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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-02-2005

Judge : P Parashar, N Saini

Appellant : Poonam Rani Singh

Respondent : Dcit

Judgement :

1. This appeal has been filed by the assessee against the Order of Learned CIT(A) in Appeal No. 16/2001-02 dated 17.05.2001 for the assessment year 1994-95. The assessee has taken the following grounds in this appeal: 1. Ld. CIT (A) is not justified in upholding addition worth Rs. 126000/- on account of loan from Digvijay Singh.

2. Ld. CIT (A) is not justified in upholding addition worth Rs. 467600/- on account of loan from Late Sh. I.B. Singh.

3. Ld. CIT (A) is not justified in estimating drawing at Rs. 50000/- on adhoc basis.

2. During the course of hearing, vide application-dated 17.01.2005, the assessee made a prayer for admission of the following additional grounds: "That the initiation of proceedings Under Section 147 of the Income Tax Act was wholly without justification, as there was no material for the reason to believe that the income of the assessee had escaped assessment." 3. After hating the parties, the bench admitted this ground vide order-dated 24.05.2005.

4. The arguments of the parties were heard on the additional grounds and also on the original grounds on 24^th May 2005. At the time of hearing, the bench directed the Learned DR to file a copy of Order of the Income-tax Officer regarding reasons recorded for the opening of the assessment and for issuing notice under Section 148 of Income Tax Act. The Learned Sr. DR vide application-dated 1.7.2005, filed letter of Enforcement Directorate dated 9.10.1998 alongwith a copy of order dated 31.03.1999 recording reasons for issuing notice Under Section 148 of Income Tax Act. In view of these, subsequent developments and for providing opportunities to the assessee for rebutting these documents, the matter was again heard on 15^th July 2005. The Learned representatives of both the parties have submitted arguments in relation to the additional ground reproduced above and have supported their arguments by making reference to various authorities.

5. We, therefore, considered it proper to dispose of additional ground taken by the assessee in this appeal, which challenges the validity of the notice issued under Section 148 of Income Tax Act. However, before taking up the arguments of the parties on this issue, we want to narrate the relevant facts regarding reopening of assessment which are as under: (i) The assessee filed the return on 30.03.1996 declaring total income of Rs. 41,200/- for the assessment year 1994-95. This return was processed under Section 143(1)(a) on 28^th June 1996.

(ii) The Enforcement Directorate wrote a letter-dated 9.10.1998 to the Joint Secretary, Foreign Tax Division, C.B.D.T., which is as under:Ref No. T-3/84-D/97 Date 9.10.1998 To Sub: Enquiries regarding fixed deposits in the name of Shri Awaninder Singh, Passport No. L-524965 and Smt. Poonam Rani Singh Passport No. R-769566 resident of A-2/177, Safdarjung Enclave, New Delhi-110029 with Wells Fargo Bank, 1705, North First Street, San Jose, CA 95112, USA. We are conducting certain enquiries against the subject parties under the provisions of Foreign Exchange Regulation Act, 1973. We are in the possession of two certificates of Deposits of US$.

1,00,000/- each issued by Wells Fargo Bank, 1705, North First Street, San Jose, CA 95112, USA in the name of captioned parties.

These deposits appear to have been made in June, 1996 which coincide with the dates during which Shri Awaninder Singh and his wife Smt.

Poonam Rani Singh were also in U.S.A. You are requested to make overseas enquiries on the following: 1. Dates on which the account was opened by Shri Awinder Singh and his wife Smt. Poonam Rani Singh.

2. Whether the amounts were deposited in cash or by cheque. If the deposits were by cheque, the who issued the cheques and from which Account and name of the bank.

4. if the deposits have been withdrawn, were the amount has been transferred or who withdrawn the money.

5. The names, passport Nos. and addresses of the persons who are authorized to operate the account.

6. Details of any other deposits or Account if any, of the subject party with the said bank.

You are also requested to collect any other information in respect of the said deposits, which may be relevant for investigation under Foreign Exchange Regulation Act. The copies of the said two deposits certificates are also enclosed herewith.

(iii) On the basis of the said letter, the Assessing Officer passed Order dated 31.03.1999, which is as under: "While dealing with an information (separately placed in an Enquiry Folder) provided by the Enforcement of Directorate vide their letter Ref. No. T-3/84-D/97 dated 9.10.98 written to the JS (FTD) CBDT it have been felt that the assessee, is maintaining Foreign Accounts/Deposits, which have not been reflected in the returns of income of the statements and accounts filed by the assessee.

I have therefore reasons to believe that Assessee have sources of income out side India which have not been reflected in the return and thus escaped assessment.

