-6-1991, with cash deposit of Rs. 1,13,510

(Dr.)

(Cr.)

F.Yr. 1991-92

Rs. 3,62,000

Rs. 3,65,035.85 (cash deposit of Rs. 2,47,890)

F.Yr. 1992-93

Rs. 52,438

Rs. 54,155 (on cash deposit)

F.Yr. 1993-94

Rs. 2,59,939.50

Rs. 6,03,356 (cash deposit of Rs. 6,03, 100)

F.Yr. 1994-95

Rs. 7,67,720

Rs. 4,20,293 (cash deposit of Rs. 2,89,350)

F.Yr. 1995-96

Rs. 742.35

This account appears to be very important as substantial cash deposits have been made and large transactions have been carried out through this account. Open enquiries were carried out and the statement of Sri C.D. Singh was recorded. Sri Singh in his statement dated 4-10-1995 (copy enclosed) has stated that although this account was in his name but this account relates to his Hindu undivided family. He has stated that as per family settlement dated 10-8-1972 (copy enclosed), he was authorised to open and operate the bank accounts on behalf of the Hindu undivided family. Explaining cash deposit, he has stated that source of initial deposit of Rs. 1,13,510 on 13-6-1991 is Hindu undivided family, which is involved in agriculture and dairy-farming. Sri Sanjai Singh in his statement dated

29-9-1995 (copy enclosed), has stated that the Hindu undivided family had sold cattle and silver which was the source of the deposit on 13-6-1991, Rs. 1,13,000 was withdrawn for making a FDR of the Hindu undivided family. An amount of Rs. 19,000 was withdrawn on 16-1-1992, for dairy and agriculture business of Hindu undivided family (M/s Ram Dihal & Sons, Jaunpur) as per the statement of Sri Sanjai Singh. Rest of the entries relate to the business of M/s Guru Nanak Service Station, MZP.

Sri C.D. Singh in his statement dated 4-10-1995, has stated that upto Financial Year 1993-94, three or four drafts in favour of IOC were made by M/s Guru Nanak Service Station, MZP. Through this account by cash deposit. This was only to accommodate to Shri Shree Prakash Singh, proprietor of M/s Guru Nanak Service Station, who is a relative of Sri C.D. Singh. Since 1-4-1994, this account was transferred to M/s Guru Nanak Service Station as cash credit from 1-4-1994, till its closure on 27-6-1995, this account was being operated by Sri Sanjai Singh who is a partner in M/s Guru Nanak Service Station. The cash deposit after 1-4-1994, as per the statement of Sri C.D.

Singh and Sri Sanjai Singh, are daily cash receipt of M/s Guru Nanak Service Station and the withdrawal are for the purpose of drafts in favour of IOC. The assessing officer is advised to closely scrutinise the big cash deposits since its source remains to be verified..... The assessing officer is requested to specially seek explanation for the cash deposit in this account for the period between March, 1992 and April, 1994. (This is the period when Sri Sanjai Singh was not a partner in M/s Guru Nanak Service Station).

II. Vehicles

(i) Maruti Car No. U.P. 63-6999..... The assessing officer may scrutinise the books of M/s R.K. Traders to verify the claims of Sri Sanjai Singh while scrutinizing the case.

(ii) Ambassador Car UTE-6464..... The assessing officer may scrutinize the investment.

III. House property

Therefore, it appears that the house was constructed by Shri Chandra Dhari Singh from his unaccounted income in the name of his wife.

Sri Chandra Dhari Singh has also got a double storyed house at V.P.O. Birampur, RS. Karkat, Jaunpur.

IV. Weapons.....

It appears that the money from undisclosed sources has been utilised to purchase the revolver and cost has been suppressed to the convenience of both the parties. Copies of both the bills filed with Addl. DIT(Inv.), Allahabad are enclosed herewith.

V. Petrol Pump, M/s Guru Nanak Service Station, MZP.....

It appears that this petrol pump is financed from unaccounted sources of Sri C.D. Singh and all the investments in the petrol pump since inception have been made by Sri C.D. Singh in Benami name The assessing officer is requested to thoroughly investigate the investment in M/s Guru Nanak Service Station, MZP, especially with reference to its nexus with Sri C.D. Singh.

VI. M/s R.K. Traders It appears that the names of Sri Sanjia Singh and Rohit Singh have been used just to conceal Sri C.D. Singh's nexus with the funds. The assessing officer is requested to thoroughly investigate the investment in the tankers belong to M/s R.K. Traders.

