IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'A' CHANDIGARH

BEFORE SHRI T.R.SOOD ACCOUNTANT MEMBER
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER

ITA No. 749/CHD/2012
Assessment Year : 2009-10

M/s Malwinder Singh, Krishna Nagar, Amloh Road, Khanna Distt. Ludhiana.	Vs	The Income Tax Officer, Ward-II, Khanna.

PAN : BBGPS3005P

(Appellant) (Respondent)

Appellant by : Shri Ravi Shankar
Respondent by : Shri Mahavir Singh

Date of Hearing : 19.08.2014
Date of Pronouncement : 17.09.2014

O R D E R

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is directed against the order of the Commissioner of Income Tax -II, Ludhiana dated 04.05.2012 against the order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal :

1. That the order of Learned C.I.T. (A) is bad in law and on facts.

2. That the CIT(A) is not justified in upholding the notice u/s 148, issued without processing the return, just within 20 days of filing the return; whereas 'reassessment notice, without terminating the pending assessment, was liable to be held invalid' as per judgment in the case of H.E.H, 242 ITR 381 (SC).

3. That the CIT (A) is not justified in following the judgment in the case of Punjab Tractors Ltd., 254 ITR 242, without noticing the fact that in that case processing u/s 143(1) terminated the original assessment against which the assessee had filed appeal also; whereas in the instant case notice u/s 148 was issued without there being any

processing or assessment of the valid return that was pending and 'the time to issue notice u/s 143(2) had not expired' as admitted by the CIT(A).

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard and disposed off.

3. The assessee has also raised additional ground of appeal which reads as under :

"The ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the initiation of re-assessment proceedings without there being any basis or material to believe that the alleged expenditure on marriage of the daughter of the assessee had live link to the escapement of income, which is contrary to the view taken by this Hon'ble Tribunal in ITA 368/Chd/2011."

4. The ld. AR for the assessee pointed out that the additional ground of appeal is legal issue for which no investigation of facts was required and hence, the same should be admitted for adjudication.

5. The ld. AR for the assessee further submitted that the original grounds of appeal are not pressed and the only issue remaining for adjudication is the additional ground of appeal.

6. The ld. DR for the revenue opposed the admission of additional ground of appeal.

7. On the perusal of the additional ground of appeal raised by the assessee, we find that the assessee has raised purely legal issue vide the said additional ground of appeal and hence, the same is admitted for adjudication. The ld. AR for the assessee has not pressed ground of appeal Nos. 1 to 3 raised in the Memo of Appeal and hence, the same are dismissed as not pressed.

8. The only issue remaining for adjudication is against the initiation of re-assessment proceedings. The allegation of the assessee was that there was no basis or material to believe that the

alleged expenditure incurred on the marriage of the daughter amounted to escapement of income.

9. The brief facts of the case are that the assessee had furnished return of income on 15.02.2010 declaring total income of Rs. 1,19,700/-. Thereafter notice under section 148 of the Act was issued on 05.03.2010 after recording reasons for re-opening the assessment. The Assessing Officer had information that the assessee had solemnized marriage of his daughter and had spent Rs. 15,00,110/- and had reason to believe that the income to that extent had escaped assessment. The Assessing Officer recorded the reasons for re-opening under section 147 of the Act and issued notice under section 148 of the Act. Thereafter, notice under section 143(2) and 142(1) of the Act were issued to the assessee. The assessee, initially did not put in appearance but on a later date, the authorized counsel for the assessee furnished part information. The assessee was requisitioned to furnish evidence/details of source of expenditure of Rs. 15,00,110/-. The reply of the assessee in this regard is reproduced under para 6 at pages 6 to 8 of the assessment order. The Assessing Officer accepted the explanation to the extent of Rs. 5,51,000/- from different persons and further accepted contribution of Rs. 2,00,000/- by the assessee and Rs. 1,00,000/- by his wife and made an addition of Rs. 6,00,000/-.

10. Before the Commissioner of Income Tax (Appeals), the issue of initiation of assessment proceedings was raised and it was contended that the notice for re-assessment under section 148 of the Act could not be issued so long as the assessment proceedings pending on the basis of return already filed were not terminated. The Assessing Officer in the remand report contended that the

assessee did not raise any objection to the issue of notice under section 148 of the Act during the course of assessment proceedings. Further reliance was placed on the ratio laid down by the Hon'ble Punjab & Haryana High Court in Punjab Tractors Ltd. Vs DCIT 254 ITR 242 (P&H). The Commissioner of Income Tax vide para 3.3 held as under :

> *"I have carefully pursued the rival submission. Notice u/s 147 can be issued for the purpose of assessment/re-assessment etc. Admittedly the time to issue notice u/s 143(2) had not expired when notice u/s 148 had been issued in this case. However, in view of Hon'ble Punjab & Haryana High Court judgment in the case 'of Punjab Tractors Ltd. Vs, DCIT, 254 ITR 242, there is nothing wrong in the notice on this ground. This ground of appeal is accordingly dismissed."*

11. The ld. AR for the assessee stressed that there was no merit in the initiation of re-assessment proceedings and the issue of notice under section 148 of the Act as no material was available with the Assessing Officer to establish escapement of income in the hands of the assessee.