Notice Under Section 148 is therefore issued to bring the income under tax net." (iv) The assessment order has been made by the Assessing Officer under Section 143/147 which was passed on 31.03.2001. It is to be pointed out that the Assessing Officer made various additions in the Assessment Order dated 21.03.2001, which are as under:1. Income from Salary 24,000/- (As shown)2. Income from other Sources 17,200/- (As shown)a) Unexplained Loan 5,93,600/- (As discussed above in para 2)b) Unexplained Gifts 25,100/- (As discussed above in para 3)c) Interest accrued on FDRs 2,50,500/- (As discussed above in para 4)d) Unexplained Investment in Immovable 1,58,43,057/- Propertiese) Addition on account of low withdrawals 1,12,000/- (As discussed above in para 6) Gross Total Income 1,68,65,457/- Less Deduction Under Section 80L 12,000/- ---------- (v) It is clear from the above details that no addition has been made in the Assessment Order on the basis of any foreign account/deposits.

6. In the setting of above factual background, we proceed to adjudicate the additional ground.

The Learned Counsel for the assessee Shri Salil Aggarwal while challenging the validity of notice issued under Section 148, made following submissions: (i) That as observed by the Assessing Officer in the reasons to be recorded, the reopening was made on the basis information provided by the Enforcement Directorate which was in relation to deposits by the assessee in various foreign accounts and as no addition has been made on account of any deposit in the foreign account in the reassessment order, the notice of reopening on that basis itself is illegal.

(ii) That the additions have been made on the items, which are not mentioned in the reasons recorded for issuing notice under Section 148 and thus there is no nexus between the reasons recorded for reopening the assessment and the reassessment made.

(iii) That the Assessing Officer cannot be allowed to travel beyond the reasons recorded for making the reassessment and he can make additions only in relation to the ground having nexus with the reasons recorded and not on totally different grounds.

(iv) That the Assessing Officer cannot make fishing and roving enquiry during the reassessment proceedings.

(v) That so far as additions on account of unexplained loans, unexplained gifts and unexplained investment in immovable properties are concerned, the assessee had already submitted details in the Balance Sheet and on the basis of same information, the Assessing Officer was not competent to reopen the assessment and to make additions in the assessment order passed under Section 143/147.

In support of his contentions, the Learned Counsel placed reliance on the following decision: 1. Vipan Khanna v. Commissioner of Income Tax and Ors. (P&H) 255 ITR 220;Commissioner of Income Tax v. Sun Engineering Works Pvt. Ltd. (SC) (vi) That after processing the return under Section 143(1)(a), the Assessing Officer could have issued notice under Section 143(2) and if he has not done so, he cannot be justified in taking recourse to process under Section 148/147.

On the basis of the above averments, the submissions of the Learned Counsel was that the notice issued under Section 148 is bad and illegal and the assessment order framed under Section 143/147 on the basis of such illegal notice is bad perse in the eye of law and the same was required to be quashed.

7. On the other hand the learned Sr. DR submitted that the Assessing Officer was fully justified in issuing notice on the basis of the information received through Enforcement Directorate and the reasons recorded in reopening of the assessment having been based on such information are fully justified. According to him, the Assessing Officer was, therefore, fully justified informing belief that the income of the assessee as escaped assessment. The learned D.R. also submitted that the intimation under Section 143(1)(a) cannot be treated as assessment as there is no application of mind by the Assessing Officer at that stage. He also contended that even if the deposits were reflected in the Balance Sheet of the assessee filed with the return, then also the Assessing Officer was fully authorized to examine the same after reopening the assessment. It was further submitted by him that the assessment can be reopened on any ground if the Assessing Officer has belief or has reasons to believe that income of the assessee has escaped assessment. According to him the Assessing Officer, while making assessment is

not to confine to reasons recorded alone and can make additions on other items of income even if reopening has been made on different items.

8. In rejoinder, the learned counsel for the assessee submitted that before issuing notice under Section 148, the Assessing Officer should satisfy that particular income of the assessee has escaped assessment and in the reassessment order additions can be made only regarding such 'escaped income and not on totally different aspects or items of income.

9. We have carefully considered the entire relevant material on record and revival submissions. The following facts are found to be undisputed: (1) The information of the Enforcement Directorate as conveyed through letter dated 9.10.1998, reproduced above, was that there were certain certificates of deposits in foreign bank accounts in the names of the assessee and her husband and enquiries were initiated in relation to the certificates, which were in the possession of the Enforcement Directorate. The reasons recorded in the reopening are based on this information alone.

