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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (IT) NO. 2517 OF 2018

Smt. S. Rajalakshmi, Indian Inhabitant]
residing at 10, Fairfield, Churchgate]
Mumbai – 400 020] ...Appellant.

Vs.

I.T.O. 12(3)(3), Mumbai Maharshi]
Karve Road, Churchgate, Mumbai ,]
Maharashtra – 400 020] ...Respondent.

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Mr S. Ganesh, Sr. Advocate a/w Mr Nishant Thakkar, Ms Jasmin Amalsadvala I/b PDS Legal for the appellant.
Mr Suresh Kumar for the Respondent.

CORAM : S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

RESERVED ON : 17th October, 2018

PRONOUNCED ON : 25th October, 2018

JUDGMENT [PER B. P. COLABAWALLA J.]:

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 (for short the **"I.T.Act, 1961"**) taking exception to the Judgment and Order dated 27th March, 2018 passed by the "D" Bench of the Income Tax Appellate Tribunal, Mumbai (for short the **"ITAT"**), whereby the ITAT dismissed the appeal of the appellant

and upheld the exercise of power by the Assessing Officer (for short **"A.O."**) under Section 147 of the I.T.Act, 1961 for the Assessment Year (for short **"A.Y."**) 2007-08. According to the appellant, though the reasons recorded by the respondent – revenue, for invoking Section 147 of the I.T. Act, 1961 did not contain any basis or material whatsoever to give rise to any "reason to believe" that the appellant's income had escaped assessment, notice under Section 148 of the I.T.Act was issued. It is in this backdrop that the learned Senior Counsel appearing on behalf of the appellant submitted that the order of the ITAT gave rise to the following substantial question of law:-

> **"Did not the Appellate Tribunal err in law in upholding the proceedings initiated against the Appellant under Section 147 of the Income Tax Act for A.Y. 2007-08**"

2. Before we advert to the legal submissions canvassed by the learned Senior Counsel as well as the Revenue, it would be apposite to set out the brief facts of the case and which are undisputed before us. In the case of Mr S. Ganesh (son of the appellant herein), for the A.Y. 2007-08 the addition of certain investments made in Birla Mutual Fund & Standard Chartered Mutual Funds were brought to tax against Shri S. Ganesh (son of the appellant herein). This was done on the basis and as per the Annual

Information Return (for short "AIR") that the assessee had made total investments of Rs.23,83,43,112/-. The assessee was, therefore, asked to reconcile the investments made by him. After hearing Mr S. Ganesh, the A.O. made said addition of Rs.23.83 Crores to the total income of the assessee – Shri S. Ganesh. Being aggrieved thereby, Mr S. Ganesh filed an appeal before the Commissioner of Income Tax (Appeals) [for short **"CIT(A)"**]. Before CIT(A) it was *inter alia* submitted by Mr S. Ganesh that the details in respect of the investments in Birla Mutual Fund in the amount of Rs.29,50,000/-, investment in Standard Chartered Mutual Fund in the amount of Rs.64 Lacs and another investment in Standard Chartered Mutual Fund in the amount of Rs.50 Lacs stood in the joint name of his mother (the appellant herein) as the first holder and Shri S. Ganesh (being her son) as the second holder. The CIT(A) then called for a Remand Report from the A.O. and after considering the same as well as the comments of the assessee, the CIT(A) sustained the addition of 2,93,50,000/- and deleted the balance additions. Being aggrieved by the order of the CIT(A), Mr. S. Ganesh preferred an appeal before the ITAT. Before the ITAT it was submitted that since his mother (the appelllant herein) was the first holder in respect of the 3 investments mentioned above, if any addition is to be made in respect to the same, they should be made in the hands of his mother (the appelllant

herein) and not in his hands. This argument of Shri S. Ganesh was accepted by the ITAT in the appeal filed by him. In paragraph 14 of the ITAT order dated 16th November, 2012, the ITAT categorically recorded that considering the facts of the case as discussed therein, the ITAT was of the considered view that there was force in the submission of Mr S. Ganesh that the investments in respect of which he was the second holder and his mother was the first holder, the addition, if any, should have been made on account of unexplained investment in the hands of his mother (the appellant herein) and not in the hands of Mr S. Ganesh. Accordingly, the ITAT held that there was no justification for making the addition of Rs.29,50,000/- in Birla Mutual Fund, and Rs.64 Lacs and Rs.50 Lacs respectively in Standard Chartered Mutual Fund in the hands of Mr S. Ganesh as he was the second holder along with his mother who was the first holder.

