IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT
and
SHRI B.C. MEENA, ACCOUNTANT MEMBER

ITA No.4328/Del./2011
(ASSESSMENT YEAR : 2000-01)

Shri Anil Kumar Chaudhary, Anil Motor Store, Village Samalkha, New Delhi – 110 037.	vs.	ITO, Ward 27 (3), New Delhi.
(PAN : AAEPC6437N)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : S/Shri Mayank Jain & Madhur Jain, Advocates
REVENUE BY : Ms. Y. Kakkar, Senior DR

Date of Hearing : 04.03.2015
Date of Pronouncement : 11.03.2015

ORDER

PER B.C. MEENA, ACCOUNTANT MEMBER :

This appeal filed by the assessee emanates from the order of CIT (Appeals)-XXIV, New Delhi dated 29.07.2011 for the assessment year 2000-01.

2. In this case, the assessment u/s 147/143(3) of the Income-tax Act, 1961 was finalized on 17.12.2007 and an addition of Rs.5,03,000/- was made which was the amount of gift received from three persons on

15.04.1999. The CIT (A) has confirmed the addition and now the assessee is in appeal before us. The assessee has taken the following grounds :-

> "i. The Assessing Officer was not justified in reopening the assessment of the assessee.
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> ii. The reopening of assessment of the assessee was barred by time since the notice of reassessment was served upon the assessee after the prescribed period had already expired. Therefore, there was no valid reopening of the assessment. Therefore, the reopening of assessment of the appellant not sustainable in the eyes of law.
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> iii. There was no independent application of mind by the assessing officer in reopening the assessment of the assessee. Information given by the DIT (Investigation) is not "reason to believe" without independent application of mind by the Assessing Officer. Admittedly, no independent application of mind was there by the assessing officer before reopening the assessment of the assessee.
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> iv. No income of the assessee had escaped assessment in the relevant Assessment Year. The tax due had been discharged by the assessee in the assessment year itself.
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> v. The assessee had discharged his primary onus of establishing the identity of the donors. The address and the identification of the donors had been established by the assessee. In absence of any other material on record to show otherwise, the Ld. Assessing Officer erred in coming to the conclusion that the identity of the donors was not established. Moreover, the recourse to section 131 of the Income Tax Act, 1961 was not taken by the Ld. Assessing Officer to call upon the donors.
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> vi. The assessing officer has wrongly added back to the amounts given by way of gift to the assessee, to his income."

3. In the ground nos.1 to 3, the assessee has challenged the reopening proceedings. In this regard, after hearing both the side, we hold that the Assessing Officer has issued the notice after recording reasons and there is

no legal and procedural infirmity in issuing of notice. The assessee has never asked copy of the reasons recorded and in view of the Hon'ble Supreme Court decision in the case of GKN Drive Shafts (India) Ltd. vs. ITO – 259 ITR 19, we find no merits in the pleadings of the Ld. AR. Further, there is a direct decision of Hon'ble Delhi High Court in the case of CIT vs. Safetag International India (P.) Ltd. reported in 332 ITR 622 (Delhi) wherein the Hon'ble High Court has considered the similar situation and held as under :-

> "When notice under section 148 was issued for reassessment proceedings, no doubt, the Assessing Officer was required to record reasons which led him to believe that there was escaped income. Law does not mandate the Assessing Officer to suo motu supply the copy of those 'reasons to believe' to the assessee. It is for the assessee and if assessee so chooses can file objections thereto. Only when such objections are filed, it becomes the duty of the Assessing Officer to dispose of all those objections first by passing speaking order and if the objections are rejected it gives a cause to the assessee to challenge the said order of the Assessing Officer by filing appropriate writ petition. This is the law declared by the Supreme Court in the case of GKN Drive Shafts (India) Ltd. v. ITO [2003]259 ITR 19/[2002]125 Taxman 963(SC)[Para 6].
>
> In the instant case, the assessee did not ask for these 'reasons to believe'. The assessee rather participated in the reassessment proceedings. When the reassessment orders were passed and the assessee felt aggrieved there against, the assessee filed appeal before the Commissioner (Appeals). In this appeal, he challenged the validity of reassessment proceedings, which was the course of action available to the assessee. The Commissioner (Appeals), thus, could examine the issue as to whether the assessment reopened was valid or not. Once the Commissioner (Appeals) also dismissed the appeal of the assessee and against that the second appeal was also preferred before the Tribunal, the Tribunal could not