(2) In the Assessment Order no addition has been made with regard to the alleged deposits referred to which has been made in the reasons recorded for reopening the assessment.

(3) The additions have been made on other items some of which are reflected in the Balance Sheet filed along with the return of income, which was processed under Section 143(1)(a).

10. In view of the above factual background, we proceed to adjudicate upon the additional ground raised before us. For an analytical examination of the matter and for due appreciation of the arguments advanced before us in relation to this ground we consider it proper to formulate following issues: (i) Whether the Assessing Officer was justified in issuing notice under Section 148 on the basis of information received by him i.e.

the letter-dated 9.10.1998 of Enforcement Directorate, reproduced above? A-O. (ii) Whether, while making assessment, the assessee can bring to charge items of

income, which had escaped assessment other than or in addition to those items on the basis of which notice Under Section 148 of Income Tax Act was issued? (iii) Whether merely because, no notice Under Section 143(2) was issued by the Assessing Officer after issuing intimation Under Section 143(1)(a), the Assessing Officer is not competent to initiate reassessment proceedings. If so, whether the scope of inquiry in such reassessment proceedings will be limited? (iv) Whether on the facts and in the circumstances of this case, the order passes by the Assessing Officer Under Section 147/143, is legally justified? 11. The above issues are to be adjudicated in the context of relevant provisions of Section 147 as amended w.e.f. 1.4.1989, which are as under: "147. 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 Section 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 recomputed 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 Section 148 to 153 referred to as the relevant 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 Assessing Officer 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; (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.

12. As per the above provisions, the Assessing Officer should have reasons to believe that any income chargeable to tax has escaped assessment. In the instant case, the letter of Enforcement Directorate, which was received by the Assessing Officer, contained the specific details relating to the deposit allegedly made by the assessee and her husband. The details, which include even the address, passport number and bank account number as also the details of deposits, are very specific. The deposit certificates were also enclosed with this letter.

On the basis of the information contained in this letter, the Assessing Officer as a responsible and prudent officer was under an obligation to reopen the assessment in the case of the assessee. Thus, it cannot be said that the Assessing Officer did not have reasons to believe that income of the assessee chargeable to tax has escaped assessment. There was solid basis, sound and sufficient material before the Assessing Officer in the shape of information, which is the foundation behind reasons to believe. There is nexus between the material/information, which was before the Assessing Officer and the formation of belief on the basis of such material. It is a settled law that adequacy of material is not relevant for having reasons to believe. Thus, on the basis of the facts as conveyed through the letter referred to above, the Assessing Officer was justified in having reasons to believe that the income of the assessee chargeable to has escaped assessment. It may be pointed out that during course of assessment proceedings also, the Assessing Officer raised several queries, which are related to huge deposits in the accounts of the assessee in the financial year relevant to assessment year under consideration. In this regard reference may be made to the notices issued by the Assessing Officer Under Section 142(1) and 143(2) of Income Tax Act and detailed replies of the assessee for explaining these deposits. These letters of the assessee are available in Paper Book at PageRaymond Woollen Mills Ltd. v. Income-Tax Officer and Ors.; 236 ITR 34; has considered the scope of Section 147 of Income-tax Act and has observed as under: "In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case.

The sufficiency or correctness of the material is not a thing to be considered at this stage." In view of the ratio of this decision, the notice issued by the Assessing Officer is found to be fully valid. Issue No. 1 is, therefore, decided in affirmative and accordingly.

14. Coming to the second issue, the provisions of Section 147 provide, in unequivocal terms that after having reasons to believe that any income chargeable to tax has escaped assessment, the Assessing Officer can assessed 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'.

In view of terminology used in Section 147, therefore, it is open to the Assessing Officer to consider any other income or any other item of income which comes to his notice during the course of the reassessment proceedings. The arguments that only those items can be considered for making additions for which the reopening was initiated and not other items, is not sustainable and appears to be fallacious.

15. The issue has been considered and decided by various Courts. The Hon'ble Gujarat High Court in the case of Commissioner of Income-Tax, Gujarat I v. Ahmedabad Manufacturing & Calico Printing Co. Ltd. 106 ITR 159 observed as under: "Where reassessment proceedings had been validly initiated, but the grounds on which they were initiated were subsequently found to be non-existent on the position of law as subsequently expounded and hence that particular point regarding which the notice of reassessment was issued had to be decided in favour of the assesses, it is open to the Income-tax Officer to consider other items and pass reassessment orders regarding those other items even though they were not included in the notice under Section 148."Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board of Direct Taxes and Anr.; 246 ITR 173; considered the scope of amended provision of Section 147 in this regard and has observed as under: "But under the substituted Section 147, existence of only the first condition suffices. In other words, if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment, if confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled, if

the case falls within the ambit of the proviso to Section 147. The word "reason" in the phrase "reason to believe" would mean cause or justification, i.e., the Assessing Officer must have cause or justification to know or suppose that income has escaped assessment.

