IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA NO. 795/2009

BETWEEN

SRI C.M.MAHADEVA
S/O SRI MANCHE GOWDA
CHAMALAPURA, KEELARA POST,
MANDYA DISTRICT.

... APPELLANT

(BY SRI. G. VENKATESH, ADV. FOR K.S.HANUMANTHA RAO, ADV.,)

AND

THE COMMISSIONER OF INCOME TAX
55/1, SHILPASHREE
VIDYARANYA COMPLEX,
VISHWESHWARANAGAR,
MYSORE.

...RESPONDENT

(BY SRI E.I.SANMATHI, ADV.,)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED: 31.07.2009 PASSED IN ITA NO.1357/BNG/2008 FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.1357/BNG/2008 DATED 31.07.2009 AND CONFIRM THE ORDER DATED 29.8.2008 PASSED IN ITA NO.161/MYS/CIT(A)-V/07-08 BY THE COMMISSIONER OF INCOME TAX (APPEALS), MYSORE.

THIS ITA COMING ON FOR HEARING THIS DAY, ***VINEET SARAN J.*** DELIVERED THE FOLLOWING:

JUDGMENT

This is an appeal filed by the assessee, who is an individual, whereby the order of the Tribunal, relating to the reopening of assessment under Section 148/147 of the Income Tax Act, 1961 (for short 'the Act'), for the assessment year 2004-05 is under challenge.

2. For the said assessment year 2004-05, the assessee had filed his return of income on 21.03.2005. The return was processed under Section 143(1) and the assessment for the year in question stood concluded, as no further regular assessment order was passed. On the basis of some survey conducted on 27.01.2006 in the premises of one M.L.Venkatesh, certain papers with regard to the purchase of some property by the assessee for a sum of Rs.10 lacs on 25.07.2003 were found. Pursuant thereto, a notice under Section 148 of the Act

was issued on 28.09.2006, for which reasons had been recorded by the Assessing Officer on 15.09.2006. In response to the said notice, the assessee-appellant requested the Assessing Officer to treat the return filed on 21.03.2005 under Section 139 of the Act, to be the return filed by the assessee in response to the notice under Section 148 of the Act. He further stated that the investment for purchase of the property was from the funds of HUF. However, after holding that the notice under Section 148 of the Act was validly issued, the Assessing Officer made certain additions of income under Section 69 of the Act. Challenging the said order, the appellant filed an appeal before the Commissioner of Income-Tax (Appeals), which was partly allowed on merits, but the reopening under Sections 148/147 of the Act was held to be valid. Challenging the same, the revenue filed an appeal before the Tribunal, in which the assessee filed cross-objections and challenged the reopening of the case under Section 147/148 of the

Act. After holding that the reopening of assessment was valid, the Tribunal partly allowed the appeal and made certain additions in the taxable income of the assessee, and at the same time dismissed the cross-objections of the assessee. Aggrieved by the said order, this appeal has been filed by the assessee on merits, as well as on the legal question with regard to the validity of the reopening of assessment under Section 147/148 of the Act.

3 This appeal was ADMITTED by a Division Bench of this Court, on the following questions of law:

> *"1)Whether on the facts and circumstances of the case the Reassessment made u/s 147 of the Act 1961 on 10.12.2007 for the Asst. year 2004-2005 was valid when the original Return of income involuntarily filed on 21.3.2007 remained undisposed of, when the proceedings u/s 147 were initiated on 27.9.2006?*
>
> *2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in travelling beyond what was actually recorded by the AO as reasons for issue of the notice u/s 148, when the AO*

had categorically admitted in the assessment order u/s 147 that notice under Section 148 was issued for reopening the assessment in order to verify the source of investment?

3) Whether on the facts and in the circumstances of the case in law, the Tribunal was right in foreclosing consideration of the actual reasons recorded by the AO, instead of exercising its power under Section 255(6), as the reasons recorded go to the root of jurisdiction?".

4. We have heard Sri G.Venkatesh along with Sri K.S.Hanumantha Rao, Advocate, learned counsel for the appellant; as well as Sri E.I.Sanmathi, learned counsel for the respondent, and perused the record.

5. Questions No.1 and 2 relate to the reopening of the assessment under Section 147 of the Act, by issuance of notice under Section 148 of the Act, which shall be dealt with first.