have restored the matter back to the file of the Assessing Officer, and give another opportunity to the assessee to raise objections to 'reasons to believe' recorded by the Assessing Officer. Reassessment order passed by the Assessing Officer in both the assessment years was even upheld by the Commissioner (Appeals). It was the assessee's own creation that it did not ask for the reasons or raise objection thereto. Merely because the assessee was oblivious of such a right would not mean that the Tribunal should have granted this right to the assessee, that too, at the stage when the matter was before the Tribunal and travelled much beyond the Assessing Officer's jurisdiction. It is trite that what cannot be done directly, it is not allowed indirectly as well. This novel and in genuineness method adopted by the Tribunal in setting aside the reassessment orders on merits could not be accepted. Even otherwise, the assessee had not supplied any purchase inasmuch as it was still open to the assessee to challenge the validity of reassessment notice before the Commissioner (Appeals) and in fact, the assessee did so for availing that opportunity. [Para 7]

As a result, the impugned order passed by the Tribunal was set aside. [Para 8]

As regards the submission of the assessee that the Commissioner (Appeals) while repelling the challenge laid by the assessee to the reassessment proceedings, as more than that the Assessing Officer had duly recorded the 'reasons to believe' as per which the reopening of the assessment was justified and on this ground, challenge to the validity of the notice was turned down. The assessee was justified in his submission that at least at this stage, the assessee could have been provided with the 'reasons to believe' recorded by the Assessing Officer to accept the assessee to make his submission before the Commissioner (Appeals) predicated on the said 'reasons to believe'. While setting aside the order of the Tribunal, it was directed that the matter be remitted back to the Commissioner (Appeals). The revenue shall supply 'reasons to believe' recorded by the Assessing Officer within four weeks from today. On the supply of these 'reasons to believe', it would be open to the assessee to make submissions before the Commissioner (Appeals) based on those reasons, challenging the validity of reassessment

> proceedings and the Commissioner (Appeals) shall decide this issue on merits after hearing both the parties. [Para 9]"

Since there is no legal and procedural irregularity in issuing notice u/s 148, the Assessing Officer has recorded the required reasons which led him to believe that there was escapement of income. Law does not provide or mandate that the Assessing Officer shall suo motu shall supply the copy of those 'reasons to believe' to the assessee. It is for assessee and if assessee chooses to ask for reasons then he/she can file objection thereto. Only when such objections are filed, it becomes the duty of the Assessing Officer to dispose of all those objections first by passing a speaking order and if the objections are rejected then it gives a cause to the assessee to challenge such order by filing an appropriate writ. This is the law laid down by Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Ltd. cited supra. In the instant case, the assessee did not ask for reasons to believe. The assessee participated in the reassessment proceedings. The reassessment order was passed. The assessee felt aggrieved to such order and filed the appeal before the CIT (A). The CIT (A) has passed an appropriate order on this issue. Thus, we hold that the assessment was reopened by issuing a legal and valid notice u/s 148 of the Act. On the procedural aspect also, there is no infirmity in the notice. The notices u/s 143(2) and 143(1) were also properly served on the representative of the assessee.

3.1 Hon'ble Delhi High Court in the case of A.G. Holdings Pvt. Ltd. vs. ITO reported in 352 ITR 364 has held that there is no requirement in section 147 of the Act or section 148 or section 149 that the reasons recorded for reopening an assessment should also accompany the notice of reassessment issued u/s 148. The requirement in section 149(1) is only that the notice u/s 148 shall be issued. There is no requirement that it should also be served on the assessee before the period of limitation. There is also no requirement in section 148(2) that the reasons recorded shall be served along with the notice of reopening the assessment. The requirement, which is mandatory, is only that before issuing the notice to reopen the assessment, the Assessing Officer shall record his reasons for doing so. Thus, the Assessing Officer is duty bound to supply the reasons recorded for reopening the assessment to the assessee, after the assessee files the return in response to the notice issued u/s 148 and on his making a request to the Assessing Officer to that effect. In the case under consideration, even the assessee has not made any request for supply of the reasons. In view of these factual matrixes, we dismiss these grounds of assessee's appeal.

