



§~79

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

%

Date of decision : 17.05.2023

+

W.P.(C) 11910/2018

RAJ BIRBAL

..... Petitioner

Through: Ms Prem Lata Bansal, Senior Standing
Counsel with Ms Kavita Jha, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE -61(1) & ORS.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Akshat Singh, Jr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition concerns Assessment Year (AY) 2011-2012.
2. The writ petition is directed against notice dated 31.03.2018 issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"] and the order dated 01.10.2018 passed by the Assessing Officer (AO), whereby objections preferred by the petitioner, *qua* the commencement of the reassessment proceeding, were disposed of.
3. Pertinently, Ms Prem Lata Bansal, Senior Advocate and Ms Kavita Jha, Advocate, who appear on behalf of the petitioner, say that the reassessment proceeding triggered against the petitioner for the AY in issue, i.e., AY 2011-12, are completely flawed.
4. Ms Bansal and Ms Jha submit that the reassessment proceeding was triggered



based on a Tax Evasion Petition (TEP), with no tangible material made available to the AO for forming an opinion that there was reason to believe that income chargeable to tax has escaped assessment.

5. Furthermore, Ms Bansal and Ms Jha say that the other ground, which has presumably, triggered reassessment proceeding is that certain expenses claimed by the petitioner, on account of salary and other heads, had been disallowed in AY 2014-15 by the AO on the ground that they were bogus.

5.1 Ms Bansal and Ms Jha inform us that although the AO had made addition(s) on that ground in AY 2014-15 by disallowing 50% of the expenses claimed by the petitioner, in an appeal preferred by petitioner, this decision was reversed.

6. In support of this plea, Ms Bansal and Ms Jha have placed on record a hard copy of the decision of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 19.02.2019. A copy of the said decision has been furnished to Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of respondent/revenue.

7. Ms Bansal and Ms Jha, on instructions of petitioner, who is present in the court, say that no appeal has been preferred by the respondent/revenue against the said order of the CIT(A), with the Income Tax Appellate Tribunal.

8. Mr Maratha, in defense of the impugned notice and order, submits that the same are sustainable, in view of the fact that there was no material available which would have substantiated the expenses claimed by the petitioner against salaries and under other heads. In other words, it was Mr Maratha's submission that the reassessment triggered against the petitioner *qua* AY in issue ought not to be interdicted.

9. We have heard learned counsel for parties.

10. The crucial issue which arises for consideration is: whether, in the instant case, based on the material which was available on record, the reassessment proceeding could have triggered against the petitioner?

11. It is not in dispute that the reassessment proceeding was triggered on account of the TEP. There is no other material available on record, based on which the AO formed an opinion, that there was reason to believe that income chargeable to tax had escaped



assessment. This is evident upon a bare perusal of the reasons furnished by the AO for reopening the assessment for the AY in issue, i.e., 2011-12.

12. For the sake of convenience, the relevant portion of the said document which is dated 02.08.2018, is set forth hereafter:

1.	<p><u>Brief details of the Assessee:</u> <i>Sh. Raj Birbal is an Advocate by profession and derived income from Business or Profession, income from House Property and income from Other Sources. The assessee filed his Return of Income for A.Y 2011-12 on 29.09.2011 declaring total income of Rs. 1,28,03,090/- which has been processed u/s 143(1) of the Income Tax Act, 1961 on 13.11.2011.</i></p>
2.	<p><u>Brief details of information collected/received by the AO:</u> <i>Information was passed on from the Investigation Wing New Delhi for a tax evasion petition stating the following:- "This is bring to your notice that the abovementioned assessee who is assessed to tax by the Assistant Commissioner of Income Tax, Circle-61(1), New Delhi, who falls under your charge has been manipulating his Income Tax Returns since the assessment year 2005-06 wherein he has booked bogus expenses ranging from Rs. 60,00,000/- (Rs. Sixty Lakhs to Rs. 1,00,00,000/- (Rupees One Crore)."</i></p>
3.	<p><u>Analysis of information collected/received:</u> <i>Perusal of the information received and ITR of the A.Y. 2011-12, it was observed that assessee has claimed expenses of Rs. 62,80,499/- against the receipts of Rs. 1,55,56,513/- declaring a net profit of Rs. 86,01,506/-. Out of this, one of the major expenses amounts pertains to salary and wages to employees amounting to Rs. 16,15,327/- and other expenses amounting to Rs. 37,43,425/-.</i></p>
4.	<p><u>Enquiries made by the AO as sequel to information collected/received:</u> <i>The assessee has been assessed in A.Y. 2014-15 u/s. 143(3) of the Income Tax Act, 1961. ITR of the A.Y. 2014-15 and assessment order was perused.</i></p>
5.	<p><u>Findings of the AO:</u> <i>Perusal of the assessment order shows that additions regarding bogus expenses have been made. For the A.Y. 2011-12, the nature and genuineness of the expenses need to be made as assessee has debited almost Rs. 62,80,499/- as expenses to his P&L a/c.</i></p>



6.	<p><u><i>Basis of forming reasons to believe and details of escapement of income:</i></u> <i>In view of the nature and amounts involved in the aforesaid transactions, I believe that part of the amount would constitute income and I am satisfied that income above Rs. 1 lac chargeable to tax has escaped assessment year A.Y 2011-12 by reasons of the failure on the part of the assessee to disclose truly and fully all material facts necessary for this assessment for A.Y. 2011-12, and the case is fit for reopening the assessment u/s 147/148 of the I.T. Act, 1961.</i></p>
7.	<p><i>In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Income-tax Act, 1961 was made. Accordingly, in this case the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded in para 2 to para 5 above.</i></p>
8.	<p><i>It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Income-tax Act, 1961 was made and the return of income was only processed u/s 143(1) of the Income-tax Act, 1961. In view of the above, provisions of clause(b) of explanation 2 of section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.</i></p>
9.	<p><i>In this case more than four years have lapsed from the end of assessment year under consideration. The reasons recorded above for the purpose of re-opening of assessment is put up for kind satisfaction of the Principal Commissioner of Income-tax-21, New Delhi in terms of section 151(2) of the Income-tax Act, 1961.</i></p>

13. A careful perusal of the aforesaid extract would show, as indicated above, that the basis for forming an opinion, which is, there was reason to believe that income chargeable to tax had escaped assessment was only the TEP, and the fact that in the AY 2014-15, the AO had disallowed 50% expenses claimed by the petitioner, against salaries and other heads.

14. As indicated in the narration above, the addition made in 2014-15 by the AO was reversed by the CIT(A) via order dated 19.02.2019. The petitioner has, in no uncertain terms, made a statement before us, that the revenue has not carried the matter in appeal.



15. If even we were to ignore this state of the facts, we are of the opinion that merely because expenses claimed were disallowed in AY 2014-15, could not have formed the basis for triggering reassessment in the AY in issue, i.e., AY 2011-12.

16. It is well established that income in each AY is to be assessed independent of the circumstances which obtain in other AYs. The only exception is that where issues are common, the courts have at times adopted the principle of consistency. In this case, that principle surely would not apply.

17. As alluded to hereinabove, the AO had no material available with him for triggering the reassessment proceeding against the petitioner. The only material, if it can be called that, which was available with the AO, was the TEP. There were no documents available which could have formed the basis for initiating reassessment proceeding against the petitioner.

17. Bald assertions in the TEP that the petitioner had claimed bogus expenses towards salary and other heads, in our view, was not sufficient for commencement of the reassessment proceeding under Section 147 read with Section 148 of the Act.

18. Thus, for the foregoing reasons, we are inclined to set aside the impugned notice and order.

19. It is ordered accordingly. The petition is, thus, disposed of in the aforesaid terms.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

MAY 17, 2023/as

[Click here to check corrigendum, if any](#)