



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 11th September, 2012.**
Date of Decision : 19th October, 2012.

+ **WP(C) NO. 4022/2012 & CM Appl.8436-8438/2012**

SHUMANA SEN

.... Petitioner

Through Mr. Jayant K. Mehta, Mr. Sukant Vikram and Mr.
Abhinav Sharma, Advs.

VERSUS

COMMISSIONER OF INCOME TAX XIV & ORS.Respondents
Through Mr. Kamal Sawhney, sr. standing counsel

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.:

The petitioner seeks to challenge the validity of the reassessment proceedings in this writ petition, commenced under Section 148 of the Income Tax Act, 1961 by issue of a notice under that section on 28.3.2012. A prayer is also made for quashing of all consequent proceedings.

2. The petitioner is an officer of the Indian Revenue Service of the 1987 batch. She is assessed to income tax. In respect of the assessment year 2005-06, the Assessing Officer, who is the respondent No.3 in the writ petition, issued notice under Section 148 of the Act on 28.3.2012 on the ground that income chargeable to tax for the assessment year 2005-06 has escaped assessment and called upon the petitioner to deliver the return of income. Pursuant thereto the petitioner would appear to have filed the return of income and on 2.4.2012 sought reasons from the Assessing Officer



for the issuance of the impugned notice of reassessment. The reasons were not provided and therefore on 24.4.2012 another request was made in writing to furnish the reasons. On 30.4.2012, the respondent No.3 provided the reasons recorded under Section 148(2) to the petitioner and on the same day also issued a notice under Section 142(1) seeking information in connection with the petitioner's assessment. On receipt of the reasons recorded for reopening the assessment, the petitioner filed her objections on 4.5.2012 questioning the jurisdiction of the respondent No.3 to reopen the assessment. It also appears that the petitioner challenged the reopening of the assessment on the ground that the notice was issued at the behest of respondent No.4 who, according to the petitioner, bore enmity towards the petitioner on account of certain matters arising out of their career with the IRS. Till the date of filing the writ petition, the objections have not been disposed of by the respondent No.3 and hence the present writ petition.

3. The main grievance projected on behalf of the petitioner, as stated earlier, is that the assessment was reopened at the behest of respondent No.4 who bore ill will and enmity towards the petitioner on account of certain developments which had allegedly taken place in their career in the IRS and that the Assessing Officer did not apply his mind to the allegations made in the "tax evasion petition" filed by respondent No.4 with the Assessing Officer. It is contended that respondent No.4, who is also a senior IRS officer, was in a position to influence the Assessing Officer and also the Commissioner of Income Tax having jurisdiction over the petitioner's assessment and that the assessment was reopened on the basis of wild and baseless allegations made in the tax evasion petition. Our attention was drawn to several pages of correspondence and other documents as well as to proceedings in courts in an attempt to show that the respondent No.4 bore a grudge against the petitioner, as a result of which he was using his position in the IRS to harass and embarrass the petitioner. It is therefore, contended that the reassessment proceedings commenced



by the issue of notice dated 28.3.2012 under Section 148 are malafide and certainly without jurisdiction. These contentions are stoutly resisted by the Id. standing counsel on behalf of the income tax department. He has produced the relevant official record in support of his contention that the reasons recorded do make out a prima facie case of escapement of income and therefore, the notice cannot be said to be without jurisdiction. He further contends that at this stage, the focus should not be as to whether the reassessment proceedings were commenced with any malafide or oblique motive and that the pertinent issue to be examined would only be whether there was “reason to believe” that income chargeable to tax had escaped assessment. He contends that the Assessing Officer had “reason to believe” that income chargeable to tax has escaped assessment as would be evident from the recorded reasons.