At the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether the material would conclusively prove escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction." 17. In the case of Damodar H. Shah v. Asst. CIT [2002] 245 ITR 774, the Gujarat High Court has held that if the Assessing Officer had reason to believe that the income chargeable to tax has escaped assessment, the requisite jurisdictional fact for the issuance of notice under Section 148 did exist and even though the same turned out to be wrong during the reassessment proceedings, there is no valid reason to thwart the proceedings under Section 147 at the threshold.18. So far as the arguments of Learned Counsel for the assessee that after processing return under Section 143(1)(a) on the basis of the same information, the reassessment cannot be made, is concerned, in the case of Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board of Direct Taxes and Anr.; 246 ITR 173; the Hon'ble Delhi High Court has observed that the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. According to the Hon'ble Court, distinction between Section 143(1)(a) and 143(3) is well brought out by the statutory provisions as stood at different points. The Hon'ble Court has also considered the effect of change brought by the amendment with effect from 1st April 1979 in the scope of Section 147. The observations of the Hon'ble High Court are as under: "The intimation under Section 143(1) (a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. The intimation under Section 143(1) (a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery of the amount indicated to be payable in the intimation became permissible. And nothing more can be inferred

from the deeming provision.

So long as the ingredients of Section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under Section 147 and failure to take steps under Section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under Section 143(1) had been issued." 19. In the case of Commissioner of Wealth-Tax v. D.R. Vadera; 246 ITR 348; the Hon'ble High Court has held as under: "Once an assessment is reopened the previous underassessment is set aside and the whole assessment proceedings start afresh. What is set aside is only the previous underassessment and not the original assessment proceedings. An order made in respect of the escaped item does not affect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in case of "underassessment", that the assessment of net income/wealth and tax due has to be re-computed on the entire taxable wealth/income, as the case may be." Thus, in view of the above-referred decisions it is clear that reassessment proceeding can be initiated after intimation Under Section 143(1)(a) is issued and such proceedings will not be barred merely because, notice Under Section 143(2) of Income Tax Act was not issued after the intimation Under Section 143(1)(a) within the prescribed period.

20. The issue relating to scope of Section 147 has been considered in detailed by the Income-Tax Appellate Tribunal - Nagpur Bench in the case of South Eastern Coalfields Ltd. v. Joint Commissioner of Income-Tax (Assessment) In that case the notice under Section 148 was issued for the reasons that the deduction in respect of contribution made by the assessee to CPRA was wrongly allowed in the original assessment without the assessee filing any particulars or other details in respect of the same but in the assessment order addition on different items were made. The contention of the assessee in that case was that since no addition was made in reassessment order with respect to CPRA, the grounds for reopening of the assessment did not survive and the Assessing Officer has no jurisdiction to continue with the proceedings. On this bases, it was contended that the entire proceedings were without having valid jurisdiction. The contention of the Learned DR on the other hand was that once the case reopened in Section 147 of the

Income-tax Act, the full assessment was above to the Assessing Officer. The bench after considering the various authorities has ordered. Thus, the issue stands covered by the decision of Hon'ble High Court referred to above and the decision in the case of South Eastern Coalfields Ltd. The bench considered the decisions of Hon'ble Court relating to the pre amendment provision of Section 147 and amended provision of the same and concluded as under: "A resume of all the case laws discussed above relating to the pre-amended provisions of Section 147 goes to show that the information was the basis for forming belief about the escapement of income as per the pre-amended provisions and the Assessing Officer was required to have such information in his possession to enable him to validly acquire the jurisdiction under Section 147 and in the absence of the very existence of such information, the various judicial authorities proceeded to conclude that the Assessing Officer did not have jurisdiction to assess or reassess the income of the assessee under Section 147. However, where the factum of having such information was found to be in existence at the time of reopening the assessment but in the ultimate analysis the Assessing Officer did not find any escapement, the reopening was considered valid by the judicial forum giving jurisdiction to the Assessing Officer to proceed under Section 147.

