REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). _____OF 2022
(ARISING OUT OF SPECIAL LEAVE TO APPEAL (C) NO. 22921/2019)

DEPUTY COMMISSIONER OF INCOME TAX (CENTRAL) CIRCLE 1(2) ...APPELLANT (S)

VERSUS

M/S. M. R. SHAH LOGISTICS PVT. LTD. ...RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. Special leave granted. With consent of counsel for parties, the appeal was heard finally. The Commissioner of Income tax (hereafter "the revenue") appeals against a judgment of the Gujarat High Court[1], which quashed a notice issued under Section 147/148, Income Tax Act (hereafter "the Act") seeking to re-open the respondent's assessment, for the assessment year (AO) 2010-11. The respondent is hereafter, referred to as "the assessee".

2. The facts are that search proceedings were conducted- by the revenue, under the Act, at the office premises of one Shirish Chandrakant Shah on 09.04.2013 at Mumbai; during the course of the search, several materials- and documents, were seized. On analysis of such documents, the revenue was of

[1] Dated 14 August, 2018 in Special Civil Application No. 21028 of 2017

opinion that Shirish Chandrakant Shah was providing accommodation entries, through various companies controlled and managed by him, and that the assessee was one of the beneficiaries of the business (of accommodation entries provided by Shri Shirish Shah) through bogus companies. This was based on the fact that many companies which invested amounts towards share capital on high premiums -in the assessee's company were also controlled and managed by Shri Shirish Shah. The AO, on a consideration of these and other materials, was of opinion that the assessee was also a beneficiary of the accommodation entries provided by Shri Shirish Shah. On the basis of this opinion the impugned notice to re-assess the income of the assessee for AY 2010-2011, was issued on 31.3.2017.

3. The assessee is a private limited company and had filed return of income for the AY 2010-11 on 25.9.2010. The return was accepted under section 143(1) of the Act without scrutiny. On 31.3.2017, the impugned notice was issued. The AO also furnished reasons recorded by him for issuing notice of reassessment.

4. The "reasons to believe" which were the basis for re-opening the assessment, recorded that search proceedings were conducted in the M.R. Shah group and Champalal group of companies on 20.09.2016 and that during the course of previous searches in the case of Shirish Chandrakant Shah, an accommodation entry provider in Mumbai, it was observed that huge amounts of unaccounted moneys of promoters/directors were introduced in closely held companies of the assessee's group. The reasons to believe also stated that the chairman of M.R. Shah Group was asked about the application money received by the assessee, during the statement- recorded under Section 132(4) of the Act, on 18.11.2016; in the course of that statement, he disclosed that M/s. Garg Logistics Pvt. Ltd. had declared ₹ 6.36 crores as undisclosed cash utilized for investment in the share capital of the assessee, M.R. Shah Logistics Pvt. Ltd. through various companies. The assessee company's chairman voluntarily

disclosed the statements made by Garg Logistics under Section 132 of the Act, about the declaration by Garg Logistics P Ltd, under the Income Declaration Scheme (IDS).

5. The AO, in the reasons to believe, compared the investments made by Pravin Chandra Aggarwal, i.e. the assessee company's Chairman with form no.2 of the assessee company and the records of the Registrar of Companies and prepared a chart, which is reproduced in a chart below

"On comparison of such data following discrepancies are noted;

Name of the Investor	*Amount of investment received by M R Shah Logistics Pvt Ltd as per form no. 2 file by it with ROC*	*Amount claimed to be paid by Garg Logistics Pvt Ltd as per form no. 2 filed under IDS declaration*
Sangam Distributors Pvt Ltd.	*Rs. 20,00,000/-*	*Rs. 10,00,000/-*
Fountain Commerce Pvt Ltd	*Rs. 25,00,000/-*	*NIL*
Panorama Commercial Pvt Ltd.	*NIL*	*Rs. 25,00,000/-*
Sanskar Distributors Pvt Ltd.	*Rs. 10,00,000/-*	*Rs. 20,00,000/-*