4. We have examined the contentions and the facts in the light of the record placed before us. The reasons recorded for reopening the assessment are annexed to the writ petition as annexure P7 and they are as below :

*“ITO, Ward-40(4), New Delhi
Reasons recorded for initiating Assessment proceedings
Under section 147/148 of Income Tax Act, 1961
in the case of Smt. Sumana Sen, PAN AMQPS5036G,
Assessment years 2005-2006, 2006-2007, 2007-2008 & 2008-2009
27/03/2012*

This office received a copy of D.O. letter from Sh. S. K. Srivastava, CIT (OSD), Delhi addressed to CIT, Delhi-XIV, New Delhi disclosing details of concealment of income and resultant evasion of tax of huge amount during the period 2003-2004 onwards and upto F.Y. 2007-2008 by Mrs. Sumana Sen, IRS currently working in the rank of JCIT in the department. It also contains details of expenditure incurred on foreign travels by Mrs. Sumana sen alongwith her family stated to be in excess of ₹3 crores. Reliance was also placed on the copy of an affidavit sworn by Mrs. Sumana Sen and filed before Hon’ble Delhi High Court in Writ Petition (C) no.1373 of 2011 wherein she admitted to have traveled abroad with her family several



times during that period. The said affidavit was enclosed alongwith the D.O. letter of Sh. S. K. Srivastava.

The said TEP alleged that the assessee received gratification by way of expenditure incurred on her foreign travels alongwith her family by M/s. NDTV Ltd. during the period under consideration in lieu of favors granted by her to M/s. NDTV Ltd. as it's assessing officer being ACIT, Circle-13(1), New Delhi. As per the TEP the estimated value of such gratification and corresponding expenditure involve in the region of about ₹3-5 crores.

The Addl. CIT, Range-40, New Delhi vide his letter dated 02/12/2011 forwarded to TEP and letter of CIT, Delhi-XIV, New Delhi in the case of Mrs. Sumana Sen an existing assessee in this charge to take necessary action as per applicable law.

The complainant being an IRS officer of 1987 batch and holding the rank of Commissioner of Income Tax subsequently also provided a copy of the letter dated 17/10/2011 written by Mrs. Sumana Sen to the Chairperson, Complaint Committee on Sexual Harassment, New Delhi wherein also Mrs. Sumana Sen has admitted that she had travelled abroad several times at the time of her husband's employment with M/s. NDTV Ltd. before, during the after her stint in Circle-13(1), New Delhi.

Pursuant to the receipt of the copy of the TEP, the matter was independently examined in exercise of independent quasi-judicial discretion by the understigned. It was found that the Returns of Income of Mrs. Sumana Sen an existing assessee in this office for the relevant period i.e. A.Y. 2004-2005, 2005-2006, 2006-2007, 2007-2008 & 2008-2008(sic) relevant for F.Y. 2003-2004, 2004-2005, 2005-2006, 2006-2007 & 2007-2008 does not disclose in any manner whatsoever the details and other particulars of her foreign travelling and the expenditure incurred on that including the source thereof, the quantum thereof, the status of that amount of money and taxability of the same. In view of the fact that the particulars pertaining to the expenditure incurred on foreign travels has been admitted before Hon'ble Delhi High Court and also before the departmental authorities, prima-facie, a case of non-disclosure of information about expenditure incurred by the assessee in the returns of income stands made out which prima-facie appears to have escaped the incidence of tax because of non-disclosure and non-inclusion in the taxable income of the assessee.



The assessee in the affidavit filed before Hon'ble Delhi High Court and in her letter dated 17.10.2011 before Departmental Authorities has claimed stated that the expenditure involved on her foreign travels was part of yearly vacation abroad with family of the salary package of Sh. Abhisar Sharma, her spouse, from the employer of Sh. Abhisar Sharma i.e. M/s. NDTV Ltd. It was further stated by the assessee that similar perquisites were given by M/s. NDTV Ltd. from time to time to other employees of that company as well as part of their salary package.

