

## **No reassessment on basis of info supplied by DGIT (Investigation) without any details available on record**

**Summary – The High Court of Gujarat in a recent case of Varshaben Sanatbhai Patel., (the Assessee) held that In absence of any details available on record, Assessing Officer could not initiate assessment proceedings merely on basis of information supplied by DGIT (Inv.) that assessee had made certain bogus purchases and, to said extent, income had escaped assessment**

### **Facts**

- For the relevant assessment years, the assessee filed its returns declaring certain taxable income. The said returns were processed under section 143(1).
- Subsequently, the Assessing Officer issued notice under section 148 seeking to reopen the assessment on ground that assessee made bogus purchases and to said extent profit had escaped assessment from tax.
- The assessee filed its objections to reopening the assessment contending that information received from the DGIT (Inv.) appears to have been made the basis for reopening the assessment; however, there was no independent application of mind by the Assessing Officer if one looked into the reasons recorded.
- The Assessing Officer rejected objections raised by assessee.
- On writ:

### **Held**

- A perusal of the reasons recorded reveals that the Assessing Officer on verification of the details available on record has noticed that there were bogus purchases. However, from the reasons there is nothing whatsoever to show as to which is the record which shows that there were bogus purchases to the extent stated therein. No details have been mentioned by the Assessing Officer as to what is the basis on which he says that the purchases are bogus.
- Pursuant to the objections raised by the assessee against the reopening of assessment, the Assessing Officer has passed separate orders dated 2-9-2014 in relation to each assessment year rejecting the objections raised by the assessee, wherein, he has stated that he had received information from the DGIT (Inv.), that assessee has made bogus purchases from the parties referred to thereunder in relation to the financial years relevant to the assessment years in question. It is further stated that the reason to believe has been recorded on the basis of the knowledge that the assessee is engaged in bogus purchases with the parties mentioned therein. It is also stated therein that the contention of the assessee that the reasons supplied to her are without supporting material are baseless and frivolous. Based on the aforesaid reasoning, the Assessing Officer has turned down the objections whereby it was alleged that the reopening was without any supporting material.

- At this juncture, reference may be made to certain averments made in the affidavit-in-reply filed by the respondent, wherein a stand has been taken that the DGIT (Inv.), has carried out independent inquiries on hawala transactions and has supplied the information of bogus purchases by the assessee for the years under consideration and that this information, as received from the DGIT (Inv.), is made part and parcel of the assessment record of the assessee. It is further stated therein that the case of the assessee has been reopened to verify the purchases made by the assessee. The notice under section 148 was issued after recording of reasons and satisfaction of the Assessing Officer on the basis of the details, that is, of DGIT (Inv.), available on record. It is further the case of the respondent that there was no assessment in this case and no opinion was formed, and therefore, there was no question of change of opinion and that the case has been reopened on the basis of subsequent information provided by the authority defined under the Act.
- Thus, the undisputed facts are that in relation to all the three assessment years, the returns filed by the assessee have only been processed under section 143(1) and no assessment has been framed under section 143(3). Under the circumstances, as held by the Supreme Court *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [\[2007\] 291 ITR 500/161 Taxman 316](#), the conditions with regard to change of opinion would not be attracted, and so long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate the proceedings under section 147. The question that therefore, arises for consideration is as to whether the ingredients of section 147 are satisfied in the facts of the present case.
- For the purpose of assuming jurisdiction to issue notice under section 148, the Assessing Officer is required to record his reasons for doing so as laid down under sub-section (2) of section 148. For the purpose of filing objections to the issuance of notice, the assessee is required to be provided with a copy of the reasons for issuing notice. The reasons should set out the reasons for formation of the belief of the Assessing Officer that the income has escaped assessment and in case where the reopening of assessment is after the expiry of a period of four years from the end of the relevant assessment year, the belief should be that, by reason of omission or failure on the part of the assessee to disclose fully and truly the material facts, the income has escaped assessment in a particular year.
- Unless the substratum is laid in the reasons, clearly demonstrating the twin belief, that is, the belief that income has escaped assessment and the belief that such escapement is by reason of failure on the part of the assessee, filing an affidavit and stating the same before the Court for the first time would amount to bringing on record material which did not form the basis of formation of such belief. The belief that income has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts has to be recorded in the reasons, though the same may be elaborated by filing an affidavit. But, in the absence of formation of any such belief being recorded in the reasons, it is not open for the Assessing Officer to express formation of such belief for the first time by way of affidavit-in-reply filed in the Court.