6. The reasons supplied by the AO further noted that he had completed the assessment in the case of Pradeep Birewar group and that a search took place in respect of that group along with various individuals who had obtained accommodation entries of long term capital gains (LTCG) in the shares of Ganesh Spinners Ltd. from Shirish Chandrakant Shah. It was found that Pradeep Birewar was an Ahmedabad based accommodation entry provider engaged in facilitating one-time accommodation entries to various clients. The "reasons to believe" further noted that the materials seized, including the books of Shirish Chandrakant Shah contained date wise details of cash receipts and

accommodation entries paid. On a consideration of all those materials, it was found that cash credit of ₹ 70.01 crores was received by Shirish Chandrakant Shah for the period 11.02.2010 to 29.07.2011.

7. The AO also recorded as follows:

> *"2 Further, this office has also completed assessment in the cases of Pradeep Birewar group. A search action in the case of Pradeep Birewar was carried out along with various individuals who had obtained accommodation entries of Long-Term Capital Gains (LTCG) in the shares of Shri Ganesh Spinners Limited (now known as Yantra Natural Resources Limited) from Shirish Chandrakant Shah (SCS) through Pradip Birewar. Pradip Birewar is an Ahmedabad based accommodation entry provider who is facilitating one time and other accommodation entries including LTCG entries to various clients on receipt of cash. He is facilitating these entries through bigger accommodation entry providers i.e Shirish Chandra Shah. During the course of search at office premises of SCS ON 09.04.2013 situated at "Dwarka Ashish Building", Jambulwadi, Kalbadevi Road Mumbai, MS excel sheet "pradeep abad" in the excel file "ac1.xls" located at path 5/pen drive back up/Removable Disk folder named "Bips backup 14.02.12 was found and seized m the computer (Rajen Computer) in that office in form of computer-backup. The said sheet is in the nature of account of "Pradip Birewar" in the books of SCS which contains the date-wise details of cash received and accommodation entries paid there against. On perusal of the said sheet, it has been found that cash aggregating to Rs.70.01 crores has been received by SCS from/through Pradip Birewar during the period 11.02.2010 to 29.07.2011.*
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> *2.1 The entries of cash received as recorded by SCS in the evidence seized/impounded during the course of survey at his office have been corroborated with the entries recorded by Shri Pradeep Birewar in Annexure A-5, A-6 and A-7 seized from the residence of Shri Pradeep Birewar during the course of search conducted in his case on 04.12 2014. When data seized in different searches 'at premises of SCS & Pradeep Birewar were correlated with data of return of assessee filed for AY 2011-12 in which year assessee-company had receive One Time (OT) entry. Hence, this facts indicate that assessee company has been introducing its unaccounted receipt/income through accommodation entries.*

2.2 It is also noticed that assessee company had received credit amount in its books but has failed to establish that the cash declared by Garg logistics Pvt Ltd under Income Declaration scheme was not actually the cash of the assessee-company. Assessee had only submitted Income Declaration Form no.2 of Garg Logistics Pvt Ltd and failed to provide documentary evidence of investment of cash declared by Garg Logistics Pvt Ltd in the assessee company. Even the list submitted by assessee had discrepancies with data submitted to registrar of companies as discussed in above para. In other words, the assessee has not been able to establish that the income admitted under IDS 2016 by Garg Logistics Pvt Ltd. went in the books of investor companies. It is worth to highlight that Investor companies are independent paper companies and they have provided entries independently and not through Garg Logistics Pvt Ltd.

2.3 Thus the claim of the assessee company that Cash declared by Garg Logistics was utilized to make investment in assessee company through paper companies remains unexplained. Besides, in the case of Trinetra Commerce & Trade(P) Ltd in [2016]75 taxmann.com 70(Calcutta) it was seen that assessee-company had received share capital from persons/entities whose identity, creditworthiness etc were not established. Addition u/s 68 was made been made in hands of assessee-company. Subsequent, one person K disclosed such amount before Settlement Commission as his undisclosed income. Based upon such admittance by 'K', in case of assessee company ITAT had deleted the addition u/s 68 holding that it would amount to double addition. However, Hon'ble High Court held that addition in hands of both K & assessee-company are justified since both are different persons subject to different causes of action u/s 69 & 68 respectively.