The copy of employment contract of Sh. Abhisar Sharma with M/s. NDTV Ltd. or any other document is not available on file to corroborate the claim of source of expenditure on foreign travel. Nor is there any documentary evidence available to show inclusion of the expenditure involved on her foreign travels in taxable income of her spouse namely Sh. Abhisar Sharma who is an existing assessee in charge of ACIT, Circle-48(1), New Delhi.

The expenditure on foreign travel of assessee, if it is a part of salary package of Sh. Abhisar Sharma received/ receivable from M/s, NDTV Ltd. is taxable perquisite U/s. 17 of the Income Tax Act, 1961. Upto A.Y. 2007-2008 it was required to be disclosed in return of income and form no.16 issued by the employer. These particulars were also required to be furnished in form no.12BA issued by the employer to the employee. This was to be furnished by the employer with his/ her return of income alongwith form no.16 and in addition to the form no.16. The provisions of Rule 26(2)(b) is being relied upon.

The assessee while claiming that the expenditure incurred by her on her foreign travels alongwith her family was part of the salary package of her Spouse Sh. Abhisar Sharma has not made any mention of the above referred to statutory documents which are mandatorily to be submitted by the concerned assessee nor has included any of these documents either with the affidavit filed by her before Hon'ble Delhi High Court nor with official letter dated 17/10/2011.

In view of the above facts there is admitted position about expenditure incurred on foreign travels of the assessee and her family during the period F.Y. 2003-2004 to F.Y. 2007-2008. The source of expenditure incurred by the assessee on her foreign travels during the above mentioned period required to be verified to ascertain the correct and full tax payable by the assessee on her taxable income.



In view of the facts and circumstances stated hereinabove and the material available on the record of this office, I have reasons to believe that income far in excess of the limit prescribed in law and much more than the limit of ₹One lakh prescribed in section 149(1)(b) of the Income Tax Act, 1961 has escaped assessment during A.Y. 2005-2006, 2006-2007, 2007-2008 & 2008-2009 and to bring the escaped income to tax, re-assessment proceedings are required to be initiated for A.Y. 2005-2006, 2006-2007, 2007-2008 & 2008-2009 U/s 147 of the Income Tax Act, 1961 and notice U/s 148 is to be issued well within the limitation period.

It is further highlighted that the complainant in his Tax Evasion Petition has alleged evasion of tax and concealment of income during the period October, 2003 to October, 2007 which is material for A.Y. 2004-2005, 2005-2006, 2006-2007, 2007-2008 & 2008-2009. Out of this the A.Y. 2004-2005 is no longer open for re-opening in terms of provision U/s 149 of the Income Tax Act, 1961 but the remaining four years are capable of being re-opened U/s. 147 and where notice can be issued U/s 148 of the Income Tax Act, 1961 to bring the income escaped from tax to tax. It is therefore proposed that all these four assessment years may be re-opened together for proper and effective inquiry in the matter and the statutory approval for the same is solicited from Addl. CIT, Range-40, New Delhi.

In view of the facts and circumstances stated hereinabove, the necessary approval of Addl. CIT, Range-40, New Delhi is being solicited in terms of statutory requirement of section 147 of the Income Tax Act, 1961 and other enabling provisions of law to assume jurisdiction U/s 147 and issue notice u/s 148 in terms of requirements of section 149 of Income Tax Act, 1961 for A.Y. 2005-2006, 2006-2007, 2007-2008 & 2008-2009 relevant for F.Y. 2004-2005, 2005-2006, 2006-2007 & 2007-2008 in the case of Smt. Sumana Sen PAN AMQPS5036G.