VII. M/s Ram Dihal & Sons (HUF)..... Considering all the facts and circumstances of the case, so-called Hindu undivided family does not appear to be genuine. The sources of the funds of so-called Hindu undivided family and its nexus Sri C.D. Singh may be probed while scrutinising the case of Sri C.D. Singh and Ram Dihal & Sons, Birampur. The assessing officer is requested to verify the genuineness of claim of so-called Hindu undivided family by issuing summons to the members of so-called Hindu undivided family.

The assessing officer is requested to thoroughly scrutinise the case of Sri Chandra Dhari Singh, M/s Guru Nanak Service Station, M/s R.K. Traders and M/s Ram

Dihal & Sons, Jaunpur with respect to the sources of the investment and its nexus Shri Chandra Dhari Singh in relevant assessment years.

Yours faithfully,

Encl : As above

(Ram Mohan Tiwari)

Asstt, DIT(Inv.),

Allahabad.'

12.2. The aforesaid letter was forwarded by the Addl. DIT(Inv.), Allahabad to Addl. CIT, Allahabad, Range, Allahabad to direct the assessing officer having jurisdiction to take up the case of Shri Chandra Dhari Singh and other two assesseees, namely M/s Guru Nanak Service Station and M/s R.K. Traders for scrutiny and the Addl. CIT, Varanasi, requested him to direct the Income Tax Officer, Jaunpur, to select the case of M/s Ram Dehal & Sons (HUF) for scrutiny, the impugned letter reads as under :

'F. No, Addl. DIT(Inv.)/Allahabad/1995-96/1131

Office of the

Addl. DIT(Inv.),

Allahabad.

dt. 20-12-1995,

To,

Sri Vineet Sahai,

Addl. CIT

Allahabad Range,

Allahabad.

Sir,

Sub : Sri Chandra Dhari Singh, r/o 28-C/8A, Sarvodya Nagar, Allahpur, Allahabad,
T.E.P. report regarding

I am enclosing herewith a copy of report of Addl. DIT(Inv.), Allahabad, in the above-mentioned case addressed to Assistant Commissioner (Circle), Income Tax Officer, W-1, Mirzapur.

2. The detailed investigations have been carried out by the Addl. DIT(Inv.), Mahabad in the above-mentioned case. Sri Chandra Dhari Singh is a Junior Engineer, presently working in the office of the Executive Engineer, Laghudal Nahar Khand, Mirzapur, since 9-9-1995. He is also interested in M/s Guru Nanak Service Station, Bhujwa Chowk, Mirzapur, and M/s R.K. Traders, Mirzapur.

3. You are requested to kindly direct the concerned assessing officer's to take up this case for detailed scrutiny as suggested in the report of the Addl. DIT(Inv) Allahabad. The case may be monitored at your level and progress of the investigation may be discussed in our coordination meeting.

Yours faithfully,

Encl : As above (two sets)

(Prakash Chandra)

Addl. DIT(Inv.),

Allahabad.'

12.3. The Income Tax Officer, Mirzapur, who happened to have jurisdiction over the appellants case, issued notice under section 148 of the Act for the assessment years 1992-93, 1995-96 on 16-1-1997 after making the following entry on the order-sheet.

'Sri Chandra Dhari Singh, Junior Engineer

16-1-1997

On receipt of information in the case of Sri Chandra Dhari Singh, Junior Engineer for the Asstt. DIT(Inv.), Allahabad, vide his letter F.No. Addl. DIT(Inv.) Allahabad, December, 1996, which has been received through the learned Addl. CIT, Allahabad Range, Allahabad to the Income Tax Officer, W-1, Mirzapur, who has further transmitted the information to me, I have reason to believe that the income of Sri Chandra Dhari Singh. Presently resident of 28-C/8A, Sarvodya Nagar Allahpur, Allahabad has escaped assessment for assessment year 1992-93. Issue notice under section 148.

Sd/-

Income Tax Officer.'

12.4. The entry for the assessment years 1993-94, 1994-95 and 1995-96 is the same as above.

12.5. The notices for all these four years issued under section 148 of the Act on 16-1-1997, addressed to the assessee and at the address 28-C/8A Sarvodyanagar, Allahpur, Allahabad, were served upon Smt. Usha Singh, w/o Sri Chandra Dhari Singh, on 1-2-1997.