3. Based on the facts discussed above, it is to be derived that credit received by assessee as Share premium & Share capital is not genuine but mere accommodation entry used to avoid tax payment and it is the undisclosed income of the assessee-company itself. On verification of return income & Audit report filed by assessee, it is noticed that assessee had received Rs. 6,25,00,000/- as share premium & Share capital during FY 2009-10 from various persons/companies. It is noticed that assesssee had shown total income of Rs. 7,94,675/- only and

not offered the amount of Rs. 62500000/- as income to suppress taxable income and to avoid tax payment and hence it is to be concluded that assessee had understated his income to the extent of Rs. 62500000/-. Hence the amount of Rs. 62500000/-being accommodation entry in form of share capital & share premium remained untaxed and escaped assessment and the failure is on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, for the assessment year 2010-11."

8. The assessee objected to the re-opening notice by letter dated 29.8.2017. The objections were rejected by the AO by an order dated 30.10.2017. Aggrieved, the assessee approached the High Court under Article 226 of the Constitution, impugning the revenue's action in seeking to re-open the assessment. The revenue resisted the challenge, and justified the re-opening (of assessment) notice.

9. The High Court, by the impugned judgment, was of the opinion that the AO had no information to conclude that the disclosure by Garg Logistics was not from funds of that declarant but was in fact the unaccounted income of the assessee. The impugned order reasoned that the AO, after recounting the background history of the assessee and background of M.R. Logistics, shifted the burden on assessee to say that the share application money received by it was not its unaccounted income. This, according to the High Court, was erroneous. The impugned judgment was of the opinion that there was no tangible material or reason for the AO to reopen the assessment. The High Court also considered the scheme of Section 183 of the Finance Act, 2016 and noted that immunity was given in respect of amounts declared and brought to tax in terms of such a scheme. Therefore, the AO could not have relied upon the declaration made by the Garg Logistics to so conclude. The High Court also derived strength from the circular of the CBDT dated 01.09.2016, especially, the answer to Query no.10.

Contentions of parties

10. It was argued on behalf of the revenue by the Additional Solicitor General (ASG) for India, Mr. N. Venkataraman, that the impugned judgment cannot be sustained as there was tangible material justifying the reopening of assessment in the circumstances of the case. It was pointed out that the AO traced the history of the assessee company, its close association with Pradeep Birewar, one time accommodation entry received by the assessee which was discovered in the course of search in the case of Shirish Chandrakant Shah as well as Pradeep Birewar and the transaction of routing its income as investment in bogus share capital. It was urged that the mere circumstance that Garg Logistics declared the amount of ₹ 6.36 crores as undisclosed income *per se* could not be an explanation to induce the AO to drop reassessment notice.

11. The revenue pointed out that in fact Garg Logistics Pvt. Ltd. had not invested any amount towards share application money; the claim of the assessee was that the companies which had invested in it were all fronts of Garg Logistics P Ltd, which had in turn declared the amounts as undisclosed income under IDS 2016. It was submitted further that the formation of belief by the AO was not on the basis of the declaration of Garg Logistics but rather information culled out through the search/seizure action, survey and search proceedings in the case of common entry provided through Shirish Chandrakant Shah.

12. The learned ASG submitted that the assessee company was not able to link the income disclosed under the IDS 2016 by Garg Logistics with the investment by the companies who had applied for shares in the assessee. Learned counsel submitted that the investor companies were independent – paper fronts which had provided entries. Learned counsel submitted that the High Court erroneously concluded that the reassessment was based upon the IDS declaration of Garg Logistics. In fact, the disclosure was voluntarily provided by the assessee's chairman during the search by a statement under Section 132(4).