6. The contention of learned counsel for the appellant is that the reopening of the assessment for the year in question was made merely for the purpose of

further investigation, which could not be said to be a valid reason for reopening; and that the Assessing Officer had no substance on the basis of which he could have had 'reason to believe' that income chargeable to tax had escaped assessment for the assessment year in question. It is contended that Section 147 of the Act does not contemplate reopening of an already concluded assessment by merely narrating certain facts and without recording any 'reason to believe' for the such reopening. His submission, thus, is that without there being any live link or close nexus between the material before the Assessing Officer and the belief which he has with regard to escapement of income of the assessee, the reopening of an already concluded assessment cannot be made on the basis of surmises and conjecture.

7. On the other hand, Sri E.I.Sanmathi, learned counsel for the respondent-Revenue has

submitted that, in the facts of the present case, reading of the first paragraph of the reasons recorded on 15.09.2006, along with its second and third paragraphs, would make it clear that there was a vast gap between the income of the assessee in the year in question, and the investment made by the assessee by way of purchase of the property. It is contended that from the same it can be clearly gathered that there was escapement of income chargeable to tax, and would be the reason for which reopening had been made. He thus submitted that, in the facts of this case, there was sufficient reason for the Assessing Officer to believe that there had been escapement of income of the assessee for the relevant assessment year and, as such, the reopening of the assessment was fully justified in law.

8. Learned counsel for the parties have relied on certain case laws which shall be dealt with while considering their submissions.

9. For proper perusal of these questions, we are reproducing below the reason recorded by the Assessing Officer on 15.09.2006 (filed as Annexure-'D' to the appeal) for issuance of notice under Section 148 of the Act:

> *"The assessee has filed R/I for A.Y.2004-05 on 21.3.05 declaring Taxable income of Rs.75,397/- and Agricultural income of Rs.50,000/-. The assessee has purchased a residential house for Rs.10,00,000/- consideration and in addition he has spent Rs.10,270/- towards registration of the document on 25.7.2003. To examine the sources of investment, summons were issued. The assessee by mistake had stated that the date of purchase was in the year 2004-05. As such, notice u/s 143(2) was issued for scrutinizing the documents. The assessee produced copy of Registered Deed, where in it was noticed that date of purchase is 25.7.2003. This transaction relates to Asst. Year 2004-05. Hence asst. for 2005-06 is completed accepting R/I after verifying the details and documents produced.*
>
> *This transaction relates to Asst. Year 2004-05. The assessee has produced self prepared statements to show that the investments is out of HUF funds. <u>As further investigation are required, proceedings have to commence for A.Y.2004-05.</u>*

> *Considering the details filed by the assessee I have reason for believe that sources of investment for the purchase of the property is not acceptable, and further investigations are necessary, I have reasons to believe that in income subject to tax has escaped from Asst. for A.Y.2004-05 within the meaning of Sec.147.*
>
> *Issue notice u/s 148 for A.Y.2004-05."*
>
> *(emphasis supplied)*

10. From a bare perusal of the aforesaid reasons recorded for reopening the concluded assessment for the assessment year 2004-05, what we notice is that the Assessing Officer was of the opinion that further investigation was required for proceeding to commence for the assessment year 2004-05, and on such basis he opined that he had reason to believe that source of investment of purchase of property was not acceptable, and for which further investigation was necessary. As such, the Assessing Officer concluded that he had 'reason to believe' that income subject to tax had escaped assessment within the meaning of Section 147 of the Act. While forming such opinion, in the first

paragraph the Assessing Officer has given details of the income of the assessee for the relevant assessment year, in which he had made a purchase of a residential house for Rs.10 lacs.

11. In response to the summons issued, the assessee had informed that the source of investment was from the HUF funds. The Assessing Officer does not state that such explanation was not correct, nor does he give reasons for not accepting such explanation given by the assessee in response to the summons issued. As such, it cannot be inferred, that what has been stated in the first paragraph of the reasons recorded on 15.09.2006 can be correlated with the third paragraph, because in the second as well as in the third paragraphs the main thrust is that further investigation was required.

12. Section 147/148 of the Act is not meant for reopening an already concluded assessment by first

issuing notice and then proceeding to investigate and find out if there was any lacuna in the accounts. If such further investigation, by reopening a concluded assessment, is permitted, it would give rise to fishing and rowing enquiries, because, in every case, the Assessing Officer can then issue notice for the purpose of investigation, and thus reopen any concluded assessment.