4. With regard to the other issues with respect of merits of the addition raised in ground nos.4 to 6, we have heard both the sides on the issue. The assessee has submitted confirmations/affidavits from the donors along with gift deeds executed between donor and donee during the assessment

proceedings. The copies of ration cards were also submitted to Assessing Officer. The assessee has given the full addresses of these donors. The assessee has also submitted copy of Income-tax returns of these donors. Copy of bank statements and cheques/drafts were also submitted. The Assessing Officer has not verified the veracity of these affidavits, confirmations, bank accounts, ration cards and gift deeds. He had asked the assessee to produce the donors. The Assessing Officer had not made any effort to issue summons to these donors. By filing these primary documents, the assessee was able to discharge the primary onus. It was the duty of the Assessing Officer to verify the veracity of these gift deeds/affidavits and other documents prior to arriving at a conclusion for rejecting the same. Further, the Assessing Officer has also not taken the investigation to any logical end when he was empowered by the law for issuing the summons to make the presence of these donors. Since the Assessing Officer has failed to take investigation to the logical end when the assessee has discharged his primary onus, in such a situation, the Assessing Officer was not justified in dismissing or rejecting the evidences submitted before him. The reliance is placed on the decision of Hon'ble Patna High Court in the case of Sarogi Credit Corporation vs. CIT, Bihar – 103 ITR 344 wherein the Hon'ble High Court has held as under :-

> "Held, that if the credit entry in the books of the assessee stands in the name of the assessee or the assessee's wife and children, or in the name of any other close relation or an

employee of the assessee, the burden lies on the assessee to explain satisfactorily the nature and source of the entry. But if the entry does not stand in the name of any such person having a close relation or connection with the assessee, but in the name of an independent party, the burden will still lie on him to establish the identity of that party and to satisfy the Income-tax Officer that the entry is real and not fictitious. Once the identity of the third party is established before the Income-tax Officer and other such evidence are prime facie placed before him pointing to the fact that the entry is not fictitious, the initial burden lying on the assessee can be said to have been duly discharged by him. It will not, therefore, be for the assessee to explain further as to how or in what circumstances the third party obtained the money or how or why he came to make an advance of the money as a loan to the assessee. Once such identity is established and the creditors, as in the present case, have pledged their oath that they have advanced the amounts in question to the assessee, the burden immediately shifts on to the department to show as to why the assessee's case could not be accepted and as to why it must be held that the entry, though purporting to be in the name of a third party, still represented the income of the assessee from a suppressed source. And, in order to arrive at such a conclusion, even the department has to be in possession of sufficient and adequate materials.

The Income-tax Officer's rejection, not of the explanation of the assessee, but of the explanation regarding the source of income of the depositors, could not by itself lead to any inference regarding the non-genuine or fictitious character of the entries in the assessee's books of account. The Appellate Assistant Commissioner clearly pointed out that the findings recorded by the Income-tax Officer were not positive findings.

Further, the Tribunal had partly accepted the source to the extent of Rs.5,000 and partly rejected it to the extent of Rs.15,000. Having accepted the genuineness of the entries in the books of account, having accepted the explanation offered by the third parties with regard to their sources of money in part at least, there was no material for the Tribunal to hold that the assessee had not discharged the onus on him and the

finding to that effect must be held to be without any evidence and, hence, wholly illegal and the conclusions drawn perverse.

Therefore, the assessee had discharged the onus within the meaning of section 68 of the Act for the cash credits and the Appellate Tribunal was not justified in maintaining the addition of Rs.15,000 as the assessee's income form undisclosed sources."

Since the assessee has submitted affidavits, copy of gift deeds and copy of ration cards which contain the particulars of the donor including addresses, details of family members which were sufficient to prove the identity of the person, in such a situation, we hold that assessee was able to discharge the primary onus and thereafter it is for the Assessing Officer to verify the veracity of these documents or issuing the summons u/s 131(2) to make the presence of the donors which he was miserably failed to do so. In view of these factual matrixes, we have no hesitation in allowing these grounds of the assessee's appeal.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on this 11th day of March, 2015.

Sd/-	**sd/-**
(G.C. GUPTA)	**(B.C. MEENA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated the 11th day of March, 2015
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-XXIV, New Delhi
5.CIT(ITAT), New Delhi.

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