13. It was pointed out that the AO's opinion has to be based upon some objective material on the record as to constitute tangible material. The sufficiency of that material would ordinarily not be scrutinized by the courts in exercise of judicial review. It was submitted lastly that on perusal of the circular of CBDT dated 01.09.2016, particularly, the answer to the queries are not relevant in the facts and circumstances of the case.

14. Learned senior counsel for the assessee, Mr. Guru Krishnakumar, urged that information of share investment of ₹ 6.25 crores by Garg Logistics made through different companies, but owned by it, was made in its declaration in the IDS. This information was not furnished to the AO and he could not, therefore, have legitimately concluded that such investment was not from the funds of Garg Logistics but was in fact assessee's unaccounted income. The AO's approach was contrary to the law in as much as in the very first instance, he sought to place the burden upon the assessee to prove that it was not in fact routing back its own cash through the investments made by the companies – which Garg Logistics (P) Ltd owned up to be unaccounted income in its declaration.

15. It was argued, the reasons recorded that the assessee had received ₹ 6.25 crores as share premium and share capital during FY 2009-10 from various persons/ companies being accommodation entry providers which was untaxed and escaped assessment and that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for its AY 2010-2011, are not valid and are bad in law and facts of the present case. The foundation of the "reasons to believe" in this case lacks validity and is beyond the scheme and scope of Section 147 and 148 of the Act and IDS.

16. It was argued, that revenue reopened the assessment casually on self-contradictory grounds and the re-opening is impermissible as there is no valid "reason to believe" that the assessee's income escaped assessment. Reliance is

placed on *Commissioner of Income Tax v. Rajesh Jhaveri Stock Broker Ltd.*[2] and the High Court also categorically observed that the reason so recorded lacks validity and conclusions are made on surmises and conjectures which are not permissible under the law and not backed by any material on record.

17. It was argued, the fact that the assessment was originally done under Section 143(1) is not decisive in determining the validity of the impugned reopening. The High Court was conscious of the legal position in this regard so much so that it noted that, the return filed by the assessee was accepted without scrutiny and therefore, the principle of change of opinion preventing the AO from reopening the assessment would have no applicability. It was further urged that the discrepancies noticed by the AO were duly explained in the assessee's objections and do not have any effect on quantification of escapement of income/share capital for value of ₹ 6.25 crores. It was lastly urged that no incriminating/tangible material was available to reopen assessment and there was no establishment of any nexus or link connecting the source of the investment to the assessee; the reassessment was opened solely on the basis of misconceived theories by the revenue. The record makes it obvious that the amount has already been declared by Garg Logistics and full tax has been paid with penalty as per the scheme. Therefore, reassessment of this amount would lead to double taxation, which is contrary to the scheme of the Act itself.

Analysis and conclusions

18. Section 147 of the Act authorizes the re-opening of any assessment of a previous year[3]. Section 148, which contains the conditions for re-opening

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[2] 2007 (7) SCR765

[3] "***147. Income escaping assessment***

"If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.--For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped

assessments, including the limitation period within which notices can be issued, by its proviso, enacts that:

> *"Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice."*

19. Long ago, in its decision reported as *Calcutta Discount Company Ltd v Income Tax officer*[4] this court had underscored the obligation of every assessee to make a true and full disclosure and said that:

> *"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assesses."*

The court further held that once the duty is discharged, it is upto the assessing officer to inquire further and draw the necessary inferences while completing the assessment.

20. As to what can be the valid grounds for re-opening an assessment has been the subject matter of several decisions of this court. In *Income Tax Officer, Calcutta & Ors. vs. Lakhmani Mewal Das*[5] this court held that the "reasons to believe" must be based on objective materials, and on a reasonable view. The court held as follows:

> *"The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for*

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assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with."