12.6. The Income Tax Officer, Ward-1, Mirzapur, ultimately completed the assessments for an the four assessment years and also for the assessment year 1996-97 by a consolidated assessment order, dated 5-3-1998, determining the total income as under :

Asst. yr.

Assessed income

Rs.

1992-93

2,75,940

1993-94

2,70,210

1994-95

3,75,330

1995-96

3,76,640

12.7. Assessment for assessment year 1996-97 not being before us for the present, the details are not extracted.

13. On appeal by the assessee the Commissioner (Appeals) rejected the assessee's objection regarding the validity of proceedings under section 147 of the Act by just making a cursory reference to the assessee's objection in para 3 and observations in para 10. The findings in para 10 read as under :

'On facts of the case, therefore, I hold that there was enough material before the assessing officer to take action under section 147 for charging income escaping assessment. In other paras i.e., para Nos. 2 to 8 the Commissioner (Appeals) has referred to the facts and in para 9 has giving the reasons for not accepting the appellant's claim of adjusting of the Hindu undivided family consisting of appellant and his two brothers and also the claim that the source of investments and deposits in bank alleged to be belonging to the assessee were in fact belonging to the Hindu undivided family.'

14.1. We have considered the rival submissions, facts and circumstances of the case, provisions of sections 147 and 148 of the Act as well as various decisions referred to by the parties in their support, but first of all, we proceed to analyse the fact and legal proposition laid down in various decisions so that the decision in assessee's case can be arrived at after applying the legal proposition laid down in these decisions.

14.2. Decisions relied upon by the appellant :

(i) Sheonath Singh v. Appellate Assistant Commissioner (supra)

The facts in this case were that in 1944, the assessee, who was a shareholder as well as director and managing director of various companies, sold his shares of Associated Hotels for Rs. 20,65,705 and in 1949 sold his shares of another hotel. In assessment year 1945-46 the assessee disclosed the sale of shares of Associated Hotel. Subsequently, the Income Tax Officer issued notices under section 34(1A) of the Act corresponding to the notice under section 148, and made assessments for assessment years 1942-43, 1943-44, 1944-45 and 1945-46. On a writ petition before the Calcutta High Court, the assessee's objection that the officer had no jurisdiction to issue the notices, was rejected by accepting the revenue's preliminary objection that the assessee having filed appeals before the Appellate Assistant Commissioner could not pursue the writ petition.

On further appeal before the Supreme Court by the assessee the department produced the report of the Income Tax Officer sent to Central Board of revenue which contained the following reasons :

'(I) The assessee who is or was at the relevant time a managing director in about a dozen limited companies along with 'Oberois' is believed to have made some great profits which were not offered for assessment.

(II) The assessee is believed to have received a sum of Rs. 22,00,000 from 'Oberois' and this sum or at least part of which represents income which has escaped assessment.'

On above facts the Hon'ble Supreme Court after observing that 'the words 'reasons 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' held as under :

That the two reasons given for the belief formed by the Income Tax Officer hopelessly failed to satisfy the requirements of section 34(1A). The so-called reasons were stated to be beliefs thus leading to an obvious self-contradiction. There was no material or fact which had been stated on which any belief could be founded of the nature contemplated by section 34(1A) and the notices were liable to be quashed.

In the result the judgment of the High Court was set aside and the notices were quashed.

(ii) ITO v. Lakhmanj Mewal Dass (supra)

Facts of this case are that original assessment for assessment year 1958-59 was completed after allowing deduction of a sum of Rs. 10,494 towards interest to certain creditors. Thereafter the assessment was sought to be reopened by issuing a notice under section 148 of the Act, dated 8-3-1967, and the reason in the report submitted to the Commissioner for reopening of the assessment after four years, were mentioned as : (i) that M.K. who was shown to be one of the creditors of the assessee had since confessed that he was doing only name-lending, and (ii) that N.M., D.K.N., B.S. and others, whose names too were mentioned in the list of creditors, were known name lenders, on a writ petition by the assessee the High Court, by a majority, held that preconditions for the exercise of jurisdiction under section 147 were not fulfilled.

On appeal by the revenue the Hon'ble Supreme Court held, affirming the decision of the High Court, on the facts, (i) that the second ground could not have led to the formation of the belief that the income of the respondent chargeable to tax had escaped assessment for the assessment year 1958-59 because of failure of the assessee to disclose fully and truly all material facts ; (ii) that since there was nothing to show that the confession of M.K. related to a loan to the assessee, much less to the loan shown to have been advanced by that person to the respondent, in the first ground the live link or close nexus which should be there between the material before the Income Tax Officer and the belief which he was to form was missing or in any event too tenuous to provide legally sound basis for the reopening the assessment.

