

**2025-TIOL-1570-HC-AHM-IT****IN THE HIGH COURT OF GUJARAT****AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5387 of 2022****M/s DIPESH PARASMAL JAIN HUF****Vs****INCOME TAX OFFICER****WARD 5(3)(1) OR HIS SUCCESSOR****Bhargav D Karia & Pranav Trivedi, JJ****Dated: August 26, 2025****Petitioner Rep by: Mr SN Divatia****Respondent Rep by: Mr Varun K Patel****Income Tax - Writ - Section 148****Keywords - Re-assessment - Reasons recorded**

THE petitioner, acting as Karta of an HUF engaged in manufacturing and selling excisable goods under the name Shefali Plastoware, filed its return of income for AY 2017-18 declaring total income of about Rs 3.62 lakh, which was processed u/s 143(1). Later, based on information received from the DDIT (Inv.) regarding a search conducted by the Excise Department in June 2015 covering FYs 2012-13 to 2014-15, the AO issued a notice u/s 148 to reopen the assessment for AY 2017-18, alleging suppression of sales of plastic goods to the extent of about Rs 429.92 crore. The petitioner objected to the reopening on the grounds that the information was factually irrelevant to AY 2017-18, that there was no live link or tangible material connecting the alleged suppression to the relevant assessment year, and that the reasons recorded lacked independent application of mind. The AO rejected the objections, leading the petitioner to file a writ challenging both the reassessment notice and the rejection order.

In writ, the High Court held that,

Whether re-assessment is tenable where the AO fails to establish any nexus between information received & income assessable for relevant AY & where reasons recorded are copy of investigative conclusions without proper analysis - YES: HC

++ The High Court held that the reopening of the assessment was unsustainable, primarily because the basis for the alleged escapement of income—being the search and show cause notice by the Excise Department—pertained to earlier financial years (2012-13 to 2015-16), whereas the reassessment was initiated for AY 2017-18. The Court observed that the AO had failed to establish any nexus between the information received

and income assessable for the relevant year, and that the reasons recorded reflected mere reproduction of investigative conclusions without proper analysis. The Court also noted internal inconsistencies in the revenue's stand, including its own admission that the alleged information for AY 2017-18 "could be from some other source." In the absence of specific material pointing to escapement of income in AY 2017-18, the Court concluded that the condition precedent for invoking jurisdiction u/s 147 was not satisfied. Accordingly, the impugned notice u/s 148 and the order disposing of objections were quashed, and the petition was allowed.

Writ petition allowed

JUDGEMENT

Per: Bhargav D Karia:

1. Heard learned advocate Mr. S.N. Divatia for the petitioner and learned Senior Standing Counsel Mr. Varun K. Patel for the respondent.

2. Rule returnable forthwith. Learned Senior Standing Counsel Varun Patel waives service of notice of rule on behalf of respondent.

3. Having regard to the controversy involved in this petition, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

4. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the validity of notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short) dated 31.03.2021 for the assessment year 2017-2018 whereby the respondent has proposed to reassess the completed assessment for the Assessment Year 2017-18. The petitioner also challenges the order passed on 28.2.2022 disposing of the objections raised by the petitioner against the re-opening of the assessment proceedings.

5. Brief facts leading to filing of the present petition are as under:

5.1 The petitioner is the Karta of the Joint Hindu Undivided Family (HUF). The HUF is engaged in the business of manufacturing and selling excisable goods by the name of Shefali Plastoware. The petitioner had filed its return of income for assessment year 2017-18 on 01.08.2017 declaring total income of Rs. 3,62,340/-. The same was also processed under Section 143(1) of the Act.

5.2 It was the case of the respondent that on 22.3.2021, information was received by the respondent from DDIT-(Inv.)-2(1), Ahmedabad that a search was carried out at the business premises of the petitioner on 5.6.2015 by the Commissioner of Excise. It was derived that the Assessee i.e. the petitioner had engaged in illicit manufacturing and sales of excisable goods and has been operating various family firms, which is as per the Show-cause notice. As per the show-cause notice issued by the Commissioner of Excise, the petitioner has indulged in suppression of sales of plastic material to the tune of Rs.42,991,65,951/-. In view of the same, the respondent issued notice under Section 148 of the Act dated 31.3.2021 for Assessment Year 2017-18 on the ground that income has escaped assessment within the meaning of Section 147 of the Act. In view of the same, the petitioner uploaded return of income on 12.10.2021, declaring total income of Rs.3,62,337/- with a request to provide the copy of reasons recorded for reopening. Subsequently, respondent issued notice under Section 143(2) read with Section 147 of the Act on 15.1.2022 along with reasons recorded for reopening the assessment.