[4] 1961 (2) SCR 241
[5] 1976 (3) SCR 956

> *the Income-tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the Court to investigate. The sufficiency of grounds which induce the income-tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law."*

21. In *Phool Chand Bajrang Lal & Ors. vs. Income Tax Officer & Ors*[6], after reviewing the previous case law, and concluding that a valid re-opening is one, preceded by specific, reliable and relevant information, and that the sufficiency of such reasons is not subject to judicial review- the only caveat being that the court can examine the record, if such material existed, it was held that the facts disclosed in the return, if found later to be unfounded or false, can always be the basis of a re-opening of assessment:

> *"appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude."*

[6] 1993 Supp (1) SCR 28

22. A three judge Bench, of this court, in *Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd*[7] after considering the previous decisions, re-stated the correct position as follows:

> *"5....where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe".....*
> *Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open.*
> *6. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place.*
> *7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."*

23. It is therefore, clear that the basis for a valid re-opening of assessment should be availability of *tangible* material, which can lead the AO to scrutinize the returns for the previous assessment year in question, to determine, whether a notice under Section 147 is called for. In the present case, the basis for reopening of assessment was not that Garg Logistics Pvt Ltd had declared ₹ 6,36,00,000/- as undisclosed cash utilized for investment in the assessee's share capital. The assessee's contention that reopening was done based on the disclosure made by Garg Logistics is therefore, not correct.

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[7] 2010 (1) SCR 768

24. It may also be noticed that the original assessment was not completed after scrutiny, but was under Section 143 (1) of the Act. The status of such assessment – if one may so term it, is essentially weak. As was explained in *Rajesh Jhaveri* (f.n.1, cited by the assessee):

> *"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 April 1, 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 Central Board of Direct Taxes 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."*[8]

Thus, in the present case, the returns filed by the assessee were not examined, or scrutinized; only an intimation that it was filed, was issued by the AO.

25. The "reasons to believe" forming part of the Section 147- in this case, clearly point to the fact that the reopening of assessment was based on information accessible by the AO that a substantial amount of unaccounted income of promoters/directors was introduced in the closely held companies of the assessee group through Shirish Chandrakant Shah, alleged to be a Mumbai based accommodation entry provider- through Pradeep Birewar, another accommodation entry provider based at Ahmedabad. During the course of search at the office premise of Shirish Chandrakant Shah (on 09.04.2013 at Mumbai) apparently, an MS Excel sheet "pradeep abad" in the Excel file "ac1.xls" in a pen-drive, backed up from a removable disc folder (called "Bips backup 14.02.2012) was seized from the computer in that office in form of computer back up. The AO, in the reasons recorded with the re-assessment notice stated that a

[8] Followed in *Deputy Commissioner of Income Tax v Zuari Estate Development and Investment Company Ltd* 2015 (15) SCC 248

comparison of data of accommodation entry provided by Shirish Chandrakant Shah through various companies controlled and managed by him and found from his office premise with the return of income of the assessee (for AY 2011-12) revealed that the latter (i.e. the assessee) had availed one time accommodation entry from various companies controlled and managed by Shirish Chandrakant Shah. The AO also noticed that the assessee had not proved credit worthiness of various share applicants, who invested amounts with high premium, in the assessee company during AY 2010-11 nor shown genuineness of such transactions.

26. This court further notices that that the record also reveals that Garg Logistics Pvt. Ltd had not invested ₹ 6,36,00,000/- in the assessee company during the relevant period. The record bears out that the following entities invested in the assessee:

Sl. No.	Name of the Allottees Companies	Amount of Investment
1.	Amar Commercial Pvt. Ltd.	₹ 1,40,00,000/-
2.	Fountain Commerce Pvt. Ltd.	₹ 25,00,000/-
3.	Ganga Marketing Pvt. Ltd.	₹ 20,00,000/-
4.	Gurukul Vinayak Pvt. Ltd.	₹ 80,00,000/-
5.	Heaven Mercantile Pvt. Ltd.	₹ 1,00,00,000/-
6.	Neelkamal Trade Link Pvt. Ltd.	₹ 1,50,00,000/-
7.	Red Hot Mercantile Pvt. Ltd.	₹ 80,00,000/-
8.	Sanskar Distributors Pvt. Ltd.	₹ 10,00,000/-
9.	Sangam Distributors Pvt. Ltd.	₹ 20,00,000/-
Total		₹ 6,25,00,000/-

27. The details of income declaration by Garg Logistics under the IDS scheme was submitted by Pravin. P. Agrawal (the assessee's chairman) in support of its

claim of genuineness of receipt of share capital. However, as noticed earlier, the basis for reopening the assessment in this case was *the information from the material seized during search in cases of Shrish Chandrakant Shah and correlation with return of income of the assessee*. Further, there was no scrutiny assessment done at the original assessment stage.