*(Indu Bala Saini)
Income Tax Officer,
Ward-40(4), New Delhi”*

It is well-settled that the reasons recorded under Section 148(2) should be based on credible material which should have a live link or nexus with the belief that there was



escapement of income. At the stage of recording the reasons and issuing notice under Section 148, it is only a prima facie belief or tentative opinion that needs to be formed by the Assessing Officer. He is not at that stage required to make an assessment or record firm or final conclusions. The belief should however be held in good faith and objectively; it cannot be a mere pretence. The material on the basis of which the Assessing Officer forms the belief should not be mere gossip or rumour. It should not be a bare suspicion. The relevancy of the reasons is justiciable; their adequacy or sufficiency is not. This position is so well settled that it hardly needs citing of any authority. A notice under Section 148 disturbs the finality of an assessment and therefore all jurisdictional conditions have to be strictly complied with. Any lapse would result in the unlawful assumption of jurisdiction which cannot be cured. Erroneous or unlawful assumption of jurisdiction produces the only result, namely, that the reassessment proceedings would be struck down as invalid.

5. Applying the above test to the reasons recorded by the Assessing Officer in the present case, it is difficult to say that the Assessing Officer erroneously assumed jurisdiction to reopen the petitioner's assessment. The source of the complaint or the tax evasion petition is not relevant; it is the substance of the contents of the tax evasion petition which has to be examined for the purpose of ascertaining whether therefrom a prima facie belief could have been formed by the Assessing Officer that income chargeable to tax had escaped assessment. The ground on which the assessment has been reopened, as seen from the reasons recorded, is that the petitioner did not disclose the expenditure incurred by her in her foreign travels during the relevant previous year. The reasons recorded refer to the fact that the copy of the employment contract of the petitioner's husband who was employed with NDTV Ltd., or any other document was not available on record to establish the claim of the petitioner that the salary package of Abhisar Sharma, her husband, included foreign travels for him and his family. The reasons also refer to the fact that no documentary



evidence was available to show the inclusion of the expenditure involved in the foreign travels in the taxable income of the petitioner's husband, who was also assessed to tax by the ACIT, Circle 48(1), New Delhi. It is also seen from the reasons recorded that no documents were submitted along with the petitioner's return of income to show that the expenditure incurred on foreign travels along with her family was part of the salary package of her spouse Abhisar Sharma. These facts have been relied upon by the Assessing Officer to form a prima facie or tentative belief that there was escapement of income as a result of the failure of the petitioner to furnish fully and truly all primary and material facts relating to her assessment. We are concerned with the assessment year 2005-06 and the notice under Section 148 was issued on 28.3.2012 after a period of 4 years from the end of the assessment year. This is therefore a case to which the first proviso to Section 147 is attracted. The Assessing Officer had to therefore demonstrate in the reasons recorded that the escapement of income was the result of the failure of the assessee to furnish fully and truly all material facts relating to her assessment. This condition is satisfied in the present case, as the above narration of the reasons recorded would show. There cannot be any dispute that it is the duty of the assessee to explain the expenditure incurred on her foreign travels. That would be a primary or material fact relating to her assessment, which the petitioner was under a duty to disclose, having regard to Explanation 1 to Section 147. In the absence of any document or evidence filed along with her return of income explaining the expenditure incurred by her on her foreign travels during the relevant previous year, the Assessing Officer was justified in invoking the first proviso to Section 147 and in coming to the prima facie belief that there was escapement of income on account of the assessee's failure to satisfy the requirements of Explanation 1 below Section 147.

6. In the circumstances, we are not inclined to accept the submissions of the petitioner. We accordingly hold that the notice issued on 28.3.2012 under Section 148



of the Act for the assessment year 2005-06 was within the jurisdiction of the Assessing Officer. The Assessing Officer is directed to dispose of the objections filed by the petitioner within a reasonable time and at any rate not later than 30th November, 2012, if not already disposed of.

7. We refrain from expressing any opinion on the various allegations and counter allegations which were exchanged between the petitioner and respondent No.4 in other proceedings. In coming to our decision we have kept in view only the material before the Assessing Officer on the basis of which he recorded reasons and issued notice under Section 148.

The writ petition and the C.M. Nos.8436-8438/2012 are accordingly dismissed. No costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

OCTOBER 19, 2012
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