

AO couldn't make reassessment on mere suspicion due to huge cash withdrawal by assessee from bank

Summary – The Ahmedabad ITAT in a recent case of Amit K. Shah, (the Assessee) held that Unless escapement of income was indicated, mere fact that assessee had made huge cash withdrawal from bank for purchase which was very much doubtful, could not be a ground for reopening assessment

Facts

- The assessee was engaged in the business of trading of waste papers.
- The Assessing Officer reopened the assessment of giving reasons that the assessee had made the cash withdrawal of Rs. 25,43,500/-. These withdrawals were made purportedly for purchase of waste papers which were very much in doubt. He applied section 40A(3) as the above withdrawals were said to be utilised for cash purchases. He argued that the income escaped from assessment was more than one lakh and the case came under section 147.
- On appeal, the Commissioner (Appeals) upheld the reassessment proceedings.
- On appeal before the Tribunal:

Held

- There is no dispute, as evident from a plain reading of the reasons recorded by the Assessing Officer that the only cause for reopening the assessment is 'cash withdrawal of Rs. 25,43,500' and the Assessing Officer's observation to the effect that 'these withdrawals towards purchase of waste paper was very much in doubt'. There is nothing to even remotely suggest that the Assessing Officer had any reasons to hold the belief that any income has escaped assessment. What he has noted in the reasons recorded in the reopening of the assessment is mere suspicion or apprehension which is seen from the fact that the assessee did make cash withdrawal from the Bank. That does not indicate escapement of income. The revenue stated about certain other facts which are not borne out of the material on record and submitted that though it has not been stated by the Assessing Officer in so many words, the Assessing Officer had good and sufficient reason to hold the belief that income has indeed escaped assessment.
- The important point is that even though reasons recorded may not necessarily prove escapement of income at the stage of recording reasons, such reasons must point out to the income escaping assessment and not merely need any enquiry which may require detection of income escaping assessment. In the present case at best case of the Assessing Officer falls in the second category. The case of *Hindustan Lever Ltd. v. R.B. Wadkar* [\[2004\] 268 ITR 332/137 Taxman 479 \(Bom.\)](#) observed that 'the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the Assessing Officer to

disclose and open his mind through the reasons recorded by him. He has to speak through the reasons.' Further, 'the reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....'. Therefore, the reasons are to be examined only on the basis of the reasons as recorded.

- In the present case the only reason is its cash withdrawal from the bank account. Dealing with somewhat similar situation, the jurisdictional High Court of Gujarat in the case of *Vishal Exports Overseas Ltd. v. Dy. CIT* [SLP Civil Application No. 3864 of 2015, dated 8-9-2015] has observed that mere withdrawal of cash from the bank accounts maintained by the assessee, can, by no stretch of imagination be termed as escapement of income, as envisaged under section 147. Where, from the reasons recorded, there was nothing to indicate that any income chargeable to tax in the case of the assessee has escaped assessment and the sole basis for reopening the assessment is that the petitioner assessee has withdrawn huge amount of Rs. 2,54,00,000 in cash but Assessing Officer has not explained the utilisation, cash withdrawals from bank accounts cannot be said to amount to escapement of income within the meaning of section 147 of the Act, as stated by the Assessing Officer, when it is not the case of the Assessing Officer that the amount deposited by the assessee in its bank accounts is undisclosed income.
- Bearing in mind entirety of the case, it was to be held that reason as recorded by the Assessing Officer for reopening the impugned assessment are clearly unsustainable in law.