28. As a matter of fact, M/s Garg Logistics filed its IDS application with a different Commissionerate[9] which did not share information with the AO in the present case; he did not also call for any such information. Pravin Chandra Agrawal, the chairman of the assessee (M.R. Shah group) was queried with regard to the capital raised with high premium during a search, and post search inquiry. He submitted details of the IDS declaration by Garg Logistics Pvt Ltd to say that the amounts received toward share applications were genuine transactions. Clearly, in the present case, the High Court went wrong in holding that the department had shared confidential IDS information of Garg Logistics Pvt Ltd. The AO utilized the material submitted by Pravin. P. Agrawal (the assessee's chairman) and correlated it with the ROC data filed by the assessee. Further, it is also apparent, that the AO's "reasons to believe" do not disclose any inquiry made in relation to Garg Logistic Pvt Ltd's account or declaration.

29. Another aspect which should not be lost sight of is that the information or "tangible material" which the assessing officer comes by enabling re-opening of an assessment, means that the entire assessment (for the concerned year) is at large; the revenue would then get to examine the returns for the previous year, on a clean slate – as it were. Therefore, to hold- as the High Court did, in this case, that since the assessee may have a reasonable explanation, is not a ground for quashing a notice under Section 147. As long as there is objective *tangible*

[9] Pr. CIT-2, Ahmedabad

material (in the form of documents, relevant to the issue) the sufficiency of that material cannot dictate the validity of the notice.

30. That brings the court to the scope and effect of the Income Declaration Scheme (IDS), introduced by Chapter IX of the Finance Act, 2016. The objective of its provisions was to enable an assessee to declare her (or his) suppressed undisclosed income or properties acquired through such income. It is based on voluntary disclosure of untaxed income and the assessee's acknowledging income tax liability. This disclosure is through a declaration (Section 183) to the Principal Commissioner of Income Tax within a time period, and deposit the prescribed amount towards income tax and other stipulated amounts, including penalty. Section 192 grants limited immunity to declarants, and states as follows:

> *"192. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 185, or for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act, 1957."*

31. As noticed previously the declarant was Garg Logistic Pvt Ltd *and not the assessee*. Facially, Section 192 affords immunity to the declarant: *"...nothing contained in any declaration made under section 183 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty…"* Therefore, the protection given, *is to the declarant,* and for a limited purpose. However, the High Court proceeded on the footing that such protection would bar the revenue from scrutinizing the assessee's return, absolutely. Quite apart from the fact that the re-opening of assessment *was not based on Garg Logistic's declaration,* the fact that such an entity owned up and paid tax and penalty on amounts which it claimed, were invested by it as share applicant, (though the share applicants were other companies and entities) to the assessee in the present case, cannot – by any rule or principle inure to the

assessee's advantage. In similar circumstances, dealing with another scheme (the Kar Vivad Samadhan Scheme 1988, a previous tax amnesty scheme) this court had, in *State, CBI vs. Sashi Balasubramanian & Ors*[10] held as follows:

> *"an immunity is granted only in respect of offences purported to have been committed under direct tax enactment or indirect tax enactment, but by no stretch of imagination, the same would be granted in respect of offences under the Prevention of Corruption Act. A person may commit several offences under different Acts; immunity granted in relation to one Act would not mean that immunity granted would automatically extend to others. By way of example, we may notice that a person may be prosecuted for commission of an offence in relation to property under the Indian Penal Code as also under another Act, say for example, the Prevention of Corruption Act. Whereas charges under the Prevention of Corruption Act may fail, no sanction having been accorded therefore, the charges under the Penal Code would not."*