Before holding as above, the Hon'ble court discussed the conditions to be satisfied before an Income Tax Officer acquires jurisdiction to issue notice under section 148 of the Act.

(iii) Ganga Saran & Sons (P) Ltd. (supra)

The facts in this case were that prior to March, 1947, one D was carrying on prosperous business in Delhi making an average profit of Rs. 36,000 a year. In March, 1947, the appellant-company, which was incorporated with D's brother-in-law, G, as its Managing Director, took over D's business against allotment of certain shares and D was appointed as director of the company to manage that business. Salary, commission and bonus paid to D were allowed in the original assessment of the assessee's company. Later on the Income Tax Officer issued notices under section 147(a) of the Act seeking to disallow the payments made to D on the ground that the same were bogus and false as D had given substantial amounts from his receipts as loan to the managing director and gifts to his near relatives and drew small amount from himself.

On a writ petition by the assessee a single Judge of the High Court quashed the notice but this decision was reversed by the Divisional Bench.

On further appeal by the assessee before the Hon'ble Supreme Court, the Apex Court held as under :

'The important words in section 147(a) are 'has reason to belief' 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 or 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 matter in regard to which he is required to entertain the belief before he can issue notice under section 147(a). If 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 reasons 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 be struck down as invalid.

(iv) K.M. Bansal v. CIT (supra)

In this case the Hon'ble High Court has held that condition regarding recording of reasons stipulated in the provisions of section 148(2) of the Act is mandatory and if in a given case, it turns out that no reasons whatsoever were recorded, it may be a case where proceedings can be terminated on that question itself.

14.3. Cases relied upon by the learned Departmental Representative

(i) ITO v. Biju Patnaik (supra)

Facts of this case were that original assessment was completed on the basis of the fact that transfer of the capital asset took place on a date when there existed no capital gain tax levy. The assessment was reopened on the information that the transfer took place on a date when such levy was in existence.

Hon'ble Supreme Court upheld the validity of reopening proceedings after having found that there was failure on the part of the assessee to disclose the material fact fully and truly. The objection that notice under section 148 did not disclose or establish the details of reasons recorded was also rejected.

(ii) Midland Fruit & Vegetable Products (India) (P) Ltd. v. CIT (supra)

The facts in this case were that during the original assessment proceedings for assessment years 1964-65 and 1965-66, a loan of Rs. 10,000 from M/s Topan Das Gopal Das and interest thereon (in assessment year 1964-65) and loans of Rs. 95,000 from Topan Das Gopal Das, loan of Rs. 90,000 from Faquir Chand Lakshman Das and loans of Rs. 2,10,000 from M/s Om Prakash & Co. and interest thereon were accepted as genuine but later on assessment for both these assessment years, were reopened after recording two different entries on the

order-sheets which inter alia, stated that these loans and payment of interest thereon were bogus and since assessee had not disclosed facts related to the same truly action under section 147/148 is taken to assess this escaped income.

It was on the aforesaid fact that the Hon'ble High Court held the reassessment proceedings to be valid.

(iii) ITO v. Selected Dalurband Coal Co. (P) Ltd. (supra)

The question in this case, for the consideration of the Hon'ble court was that 'where the report, made by a government department after conducting a joint inspection, gave a reasonably specific estimate of the excessive coal mining said to have been done by the assessee over and above the figure disclosed by it in its return of income, such report could constitute the basis for the formation of requisite belief under section 147(a) so as to sustain the reassessment notices under section 148 is irrespective of whether the facts stated in such report were true or not.

The Hon'ble Supreme Court on the facts in this case upheld the validity of reassessment proceedings.

(iv) Drill Rock Engg. Co. (P) Ltd. v. ITO (supra)

In this case the assessee had challenged the validity of the initiation of reassessment proceedings under section 147(b) and the validity of notice under section 148 on the basis of following grounds:

(a) That the Income Tax Officer did not know and would not have known of any payments made in violation of section 40A(3) of the Act leading him to believe that there was concealment of income or that there was known disclosure of primary facts. In view of the fact that Income Tax Officer did not know any violation under section 40A(3) before issuing notice it should be held that the Income Tax Officer did not legally assume jurisdiction under section 147 and reassessment should be annulled.