12. The ld. DR for the revenue placed reliance on the order of Commissioner of Income Tax (Appeals).

13. We have heard the rival contentions and perused the record. In the facts of the present case, the assessee had furnished return of income for the year under consideration on 15.02.2010. Admittedly, the said return of income was not processed by the Assessing Officer. However, notice under section 148 of the Act was issued on 05.03.2010 i.e. during the period when the notice under section 143(2) of the Act could also be issued. The Assessing Officer recorded the following reasons for initiating the re-assessment proceedings under section 147 of the Act and thereafter issued

notice under section 148 of the Act :

> *"The under signed has information in possession that Sh. Malwinder Singh has solemnized the marriage of his daughter Smt. Harpreet Kaur in the month of February 2009 and spent Rs. 15, 00,110/-. Sh. Malwinder Singh is not assessed to tax. I have therefore, reasons to believe that income to the extent of Rs. 15,00,110 chargeable to tax for the assessment year 20O9-10 has escaped assessment within the meaning of section 147 of the Income Tax act, 1961,."*

14. The Assessing Officer was in possession of the information that the assessee had solemnized marriage of his daughter in the month of February,2009 and there was further information that the assessee had spent Rs. 15,00,110/- on the said marriage functions and in view thereof, the Assessing Officer had reason to believe that income to the extent of Rs. 15,00,110/- had escaped assessment. Admittedly, the assessee had solemnized the marriage of his daughter during the year under consideration and during assessment proceedings, the assessee was asked to furnish sources of the said expenditure to which assessee had furnished the explanation alongwith evidences before the Assessing Officer. However, the Assessing Officer accepted part of the information/evidences but made an addition of Rs. 6,00,000/- in the hands of the assessee. The assessee during the course of assessment proceedings had not objected to the initiation of re-assessment proceedings and for the first time before the Commissioner of Income Tax (Appeals) had raised an issue against the initiation of re-assessment proceedings. The assessee before us had also agitated the said issue by way of additional ground of appeal.

15. The plea of the assessee against the initiation of re-assessment proceedings was that where the time period for issue of notice under section 143(2) of the Act had not expired, then notice under section

148 of the Act could not be issued.

16. The Hon'ble Punjab & Haryana High Court in Punjab Tractors Ltd. Vs DCIT (supra) have laid down the principle that the condition precedent for proceeding under section 147/148 of the Act was that the Assessing Officer should have reason to believe that income had escaped assessment. The Hon'ble jurisdictional High Court further held, *"The notice under section 147/148 issued to the petitioner was not vitiated merely for the reason that notice under section 143(2) had not been issued to it."*

17. The facts of the present case before us are identical to the facts before jurisdictional High Court in Punjab Tractors Ltd. Vs DCIT (supra) and the said ratio laid down by the Hon'ble High Court is squarely applicable to the facts of the present case where the assessee had furnished the return of income but had not received any notice under section 143(2) of the Act. However, the Assessing Officer, in view of the information received under which it was alleged that the income had escaped assessment in the hands of the assessee, had recorded reasons for re-opening the assessment and the issue of notice under section 148 of the Act was thus validly initiated. We find no merit in the plea of the assessee in this regard.

18. Another plea raised by the ld. AR for the assessee was that no addition was warranted in the hands of the assessee in view of similar issue being settled by the Chandigarh Bench of Tribunal in ITO Vs Director Major General S.S.Chauhan in ITA No. 368/CHD/2011 relating to assessment year 2001-02 vide order dated 29.03.2012. It was put to the ld. AR for the assessee again and again as to why the said plea can be raised when no ground of appeal against the issue on merits i.e. the addition of Rs. 6 lacs has

been raised either in the original ground of appeal or in the additional ground of appeal. The ld. AR for the assessee had no reply to the same and it was stressed again and again that the re-assessment proceedings were not validly initiated. The Hon'ble Supreme Court in ACIT Vs Rajesh Jhaveri Stock Brokers P.Ltd. 291 ITR 500 (S.C) had held as under :