32. In *Tanna & Modi v Commissioner of Income Tax, Mumbai XXV & Ors*[11] also, this court held, similarly that immunity granted for one purpose, cannot be extended for another:

> *"20. It may be necessary for the aforementioned purpose to bear in mind that the immunity granted pursuant to acceptance of a declaration made under the voluntary taxation scheme or Kar Vivad Samadhan Scheme, 1998 does not lead to a total immunity. Immunity granted under the Scheme has its own limitations. The Scheme must be applied only in the event the conditions precedent laid down therefore are applicable. See State, CBI v. Sashi Balasubramanian and Anr.[2007]289ITR8(SC) and Alpesh Navinchandra Shah v. State of Maharashtra and Ors. 2007 (3) SCR 223*
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> *21. A raid was conducted in the premises of the firm. Search warrant might have been issued in the name of a partner of the firm. The partner made certain statements. The search revealed some undisclosed income. The firm has a separate legal entity, it could have made a declaration, but it was done in respect of the same amount regarding the partner of the firm made disclosures. What*

[10] 2006 Supp (8) SCR 914
[11] 2007 (8) SCR 233

would be the effect of his subsequent retraction is not a matter which we are required to deal with herein. It is one thing to say that when a firm has concealed income, each partner need not make a declaration but it would be another thing to say that when a search has been made on the premises of the firm and the books of accounts of the firm are inspected, on the strength of a search warrant issued in the name of one of the partners thereof, a declaration can be made by the firm so as to cover the loopholes. In a case where Sub-section (2) of Section 64 is applied, Sub-section (1) thereof would not apply inasmuch as it starts with the term "nothing contained" in Sub-section (1) shall apply in relation to. What are the conditions which would make Sub-section (1) of Section 64 inapplicable is the income assessable for any assessment year for which a notice under Section 142 or 148 of the Income Tax Act has been served upon such person and the return has not been furnished before commencement of the Scheme and upon strict construction, it is possible to argue that the word "such person" must relate to that declaring which being a firm would not include within its purview its partners. But, in a case of this nature where fraud is alleged, we cannot be oblivious of the fact that each firm acts through its partner. A firm is the conglomeration of its partners, and is not a juristic person. In the instant case, the purported disclosure made by the firm relates to the same amount which has been disclosed by the partner. Even the source of income was found to be the same. As the income of a firm vis-a-vis its partners have a direct co-relation, in our opinion, while construing a statute granting immunity, it should not be construed in such a manner so as to frustrate its object."

33. In an earlier decision, *Tekchand & Ors. vs. Competent Authority*[12] it was similarly held that immunity granted by a tax amnesty scheme in respect of liabilities under some enactments, did not afford protection against action under other enactments or laws:

"13. So far as the contention based upon Sections 11 and 16 of Voluntary Disclosure Act is concerned we have already pointed out, while setting out the said provisions that the immunity conferred thereunder is of a limited character and that it is not an absolute or universal immunity. The immunity cannot be extended beyond the confines specified by the said provisions. There is also no reason to

[12] 1993 (2) SCR 864

> *presume that the Parliament intended to extend any immunity to smugglers and manipulators of foreign exchange who are proceeded against under enactments other than those mentioned in Sections 11 and 16 of the Voluntary Disclosure Act. So far as the argument that the authorities under the Act have not properly considered the explanation offered by the appellants and the material produced by them, we must say that we are unable to agree with the same."*

34. This court is, therefore, of the opinion that the High Court fell into error, in holding that the sequitur to a declaration under the IDS can lead to immunity (from taxation) in the hands of a non-declarant.

35. In view of the foregoing reasons, the impugned judgment is hereby set aside. The AO is at liberty to take steps to complete the re-assessment. The revenue's appeal is allowed in these terms, without order on costs.

.....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

New Delhi,
March 28, 2022.