13. An assessment which has attained finality can be reopened only on cogent grounds when the Assessing Officer has, on the basis of some evidence, 'reason to believe' that income assessable to tax has escaped assessment for the year in question. The purpose of the said section is not to reopen the assessment for the purpose of investigation, and then find out the grounds or reasons for reassessment.

14. The Apex Court, in ***Chhugamal Rajpal –vs- S.P.Chaliha [(1971) 79 ITR 603],*** considered a case

where notice under Section 148 was issued after recording the reasons in the form of a report of the Income-Tax Officer, which is reproduced below:

"Report in Connection with the starting of proceeding" under Section 147 of the Income-tax Act, 1951.

Name of District	
Ward of Circle	A Ward, Muzaffarpur
G. I.R. No.	303-C.
1. Name and address of the assessee	S. Chugamal Rajpal, Muzaffarpur.
2. Status	R.F.
3. Assessment year for which notice under s. 148 is proposed to be issued	1960-61.
4. Whether it is a new case or one in which re-assessment (or recomputation) has to be made.	Re-assessment
5. If a case of reassessment (or recomputation) the income (or loss or depreciation allowance) originally assessed/determined.	Rs. 73,604/-
6. Whether the case falls under cl. (a) or (b) of s. 147	147(a)
7. Brief reasons for starting proceedings Under s. 147 (indicate the items which are believed to have escaped assessment	Kindly see overleaf Sd/- S. P. Chaliha. I.T.O. 30-4-66 A-Ward, Muzaffarpur.
8. Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148.	Yes (Sd.) K.Narain 13-5-66 Commissioner of Income-tax, Bihar and Orissa, Patna
9. Whether the Board is satisfied that it is a fit case for the issue of notice under s.148.	Secretary, Board of Revenue

During the year the assessee has shown to have taken loans from various parties of Calcutta. From D.I.s Inv. No. A/P/ Misc.(5)D.I./63-64/5623 dated August 13, 1965, forwarded to this office under C.I.T. Bihar and Orissa, Patna's letter No. Inv. (Inv.)15/ 65-66/1953-2017 dated Patna September

24, 1965, it appears that these persons are name-lenders and the transactions are bogus. Hence, proper investigation regarding these loans is necessary. The names of some of the persons from whom money is alleged to have taken on loan on Hundis are:

1. Seth Bhagwan Singh Sricharan.
2. Lakha Singh Lal Singh.
3. Radhakissen Shyam Sunder.

The amount of escapement involved amounts to Rs. 100,000/-.

Sd/- S. P. Chaliha, 30-4-66.
Income-tax Officer, A-Ward, Muzaffarpur."

On considering the aforesaid report/reasons, the Supreme Court was of the view that the Income Tax Officer did not set out any reason for coming to the conclusion that it was a fit case for issuance of notice under Section 148 of the Act and further held that *"in his report he vaguely refers to certain communications received by him from the C.I.T., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion*

that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions"

15. The Apex Court further observed that the Assessing Officer must give reasons for issuing notice under Section 148 of the Act i.e, he must have prima facie grounds before him for issuing notice under Section 148, which is not for the purpose of holding any further proper investigation. It further held that *"In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under s.148. Before issuing a notice under s.148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of these assessee to make a return under s.139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income*

chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year."

16. The facts of the aforesaid case are quite similar to the one on hand. In the present case also the reason for reopening is for further investigation to find out the source of investment for the purchase of the property, which is not permissible in law.

17. Further in the case of ***Income-Tax Officer – vs- Lakhmani Mewal Das reported in (1976) 103 ITR 439,*** the Apex Court has held that *"the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct*

nexus or live link between the material coming to the notice of the Income-Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts."

18. In the present case, what we find is that there is no nexus or live link between the material which had come to the notice of the Assessing Officer, and the formation of his belief that there was escapement of income by the assessee which may be assessable to tax. Merely by mentioning the income of the assessee in the assessment year, and the investment made by him for the purchase of residential property, it cannot be concluded that the difference would automatically be the income which had escaped assessment.

19. The submission of learned counsel for the respondent-Revenue, that reading of the first paragraph of the reasons recorded along with the third paragraph, would amount to the Assessing Officer concluding that the difference between the purchase price of the property and income of the assessee in that year was the reason for which re-assessment notice was given, is not worthy of acceptance. Definite and specific reasons have to be recorded by the Assessing Officer before the issuance of notice under Section 148 of the Act, as reply has to be given by the assessee to such reasons which are recorded in the notice. Nothing can be left for the party to conjecture and then presume that such could be a reason for the Assessing Officer to believe that there has been escapement of income from assessment to tax.