After the amendments made to Section 147 with effect from April 1, 1989, the condition precedent is only that the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment. In the present case, the reason to entertain belief about the escapement of income by way of allowing wrong deduction on account of contribution to CPRA was very much there and the same was also communicated to the assessee by the Assessing Officer. Although this belief turned out to be wrong during the reassessment proceedings, we are of the view that it cannot be said that the reason to form such belief did not exist at the time of initiation of reassessment proceedings by issue of notice under Section 148. Thus, the Assessing Officer had at the relevant time reason to believe that deduction on account of contribution to CPRA was wrongly allowed and, therefore, the issuance of notice under Section 148 cannot be said to have been done without jurisdiction." In view of the above discussion it is to be held that the Assessing Officer is fully competent and entitled to consider other items of income also if such items of escaped income comes to his notice during

the course of assessment proceedings and he has not to confine 10 matters or items on the basis of which proceedings Under Section 147 were initiated.

21. The scope of enquiry under amended provisions of Section 147 has been considered by various courts. In a recent case in the case of Vipan Khanna v. Commissioner of Income Tax and Ors. (P&H); 255 ITR 220, the Hon'ble Punjab & Haryana High Court has also considered this issue.

In that case the assessee had claimed depreciation on tax @ 50% in the Statement of Accounts filed with the return. The return was filed on 31.5.1994 and was processed under Section 143(1)(a) for the assessment year 1992-93 on the same date. The depreciation was admissible to the assessee only @ 40%. After noticing this mistake, the Assessing Officer, with a view to rectify the mistake, issued notice under Section 154/155 of the Act on 1st May 1995 requiring the assessee to file the objections, if any, to the proposed notification. The reply of the assessee was that no rectification was called for. In support of this reply a chart was filed on the basis of which it was explained that if the depreciation @ 40% is to be calculated then also no rectification will be needed because on one truck no depreciation was claimed in the return and if the same is added then the depreciation claimed will be fully justified.

22. During the pendency of proceedings under Section 154/155 the assessee filed return of income for assessment year 1993-94 on March 31, 1995. From the statement of accounts attached with the return it was found that the assessee again claimed depreciation @ 50%. The Income Tax Officer while processing the return under Section 143(1)(a) restricted the claim of depreciation to 40% and made adjustment accordingly. The assessee challenged the adjustment made by the Income Tax Officer before the Commissioner of Income Tax (Appeals) who deleted the addition made by making adjustment under Section 143(1)(a).

23. In this background the Income Tax Officer initiated proceedings under Section 147 of Income Tax Act for assessing the income, which had escaped assessment due to excessive claim of depreciation by issuance notice under Section 145 for both the assessment years 1992-93 and 1993-94.

24. Following reasons were recorded in issuing notice under Section 148: - December 31, 1996: In this case the assessee claimed excessive depreciation at 50 per cent, whereas the assessee was entitled to depreciation at 40 per cent, under the Income-tax Rules. Hence, I have reasons to believe that having income chargeable to tax was escaped assessment for the assessment year 1992-93; Accordingly, issue notice under Section 148 of the Income-Tax Act, 1961, for the assessment year 1992-93." Identical reasons were recorded in respect of the assessment year 1993-94 as well." 25. In order to finalise the assessment on the basis of proceedings under Section 147 of the Act, the Assessing Officer issued notice under Section 143(2) and 142(1) of Income Tax Act requiring the assessee to produced the books of accounts and to furnish the information on various items.

26. The assessee challenged the action of the Assessing Officer under Section 144 (a) before the DC IT but the contention of the assessee was not accepted by him.

27. Thereafter the assessee filed a Writ Petition before the Hon'ble High Court against the order passed by the DCIT.28. The Hon'ble High Court has considered the scope of Section 147 as amended w.e.f. 1.4.1989 and has observed as under: "Prior to the amendment with effect from April 1, 1989, the Assessing Officer could frame an assessment under Section 143(1) of the Income-tax Act 1961, without requiring the presence of the assesses. Alternately he could issue a notice under Sub-section (2) of Section 143 of the Act and require the assessee to produce his books of account and other evidence in support of the return filed by him and thereafter frame an assessment under Sub-section (3) of Section 143 of the Act. Therefore, it was necessary that an assessment order either under Sub-section (1) or under Sub-section (3) of Section 143 of the Act had to be passed. However, after the amendment made with effect from April 1, 1989, the position has materially changed. Now, the Assessing Officer initially processes the return under Section 143(1) (a) of the Act and determines the amount payable or refundable on that basis. It is not necessary for him to frame an assessment in each and every case. However, in case he chooses to verify the return and frame an assessment, he has to issue a notice under Sub-section (2) of Section 143 and require the assessee to produce his books of account and other materials in support of the