(b) That the jurisdiction of the Income Tax Officer to proceed under section 147 vitiated for nondisclosure of reasons for issuing notice under section 148 to the assessee.

The Tribunal, so far as first objection is concerned, found as a matter of fact that when the Income Tax Officer, during the assessment proceedings for assessment year 1981-82, called upon the assessee to furnish details of payments of commission, etc., it came to his notice from the details filed before him that the accounts were either adjusted or payment were made without disclosing the mode of payment. On assessee's failure to give the details the Income Tax Officer made certain enquiries and found that payments for assessment years 1980-81 and 1981-82 were made in violation of the provisions of section 40A(3).

With respect to second objection the Tribunal, after referring to various decisions rejected the assessee's objection that notice under section 148 is invalidated merely because, facts or material which form the basis of Income Tax Officer's belief that there is escapement of income chargeable to tax, were not recorded in the notice of reopening.

15.1. After having considered the rival submissions, facts and circumstances of the case, provisions of sections 147 and 148 and the various decisions relied upon by the parties, we are of the opinion that for a reassessment or assessment under section 147 to be valid the following mandatory prerequisite conditions must be satisfied :

(I) In a case where assessment has been framed under section 143(3), the assessing officer must have reason to believe that the escapement of income from the assessment has been due to failure on the part of the assessee to disclose all material facts necessary for his assessment fully and truly and the proceedings under section 147 can be initiated only within a period of four years.

(II) In any other case, the assessing officer must have reason to believe that income chargeable to tax has escaped assessment. The proceeding under section 147 in such cases can, however, be initiated within the different periods depending on the quantum of escaped income.

15.2. The aforesaid conditions are applicable after 1-4-1989, but the fact remains that so far as, satisfaction of the condition 'to have reason to believe' and that before issuing a notice under section 148 the reasons will be recorded remains the same as were under the unamended provisions and, therefore, for an assessment or reassessment under section 147 to be valid the following mandatory conditions have to be satisfied.

(a) The assessing officer must be in possession of a definite and relevant information or material which may led him to have reasons to believe that income chargeable to tax has escaped assessment.

(b) The assessing officer must record the reasons confirming his belief regarding having reasons to believe.

(c) There should be direct nexus and live link between the information/material referred in the reasons and the belief entertained by the assessing officer.

15.3. It is only after the satisfaction of above conditions that the initiation of the proceedings under section 147 can be said to have been validly initiated i.e., assumption of jurisdiction by the Income Tax Officer to proceed under section 147 can be said to be in accordance with law.

15.4. Further, it is only after satisfaction of the aforesaid conditions that the assessing officer is required to issue and serve upon the assessee a notice under section 148 of the Act and for a notice under section 148 of the Act to be valid the following conditions should be satisfied :

(a) The notice must be addressed to the proper person as required by the provisions of section 282 of the Act;

(b) The status of the assessee must be clearly mentioned on the notice.,

(c) The assessment year should be clearly mentioned on the notice;

(d) The notice must be served on the assessee and in accordance with the provisions of law on this point.

15.5. From the above discussion it is clear that it is only after the satisfaction of all the conditions laid down as per paras 15.1 and 15.2 and decisions listed in para No. 14.2 above that the assessing officer can proceed to make an assessment under section 147 read with section 143(3) or section 144 of the Act as the case may be.

15.6(i). In other words, so far as requirement of availability of material/information, formation of belief by the assessing officer/having reason to believe, necessity of there being a direct nexus or live link between the material coming to the notice to the Income Tax Officer and the formation of his belief and that there has been escapement of income of the assessee from the assessment either because of failure on the part of the assessee to disclose all material facts fully and truly or otherwise, the law relating to the unamended provisions i.e., provisions of section 147(a) and 147(b), still hold good and consequently, to hold the initiation of proceedings under section 147 of the Act to be valid the law laid down on that basis is fully applicable.

15.6(ii). Consequently, we are, therefore, of the opinion that the reasons for formation of belief contemplated by amended provisions of section 147 of the Act, for initiation of proceedings under section 147, must have a rational connection 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 assessing officer and formation of his belief that there has been escapement of particular income from assessment in a particular year either because of failure of the assessee to disclose fully and truly all material facts [if assessment under section 143(3) for that year has already completed] or the escapement of the particular income from assessment in a particular year is for any other reason [in case where there has been no assessment under section 143(3)]. 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 assessing officer. At the same time one has to bear in mind that it is not any and every material, howsoever, vague and indefinite or distant, remote and far fetched which would warrant the formation of the belief relating to the escapement of income from assessment. The reason for formation for belief must be held in good faith and should not be a mere pretence.