5.3 The petitioner, in response to the same, raised its objection against the reopening by way of communication dated 10.2.2022. It was the case of the petitioner that the search by the Excise Department conducted on 5.6.2015 was for period covering Financial Years 2012-13, 2013-14 and 2014-15. However, the respondent had initiated re-assessment proceedings in case of the petitioner for the Assessment Year 2017-18, which was much later than such period. Further, it was the objection of the petitioner that the reasons recorded were factually incorrect and the proceedings initiated were on the basis of factually incorrect

reasons. It was further objected by the petitioner that the reason to believe does not contain reasons but the conclusion of the Assessing Officer one after the other. Therefore, there is no independent application of mind by the Assessing Officer to the tangible material and information received from DDIT - (Investigation), which forms the basis of the reasons to believe that income has escaped assessment. It was further objected by the petitioner that the conclusion of the Assessing Officer are at best a reproduction of the conclusion in the investigation report and, therefore, the reasons fail to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment. However, the objections were not considered by the respondent and by way of order dated 28.2.2022, the objections were rejected by the respondent. In view of the same, the order passed on 28.2.2022 rejecting the objections of the petitioner as well as the notice dated 31.3.2021 under Section 148 of the Act, are impugned in the present petition.

6. Learned advocate Mr. S.N. Divatia for the petitioner submitted that both, the impugned notice dated 31-03-2021 and the order passed on 28.02.2022 disposing off the objections are patently illegal, bad-in-law and without jurisdiction because the condition precedent for reopening under section 147 of the Act is not satisfied.

7. Learned advocate Mr. Divatia further submitted that section 147 of the Act empowers the Assessing Officer to assess or re-assess income chargeable to tax which he has reason to believe has escaped assessment. In order to re-open an assessment made u/s. 143(3) of the Act, the following conditions are required to be satisfied :-

(a) The Assessing Officer must form a tentative or prima facie opinion on the basis of material that there is an under assessment or escapement of income;

(b) He must record such prima facie belief into writing;

(c) The belief formed is subjective but the reasons recorded or the information available on record must show that the belief is not a mere suspicion:

(d) Reasons recorded and/or the documents available on record must show a nexus or that in fact they germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.

8. Learned advocate Mr. Divatia further submitted that the perusal of the reasons recorded for reopening show that the impugned notice was issued on account of the information received from DDIT (Inv.)-2(1), Ahmedabad that a search was conducted on 05.06.2015 in case of M/s. Shefali Plastic Industries and related firms by O/s. Pr. Commissioner of GST, Ahmedabad wherein it was found that the group was engaged in illicit manufacturing and sale of excisable goods in various family firms and the show cause notice stated suppression of sales of plastic material to the tune of Rs.42,991,65,951/- during the year under consideration. Therefore, the Respondent had reason to believe that there was escapement of Income. The impugned reopening is totally baseless and unfounded for the simple reason that when the search by GST Authority was carried out on 05.06.2015, there cannot be any illicit manufacturing and sales of excisable goods resulting into the escaped income for the previous year relevant to A.Y. 2017-18 which has been sought to be reopened by the Respondent. The perusal of order passed on 11.01.2022 passed by office of Pr. CC GST A'bad at page-68 of this order gives the quantification of Central Excise Duty for four different concerns for the period from FY 2012-13 to 2015-16. There is no such duty in respect of FY 2016-17 relevant to A.Y. 2017-18 which is under reopening. The total sales alleged for the entire four years is Rs. 17,84,575/- in case of proprietary concern Shefali Plastoware run by the petitioner HUF.

9. Learned advocate Mr. Divatia also submitted that the impugned reassessment notice as well as the re-assessment proceedings are without jurisdiction and illegal also for the reason that the Respondent has not pointed out any material worth name on the basis of which he may form the belief about the escapement of income for A.Y. 2017-18. It is now a trite law that in order to form belief about the escapement of income by

the Respondent, there has to be live link or nexus between the material and the belief, which is admittedly not found in the present case.