return. Thereafter he can make an assessment under Sub-section (3) of Section 143 of the Act. Another important change incorporated in Sub-section (2) of Section 143 of the Act is that the notice under this sub-section cannot be served on an assessee after the expiry of 12 months from the end of the month in which the return is furnished. Therefore, in a case where a return is filed and is processed under Section 143(1)(a) of the Act and no notice under Sub-section (2) of Section 143 of the Act thereafter is served on the assessee within the stipulated period of 12 months, the assessment proceedings under Section 143 come to an end and the matter becomes final. Thus, although technically no assessment is framed in such a case, yet the proceedings for assessment stand terminated." 29. On going through the order of the Learned High Court it is clear that issuance of notice under Section 148 was found to be justified. It was also held that in view of the amendment made under Section 147 of Income Tax Act w.e.f. 1,4.1989, the Assessing Officer could not only assess or reassess the escaped income in respect of which proceedings under Section 147 have been initiated but also any other income chargeable to tax which may have escaped assessment and which comes to his knowledge subsequently in the course of such proceedings.

30. According to the Hon'ble High Court through letter dated 30th July the Assessing Officer sought general information on other issue merely to verify the return. It was held that such general enquiry could only be made by issuing a notice under Sub-section (2) of 143 within the stipulated period. It was further held that, on facts of that case, it was not the case of revenue that during the course of proceedings under Section 147 of the Act it had come across any material relating to the items mentioned in letter dated 30th July 1999 suggesting escapement of income under any of those heads. On this basis, it was held that the directions issued by the DCIT under Section 144(a) in upholding the conduct of the Assessing Officer in issuing the letter seeking general information could not be sustained. From this decision also, it is clear that the jurisdiction of the Assessing Officer is not restricted only to the portion of escaped income in respect of which the proceedings had been initiated but to all other items of income, which may have escaped assessment.

31. On the basis of the decision of Hon'ble Jurisdictional High Court in the case of Mahanagar Telephone Nigam Ltd. (supra) it is to be held that intimation Under Section 143(1)(a) cannot be equated with assessment as it is only a demand notice.

However, as held by the Hon'ble Punjab & Haryana High Court in the case of Vipan Khanna v. Commissioner of Income Tax and Ors. (P&H); 255 ITR 220, the Assessing Officer cannot make robbing and fishing inquiry during reassessment proceedings and has to confine to specific items of escaped income only, if he has not taken recourse to the process Under Section 143(2) within the time prescribed for that purpose. Thus, after the expiry of period prescribed for notice Under Section 143(2) the scope of Inquiry will be limited and shall not be the same as is available in the case of original assessment Under Section 143(3) of Income Tax Act. This issue is, therefore, decided accordingly.

32. On the basis of our discussion and findings recorded while adjudicating various issues formulated in this matter, the following preposition may be culled out: (1) The proceedings under Section 148/147 can be initiated if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment. The only requirement is that at the stage of initiation of such proceedings there must exist some grounds or material for formation of the belief and there should be nexus between such grounds and reason to form belief that any income has escaped the assessment.

(2) The reopening cannot be held to be invalid merely because in the ultimate analysis no escapement of income is found in relation to any ground on the basis of which proceedings for reopening were initiated. In other words if there was requisite material for assumption of jurisdiction at that stage but the same could not substantiated during reassessment proceedings, then proceedings under Section 147 cannot be held to be invalid.

(3) The reassessment proceedings may be initiated on one ground but the reassessment may be done on any other ground, if such ground comes to the notice of Assessing Officer during the course of assessment proceedings. It is, therefore, open to the Assessing Officer to consider other items even though they

were not included under Section 148.

(4) The intimation under Section 143(1)(a) cannot be treated to be 'an order of assessment and so long as ingredients of Section 147 of Income Tax Act are fulfilled., the Assessing Officer shall be free to initiate proceedings under Section 147 and failure to take steps under Section 143(2) will not deprive the Assessing Officer in exercising jurisdiction under Section 147 of Income Tax Act.

(5) In reassessment proceedings, the whole of the original assessment is not set aside and., the reassessment is to be made only in respect of escaped income which is under assessed.

(6) During the proceedings of reassessment under Section 147/148, the Assessing Officer is not empowered to make robbing and fishing inquiries and to make general inquiry or to seek general information in relation to the return filed by the assessee.

(7) The item of income on which reassessment is made must bear the characteristics of escaped income. The touchstone, therefore, is that reassessment can be made only of income which has escaped assessment and which is under assessed.