15.7. If we apply the aforesaid principles to the facts of the present case what is revealed is that none of the conditions necessary for initiation of proceedings under section 147 has been satisfied and reasons for his revelation are as under :

(i) The order-sheet entry dated 16-1-1997, which has been claimed by the revenue to be the recording of reasons as envisaged in the provisions of section 148(2) of the Act, being completely silent as to the quantum of income and also as to the material, cannot be said to have any direct nexus or live link for the formation of belief or for having reasons to believe that appellant's income chargeable to tax has escaped assessment. This entry only refers to the letter of the Addl. DIT(Inv.), Allahabad dated December, 1996, which cannot, by itself, be said to be a relevant material.

(ii) The report of the ADI, also do not refer as to what specific income and for which particular assessment year has escaped assessment. In whole of the report the ADI expresses only a doubt or a suspicion when its says 'It appears

and that 'assessing officer is requested to scrutinise

The concluding observations of the Addl. DIT(Inv.) Allahabad, 'the assessing officer is requested to thoroughly scrutinise the case of Shri Chandra Dhari Singh, M/s Guru Nanak Service Station, M/s RX. Traders any M/s Ram Dihal & Sons, Jaunpur, with respect to the sources of investment and its nexus with Shri Chandra Dhari Singh in relevant assessment years' establishes beyond any shadow of doubt that he himself had also not reached to any conclusion as to what income and for which assessment year had, if at all it had, escaped assessment. He simply expressed/indicated a doubt/suspicion gathered as a result of enquiries conducted by him on the basis of alleged tax evasion petition.

(iii) The letter of Addl. DIT(Inv.), Allahabad, dated 20-12-1995, also does not specify as to what specific income and for which particular assessment year has escaped assessment. On the contrary this letter also simply conveys a request to the authorities to take up the case of the appellant and of the Hindu undivided family for detailed scrutiny.

15.8. After having put the aforesaid information/material/facts, i.e., the order-sheet entry and letters of the authorities referred therein, which have been claimed by

the revenue to be the only basis for initiating proceedings under section 147 of the Act on 16-1-1997 (for all the four assessment years under appeal), to the tests partulated (sic-prescribed) by us in para Nos. 14.2, 15.1 and 15.2 above and in view of the admitted fact by the revenue that the assessing officer had not made any sort of enquiry after having received the report of the Addl. DIT(Inv.), Allahabad and before issuing notice under section 148 on 16-1-1997, only inescapable conclusion is that the proceedings under section 147 of the Act, in this case, were initiated without meeting the prerequisite mandatory requirements such as mentioned at Sr. Nos. (a), (b) and (c) of para No. 15.2 (supra) and that being the case we have to hold that there was no information or material worth the name with the assessing officer which could be said to be definite or relevant or could be said to have direct nexus and live link with the formation of belief by the assessing officer and consequently, the order-sheet entry dated 16-1-1987, cannot be read as to have met the mandatory requirement regarding recording of the reasons as envisaged by the provisions of section 148(2) of the Act.

Consequently, we have to hold that very initiation of proceedings under section 147 of the Act, in this case, was bad in law and has to be declared null and void. We do so.

15.9. Having held as above, we have further to hold that the consequential proceedings as issuance of notices under section 148 of the Act and the assessments framed in consequence thereupon were also bad in law and void ab initio.

16. In the result we quash the order of the Commissioner (Appeals) dated 3-3-1999, common for all the four assessment years and are quashed the consolidated assessment orders for assessment years 1992-93 to 1995-96, dated 5-3-1998, declaring the same to be bad in law and void ab initio.

17. Since all the four assessments have been quashed on the legal ground (supra), we do not consider it necessary, at this stage, to adjudicate upon the validity of service of notices under section 148 of the Act and consequential validity of the assessment and also the other aspects of the case including various findings and merits of the case.

18. So far as decisions relied upon by the learned Senior Departmental Representative are concerned, the same, as is evident from the facts and circumstances of the decisions, are distinguishable on facts as well as in law and are, therefore, not applicable to the facts and circumstances of the present case.

19. In the result appellant's appeals for all the four assessment years are allowed.

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