- The reasons recorded by the Assessing Officer for reopening of the assessment for the years under consideration have to be viewed in the light of the above settled principles. Having regard to the fact that in this case there was no scrutiny assessment under section 143(3) the scope of inquiry by this Court is limited to the extent laid down by the Supreme Court in *Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra)*, viz. whether there was relevant material on which a reasonable person could have formed the requisite belief.
- On a plain reading of the reasons recorded, what emerges is that the Assessing Officer, on verification of the details available on record, has noticed that there were bogus purchases. However, there is no assertion as regards the basis of which material on record he has come to such conclusion. A perusal of the order rejecting the objections raised by the petitioner, shows that the reopening is based, not upon the material on record, but on the basis of material received from an external source viz., the DGIT (Inv.), pursuant to inquiries made by him (the DGIT). Therefore, the material on the basis of which the Assessing Officer seeks to assume jurisdiction under section 147, is the information received from an external source viz., from the DGIT and not the material on record as reflected in the reasons recorded.
- Under the circumstances, on the basis of the material on record, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment, inasmuch as, the formation of belief of the Assessing Officer was not based upon the details available on record, but on the material made available by the DGIT (Inv.), which was an external source, it cannot be concluded that the requirements of section 147 were satisfied, inasmuch as, the belief of the Assessing Officer is not based upon the material on record, but on some other material from an external source which does not find reference in the reasons. As is clear on a plain reading of the reasons recorded, except for the assertion that there were bogus purchases, the Assessing Officer has not referred to any material on the basis of which he proceeded to invoke the provisions of section 147. The assertion made by the Assessing Officer is a bare one, without any reference to the material on the basis of which he made such assertion.
- Adverting to the facts of the present case, the returns filed by the assessee have been processed under section 147(1). The Assessing Officer in the reasons recorded for the purpose of reopening the assessment has placed reliance upon the record of the case. As noted hereinabove, there is no assertion as regards on what basis the Assessing Officer has stated that the assessee had made claim in respect of bogus purchases in the trading and the profit and loss account as expenditure. The Assessing Officer has stated that on verification of the details available on record, it has been noticed that the assessee has made bogus purchases; however, no specific averments are made as regards which details available on record reflected such bogus purchases.
- It is evident that the Assessing Officer for the purpose of reopening the assessment has placed reliance upon the material from an external source which does not form part of the record. However, the said aspect is not reflected in the reasons recorded. On behalf of the Assessing Officer, the revenue is not in a position to point out any material on the record on the basis of which the

Assessing Officer could have formed such belief. What is now sought to be stated by way of the order rejecting the objections as well as the affidavit-in-reply filed in response to the averments made in the petitions is that the formation of belief is based upon the information which is received from the DGIT (Inv.).

- It is settled legal position as held by a catena of decisions that the substratum for formation of belief that income liable to tax has escaped assessment has to form part of the reasons recorded. In the present case, the substratum for formation of belief, as indicated in the order rejecting the objections as well as the affidavit-in-reply, is the information given by the DGIT (Inv.), which got no relation with the reasons recorded, which are stated to be based upon the material available on record.
- Under the circumstances, the Assessing Officer, on the basis of the material on record, could not have formed belief that there was any escapement of income chargeable to tax so as to validly assume jurisdiction under section 147. As held by the Supreme Court in a catena of decisions, the reasons recorded cannot be supplemented in the affidavit or by the order rejecting the objections. The material, on the basis of which, the belief that income chargeable to tax has escaped assessment has been formed, has to find place in the reasons itself.
- In the aforesaid premises, the formation of belief that income has escaped assessment not being based upon record, it is evident that the substratum for reopening the assessment is not laid in the reasons recorded, but on material extraneous thereto. Under the circumstances, the basic requirement for assumption of jurisdiction under section 147 for reopening the assessment is not satisfied in the present case. The impugned notice under section 148, therefore, cannot be sustained.
- For the foregoing reasons, the petitions succeed and are, accordingly, allowed. The impugned notices issued under section 148 are hereby quashed and set aside.