(8) The Assessing Officer can exercise power under Section 147 in relation to other items of income which were not the basis for formation of belief or reasons to believe for issuing notice under Section 148 but for assessing such income he should indicate that any material or information has come to his notice during reassessment proceedings through external or internal source but he cannot reassess any item of income only after gathering general information or on conducting general probe from the assessee during the course of reassessment proceedings.

33. The last point may be illustrated in the following manner. The Assessing Officer reopens assessment on the ground that the assessee claimed excessive depreciation. During the course of reassessment proceedings it comes to his notice through information form ADI that the assessee has made huge deposits in

his bank account, which were not disclosed in the return. The Assessing Officer after making inquiry can definitely make addition in respect of such income, which escaped assessment. Similarly, if from Sales Tax Department he gets information that the assessee has suppressed sales then after making inquiry on this issue, he can make addition accordingly. Thus, any item of escaped income, which comes to his notice during reassessment proceedings, can be included in the reassessment proceedings. It is not open to him to make the entire assessment de novo or afresh. He has to confine only to particular items, which escaped assessment or in relation to which there was under assessment or excessive relief were allowed. Such items have to be identified and specified before making the reassessment in relation thereto.

34. The above conclusion is fully fortified from various authorities referred to above. The language and terminology used in Section 147 also makes it clear that it is particular income, which in the opinion of the Assessing Officer has escaped assessment and for which reassessment is to be made. For the sake of clarity, at the cost of repetition we are reproducing the provisions of Section 147 again which are as under: "147. 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 Section 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 recomputed 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 Section 148 to 153 referred to as the relevant assessment year):" 35. On closer scrutiny of the above provision, it is clear that the term 'any income' has been used intentionally in this provision and it cannot be taken into 'entire income' or total income. The word 'such income' also qualifies 'any income'. Similar interpretation can be made of the various clauses of explanation 2 to Section 147. The deemed escaped assessment can be inferred where income chargeable to tax has been under assessed.

36. In the context of the above postulates, on facts and material of the case it is fond that the Assessing Officer undertook a general, fishing and robbing inquiry

while proceeding under Section 147. As held above, such course was not available to him. From the assessment order, it is not clear as to which income or items of income were found to be items of escaped assessment. He has not given indication of the fact that any such items came to his notice during the reassessment proceedings. It is to be pointed out that the scope of inquiry in the reassessment proceedings is not the same as is in a regular assessment.

37. On going through the assessment order and material on record, it is found that vide letter dated 28.09.1999 available at Page 11 of Paper Book, the Assessing Officer directed the assessee to furnish details of various items which where in are as under: 1. A brief note on the Income earning activities during the financial year 1993-94.

3. Details of loans taken during the year with confirmed copy of account of lenders alongwith documentary evidence regarding identity and creditworthiness of the lenders.

4. Exact particulars of immovable properties owned giving addresses, location, date of acquisition and source of Investment in acquisition of such properties.

Investment made in immovable properties during the financial year 1993-94 and source of such investment.

5. Details of Investment made in movable assets during the financial year 1993-94.

6. Details of Bank accounts/Bank deposits giving account number, name and address of the bank and nature of account alongwith a copy each of the bank statement / pass book of such bank account / bank deposits for the financial year 1993-94.

7. Details of Bank account/Bank deposits with any foreign bank giving account number, name and address of the bank and nature of account, alongwith a copy each of the bank statement/pass book of such bank accounts/bank deposits for the financial year 1993-94.

9. Details of vehicles owned during the financial year 1993-94 with Source of Investment in acquisition of such vehicles.

10. Details of gifts received / given from to any person(s) during the financial year 1993-94 alongwith documentary evidence.

11. Details of foreign visits made during the financial year 1993-94. Expenditure made in such foreign traveling and source of such expenditure.

12. Details of family members, their activities and withdrawals made for household expenses during the financial year 1993-94.

You are also requested to produce your books of account, bank statements / bank pass books for the financial year 1993-94.

The date and time fixed for compliance is 11.10.1999 at 10.30 A.M. Notices Under Section 143(2) and 142(1) of the IT Act are enclosed.