> *Substantial changes have been made to section 143(1) with effect from 1-6-1999. Up to 31-3-1989, after a return of income was filed, the Assessing Officer could make an assessment under section 143(1) without requiring the presence of the assessee or the production by him of any evidence in support of the return. Where the assessee objected to such an assessment or where the officer was of the opinion that the assessment was incorrect or incomplete or the officer did not complete the assessment under section 143(1), but wanted to make an inquiry, a notice under section 143(2) was required to be issued to the assessee requiring him to produce evidence in support of his return. After considering the material and evidence produced and after making necessary inquiries, the officer had power to make assessment under section 143(3). With effect from 1-4-1989, the provisions underwent substantial and material changes. A new scheme was introduced and in the new substituted section 143(1) prior to the subsequent substitution with effect from 1-6-1999, in clause (a), a provision was made that where a return was filed under section 139 or in response to a notice under section 142(1), and any tax or refund was found due on the basis of such return after adjustment of tax deducted at source, any advance tax or any amount paid otherwise by way of tax or interest, an intimation was to be sent without prejudice to the provisions of section 143(2) to the assessee specifying the sum so payable and such intimation was deemed to be a notice of demand issued under section 156. The first proviso to section 143(1)*(a) *allowed the department to make certain adjustments in the income or loss declared in the return.* [Para 11]
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> *What were permissible under the first proviso to section 143(1)*(a) *to be adjusted were that,* (i) *only apparent arithmetical errors in the return, accounts or documents accompanying the return,* (ii) *loss carried forward, deduction allowance or relief, which was* prima facie *admissible on the basis of information available in the return but not claimed in the return and similarly* (iii) *those claims which were on the basis of the information available in the return,* prima facie *inadmissible, were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the face of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief.* [Para 12]
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> *The intimation under section 143(1)*(a) *is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not* per se *preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from 1-4-1989 to 31-3-1998, the second proviso to section 143(1)*(a) *required that where adjustments were made under the first proviso to section 143(1)*(a), *an intimation had to be sent to the assessee, notwithstanding that no tax or*

*refund was due from or to him after making such adjustments. With effect from 1-4-1998, the second proviso to section 143(1)(*a*) was substituted by the Finance Act, 1997, which was operative till 1-6-1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between 1-4-1998 and 31-5-1999, sending of an intimation under section 143(1)(*a*) was mandatory. Thus, the legislative intent is very clear from the use of the word 'intimation' as substituted for 'assessment' that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(*a*), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(*a*) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(*a*) indicates that the Assessing Officer has to proceed after accepting the return and making the permissible adjustments only. As a result of insertion of the* Explanation *to section 143 by the Finance (No. 2) Act of 1991 with effect from 1-10-1991 and, subsequently, with effect from 1-6-1994, by the Finance Act, 1994, and ultimately omitted with effect from 1-6-1999, an intimation sent to the assessee under section 143(1)(*a *) was deemed to be an order for the purposes of section 246 between 1-6-1994 and 31-5-1999, and under section 264 between 1-10-1991 and 31-5-1999. The expressions 'intimation' and 'assessment order' have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. The assessment is used as meaning sometimes 'the computation of income', sometimes 'the determination of the amount of tax payable' and sometimes 'the whole procedure laid down in the Act for imposing liability upon the tax payer'. In the scheme of things, as noted above, 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. Under section 143(1)(*a*), as it stood prior to 1-4-1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the CBDT spell out the intent of the Legislature,* i.e., *to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. Under the first proviso to the newly substituted section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgement of the return shall be deemed to be an intimation under section 143(1) where (*a*) either no sum is payable by the assessee, or (*b*) no refund is due to him. It is significant that the acknowledgement is not given by any Assessing Officer, but mostly by ministerial staff. No assessment can be done by them. 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 indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision.* [Para 13]

Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' will mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income has escaped

assessment, it can be said to have 'reason to believe' that an income has escaped assessment. The said expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers. [Para 16]

*The scope and effect of section 147, as substituted with effect from 1-4-1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (*a*) and (*b*) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(*a *) two conditions were required to be satisfied - firstly, the Assessing Officer must have reason to believe that income, profits or gains chargeable to income-tax had escaped assessment, and secondly, he must also have reason to believe that such escapement had occurred by reason of either (*i*) omission or failure on the part of the assessee to file a return under section 139 for any assessment year with the Assessing Officer or (*ii*) to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148, read with section 147(*a *). 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, it 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 instant case was covered by the main provision and not the proviso.* [Para 17]

So long as the conditions 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) has been issued. [Para 18]

The inevitable conclusion was that the High Court had wrongly applied, Adani Export's *case (*supra*) which had no application to the instant case, on the facts, in view of the conceptual difference between section 143(1) and section 143(3).*

Thus, the appeal was to be allowed.

19. In view of the ratio laid down by the Hon'ble Supreme Court in ACIT Vs Rajesh Jhaveri Stock Brokers P.Ltd. (supra) where the Assessing Officer had information about escapement of income in the hands of the present concern, then the Assessing Officer is empowered to record reasons for re-opening and initiate the proceedings by issue of notice under section 148 of the Act. Hence, in the facts of the case where the Assessing Officer had the information of escapement of income in the hands of the assessee,

the recording of reasons by the Assessing Officer under section 147 and issue of notice under section 148 of the Act is valid initiation of re-assessment proceedings and we find no merit in the additional ground of appeal raised by the assessee.

20. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 17th September,2014.

Sd/-	Sd/-
(T.R.SOOD)	**(SUSHMA CHOWLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 17th September,2014

'Poonam'

Copy to:

The Appellant, The Respondent, The CIT(A), The CIT,DR

Assistant Registrar/ITAT/CHD