20. The submission of Sri E.I.Sanmathi, learned counsel for the respondent-Revenue is that the

difference between the investment made by the assessee and his income during the year in question, would be the income which had escaped assessment from tax, is also not worthy of acceptance. Investment is not necessarily to be made from the income derived during one particular year in question. An investment to purchase a residential house or a capital asset, can always be made from the savings in the past years, as well as the savings from the year in question. It could also be from gifts or loans taken from friends and relatives. It was only if there was any definite information that the asessee had some additional income, which was not disclosed by him and was invested in purchase of property, then alone the notice under Section 148 of the Act could have been issued, and that also after recording the basis on which the Assessing Officer had formed his opinion that he had 'reason to believe' that any such income had escaped

assessment. The same is totally lacking in the present case.

21. The Apex Court in the case of ***Ganga Saran and Sons P. Ltd. –vs- ITO (1981) 130 ITR 1*** has interpreted the scope of Section 147 of the Act for the purpose of reopening of assessment. The relevant paragraph of the aforesaid judgment of the Supreme Court is reproduced below:

> *"It is well settled as a result of several decisions of this court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under s.147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and, secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under s.147(a) are 'has reason to believe' and these words are stronger than the words 'is satisfied'. The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other*

words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under s.147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

22. In the present case, we find that the belief entertained by the Assessing Officer was arbitrary and irrational, as the same is neither reasonable nor is based on any relevant material, having a bearing on the matter in regard to which the Assessing Officer has entertained the belief.

23. Learned counsel for the respondent-Revenue has also placed reliance on the Judgment of the Delhi High Court in the case of ***Rajat Export Import India Pvt. Ltd. –vs- Income Tax Officer (2012) 341 ITR 135.*** In the said case, the reasons recorded by the Assessing Officer before issuing notice under Section 148 of the Act were definite reasons i.e., the assessee therein had taken certain accommodation entries from particular persons, details which had been given in the 'reason to believe', wherein it had been recorded that a definite sum of Rs.3 lacs chargeable to tax had escaped assessment, which was to be brought to tax under Section 147/148 of the Act and thus, notice under Section 148 of the Act was issued. In our view, the facts of the present case are totally different, and as such the ratio of the judgment in the case of ***Rajat Export Import India Pvt. Ltd. (supra)*** would not apply to the facts of the present case.

24. In the present case, there is no allegation of the assessee not having made full and final disclosure in his return of income for the relevant assessment year. Much emphasis has been laid on the fact that disclosure of the purchase of the property was not made in his return of income for the relevant assessment year. On being asked, Sri E.I.Sanmathi, learned counsel for the respondent-Revenue, could not place before the Court any provision of law which required the assessee, in the assessment year 2004-05, to disclose about the fact of having made the actual investment in his return of income. In the absence of any legal obligation on the assessee to disclose about the purchase of property in his return of income, it cannot be said that the assessee had concealed any income, even though when there is no dispute about the fact that he had disclosed his agricultural as well as non-agricultural income during the assessment year in question, and there is no finding as to income from

which other source had been concealed by the assessee. Learned counsel for the respondent-Revenue has also submitted, that since there was investigation required with regard to the investment made by the assessee for purchase of property for the assessment year in question, and time for issuance of notice under Section 143(2) of the Act had expired, issuance of notice under Section 148 of the Act was necessitated.

25. In our view, the same cannot be a ground for initiating proceedings under Section 148 of the Act. It was for the Assessing Officer to take proper steps earlier by issuing notice under Section 143(2), and if the law does not now permit issuance of any such notice, then invoking some other provision, which would not be applicable, is not the correct mode.

26. In view of the aforesaid, we are of the opinion that the issuance of notice under Section 148 for

assessment or re-assessment under Section 147 of the Act, was not be valid in the facts of the present case.

27. As such, the first two questions of law are answered in favour of the assessee and against the revenue.

28. In view of the answers given to the first two questions, we are of opinion that the answer to the third question would be academic in nature and, thus, we do not propose to answer the same.

In view of the aforesaid, ***the appeal stands allowed.*** However, there shall be no order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

TL