Similar general queries were made through letter-dated 17.7.2000, which are as under: 4. Detail of immovable properties acquired during the year Annex. - D. 6. Detail of Bank Account with Photocopy of Bank Statement Annex. - E.38. Likewise vide letter dated 13.11.2000 he inquired from the assessee about justification of interest accrued on FDRs deposits in Dena Bank and credits in Bank of Baroda etc. He also directed the assessee to explain various other deposits in her account and sources thereof. She submitted detailed explanation and gave the details of sources. The Assessing Officer went on to examine the source of the source i.e. the capacity of the person who advanced the amount and the genuineness of the transaction. He even doubted the genuineness of the gifts and the capacity of donors. He also estimated the house-hold expenses and made additions on all these items without pointing out in the assessment order or elsewhere that such escaped items of income came to his notice during reassessment proceedings. It is found that in the balance sheet filed with the return that assessee had disclosed all the credits etc.

and no recourse was taken by the Assessing Officer to the process Under Section 143(2) and 143(3) within the period prescribed for that purpose. In view of the

decision in the case of Vipin Khanna (supra) the assessment proceedings stood terminated after the expiry of the period prescribed for issuance of notice Under Section 143(2) of Income Tax Act in this case. Hence, the Assessing Officer could have considered only those specific and particular items which escaped assessment and which were under assessed. He could not undertake the same general inquiry Under Section 147 of Income Tax Act in this case, which he could have undertaken while making regular assessment.

39. In view of the above, the additions made by the Assessing Officer in consequence of such general inquiry or robbing and fishing inquiry cannot be sustained and have to be deleted. We, therefore, delete various additions challenged in this appeal as having been made on the basis of such fishing and robbing inquiry which course was not legally justified. We may clarify here that the assumption of jurisdiction by the Assessing Officer in issuing the notice Under Section 148 and in proceeding Under Section 147, was fully justified arid, therefore, the assessment order cannot quashed... To this extent, therefore, the challenge in the additional ground is not acceptable. In view of our findings, recorded on various issues formulated by us, the additional ground is disposed off accordingly.

40. While deciding the additional ground, we have observed that various additions made in consequence of general and roving enquiry conducted by the Ao, which course has not been approved by us, cannot be sustained. However, we consider it proper to decide the additions challenged in various grounds in this appeal on merit also.

41. Ground No. 1: The AO had made addition of Rs. 1,26,000/- on account of loan from Digvijay Singh. The assessee had furnished full particulars as also the source. It was explained that these advances were received by her through banking channel. Details of drafts etc.

were also fully disclosed. These details are available on page 34 of the paper book, which is balance sheet of Mr. Digvijay Singh as on 31-3-1994. So far as the amount of Rs. 71,000/- is concerned, it came to Shri Digvijay Singh in the following manner: 42. The amount of Rs. 55,000/- as per the cash account s on 1-4-1993 to

31-3- 1994, as per page 34 of the paper book, also came by cheque to the assessee. Thus, the assessee has discharged the burden, which lay upon her. However, the departmental authorities did not accept the explanation of the assessee. In our considered opinion this approach is not justified in view of the ratio of decision in the case of Sarogi Credit Corporation v. CIT 103 ITR 344. The addition made by the AO and sustained by the learned CIT(A) is accordingly deleted.

43. Ground No. 2: So far as addition of Rs. 4,67,600/- on account of loan from late Shri I.B. Singh is concerned, the assessee had explained the source of this loan Shri I.B. Singh had expired and therefore confirmation in this regard was given by his son through an affidavit which is on record. The learned CIT(A) has not accepted the confirmation given by Shri Awanindra Singh son of late Shri I.B. Singh.

It was also explained that this amount of Rs. 4,67,600/- was received by the assessee through a/c payee D.D. which was paid to the seller of property no. UG/18, Somdutt Chamber No. 1, Bhikaji Kama Place, New Delhi, on behalf of the assessee. Shri Singh was a government employee and retired from service in 1977. He also expired in 1999. Thus, as the creditor had expired, no more details about the source of the source could be given by the assessee. In our opinion, therefore, the assessee discharged the burden which lay upon her. In view of above, the learned CIT(A) was not justified in sustaining the addition of Rs. 4,67,600/- and the same is deleted.

44. Ground No. 3: Addition of Rs. 50,000/- has been made on account of low Withdrawal. The AO has drawn inference that the assessee must be maintaining farm house E-18, Bijwasan, New Delhi. This farm house was purchased by her husband Mr. Awanindra Singh in September, 1994. The assessee was not living in this farm house but was staying at A-2/177.

the AO was, therefore, not justified to include the expenditure allegedly incurred by the assessee on the employees for maintaining the farm house.

45. The Allahabad Bench of the ITAT In the case of Rajkumar Jain 50 ITD 1 (All.) (Third Member) has held that the additions made on estimate basis and on assumptions and presumptions cannot be sustained. In this case the husband of the assessee was also making withdrawals for house-hold expenditure. Hence, in the totality of the circumstances relating to this matter, the addition cannot be justified and the same is deleted.

46. In view of the above, all the additions challenged in ground Nos. 1 to 3 are deleted. Therefore, on merits also, the assessee succeeds.

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