10. Mr. Divatia further submitted that while disposing off the objections by the Respondent in order dated 28.02.2022, it is observed in para-8 of this order that the suppression of sales is not mentioned as per the show cause notice but it is mentioned "*this particular information pertaining to A.Y. 2017-18 could be from some other source*". This contention itself proves that the Respondent had failed to indicate the source of information for reopening and a general statement has been made as to the source of information without pointing out the material. Therefore, in absence of any information or material to form the belief of escapement, the impugned notice is illegal. The Petitioner submits that on the basis of past record, no extrapolation can be made and the same cannot be the basis for formation of a belief to initiate a valid reopening of assessment u/s. 147 of the Act.

11. Per contra, learned Senior Counsel Mr. Varun Patel for the respondent has submitted that pursuant to information available, the case was reopened as per the law after recording of satisfaction and taking approval of the competent authority, hence it cannot be said that the case was reopened without application of mind. The Assessing Officer after analyzing the all these facts, has recorded his reason for reopening the case and sent the same to competent authority for approval to issue notice u/s. 148 of the Act. The competent authority after satisfying itself with the reason recorded by the Assessing Officer has accorded approval for issuing notice u/s. 148 of the Act. Hence, it is absurd to say that the approval has been given without application of mind, erroneous and illegal.

Further, the case was reopened as per the procedure after recording of satisfaction and taking approval of the competent authority, hence it cannot be said that the case was reopened in mechanical manner. The main ingredient required to issue notice u/s 148 of the L.T. Act, 1961 is to form 'reason to believe'. At the stage of issue of notice u/s 148, the only question is whether there was relevant material on which reasonable person could have formed the requisite belief as to whether an income chargeable to tax has escaped assessment. The expression 'reason to believe' cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. Whether material would conclusively prove escapement of income is not the concern at the stage of issue of notice. It only means that the Assessing Officer forms a belief from the examination of facts, from any information the Assessing Officer receives. If the Assessing Officer discovers or finds or satisfies that the taxable income has escaped assessment, it would amount to saying that the Assessing Officer had reason to believe that such income has escaped assessment. The justification of Assessing Officer's belief is not to be judged from the standards of proof required for coming to a final decision. A belief though justified for the purpose of initiation of the proceedings u/s 147 may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where Assessing Officer finds a cause or justification to believe that such income has escaped assessment, the Assessing Officer is not required to base his belief on any final adjudication of the matter. The Assessing Officer had applied his mind and examined the information received and then recorded his reasons to believe that the income of assessee had escaped assessment for the year under consideration.

However, it was categorically submitted by Mr. Patel that particular information pertaining to A.Y. 2017-18 could be from other source as well. It was further submitted that the information for reopening may come from external source or even from material on record. In view of the same, it was submitted that the petition is devoid of merits and, therefore, liable to be dismissed.

12. Having heard learned advocates for the parties and material on record, it is clear that while disposing of the objections made by the petitioner it has been categorically recorded by the respondent that as per the information on record, an amount of Rs.42,991,65,951/- has escaped assessment and, therefore, the Assessing Officer has rightly invoked the provision of Section 147 of the Act and issued Notice under Section 148 of the Act. It was further noted that as per the decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. Income Tax Officer*, reported in 259 ITR 19 SC = [2002-TIOL-634-SC-IT](#), it was not mandatory to provide any other documents apart from the reasons recorded for re-opening. However, the fact is not in dispute that the amount which is alleged to have escaped income, is based on a search which

was carried out for the Financial Years 2012-13, 2013-14 and 2014-15 whereas the present dispute is qua Assessment Year 2017-18. Considering the totality of the circumstances and the facts which have come on record, it is apparent that the respondent is not sure as to the year of taxability and whether said escaped income requires to be taxed in the Assessment Year 2017-18. In this situation, it is not possible to agree with the stand of the revenue that any income could have been stated to have escaped the assessment for the Assessment Year 2017-18 vis-a-vis the search carried out by the Department in relation to the Financial Years 2012-13, 2013-14, 2014-15 and 2015-16 and that there was a failure or omission on the part of the Assessee due to such escape.

13. The impugned notice under Section 148 of the Act dated 31.3.2021 and the impugned order dated 28.2.2022 disposing of the objection of the petitioner are hereby quashed and set-aside. The petition is allowed, accordingly. Rule is made absolute.

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