3. Considering the above facts and the observations of the ITAT in the case of Mr S. Ganesh, the assessment was re-opened in the case of the appellant on the ground that income chargeable to tax had escaped assessment within the meaning of Section 147 of the I.T.Act, 1961, and accordingly, a notice under Section 148 of the I.T.Act, 1961 was issued. This notice was dated 21st March, 2013. In

response to the notice, the appellant's authorized representative, vide its letter dated 28th April, 2013, stated that the appellant is not able to trace out all the documents including the bank statements and TDS certificates which are required to file the return of income-tax. The appellant further stated that she had made an application to her bankers for issuance of bank statements and requested for further time to file her return of income tax.

4. Subsequently, the appellant's son, Mr S. Ganesh, vide his letter dated 2nd July, 2013, stated that the return of income for A.Y. 2007-08 was filed under protest and also enclosed a copy of the I.T. return for the said A.Y. declaring 'nil' income. In the said return of income the appellant showed her income from other sources of Rs.1,38,522/- and also showed exempt income being dividend from Mutual Funds of Rs.2,62,32,867/-. The appellant also took objections for reopening the assessment on the ground that she had sufficient exempt income. Thereafter, the reasons for reopening of the assessment were given to the appellant to which objections raised by the appellant. These objections were disposed of by the A.O. vide his order dated 8th November, 2013.

5. Thereafter, the case was selected for scrutiny and notices

under Section 143(2) and 142(1) of the I.T.Act, 1961 were issued. In response to these notices the appellant appeared from time to time and furnished the details as called for. During the course of assessment proceedings, the A.O. also called upon the appellant to explain the source of investments in mutual funds amounting to Rs.1,43,50,000/-. In response to this, the appellant submitted that the jurisdictional condition precedent for issuance of notice under Section 148 of the I.T.Act, 1961 was that the A.O., should have "**reasons to believe**" that the income had escaped assessment. According to the appellant this jurisdictional fact was not established in the present case, and therefore, the notice issued under Section 148 of the I.T.Act, was bad in law. According to the appellant, she had made two investments amounting to Rs.93 Lacs for the financial year 2006-07 (A.Y. 2007-08). This fact, by itself, cannot possibly give the A.O. reason to believe that the income had escaped assessment in view of the fact that the appellant had a large amount of tax free income through dividends from Mutual Funds.

6. The A.O., after considering these submissions, observed that the appellant had not declared her income in the return as required under Section 139(1) of the I.T.Act, 1961. The exempted income was not disclosed in the said return. He, therefore, concluded

that reopening of the assessment was on a sound basis and he confirmed that income had escaped assessment. The A.O. further observed that the finding in the order of the ITAT dated 16th November, 2012 (which was passed in the case of Mr S. Ganesh, the son of the appellant) was clearly in the nature of the material required for formation of reasonable belief that income had escaped assessment. The A.O. was, therefore, of the opinion that he had "**reason to believe**" that income of the appellant had escaped assessment as the appellant had never filed the return of income disclosing her income from the mutual funds for the A.Y. 2007-08. Thus, he was justified in reopening the assessment, was the finding. After coming to this finding, the A.O. also went on to examine whether the addition should be made on merits. The A.O. also went on to observe that no evidence was provided by the appellant regarding the source of income through which these investments were made. We must mention here that on the merits no challenge has been laid before us. The only challenge to the impugned order, and as can be seen from the question of law reproduced by us above, is that the A.O. had no "**reason to believe"** that income had escaped assessment for the A.Y. 2007-08, and therefore, notice under Section 148 of the I.T.Act, 1961 could not have been issued to the appellant.

7. Be that as it may, being aggrieved by the assessment order passed by the A.O., the appellant preferred an appeal before the CIT(A). There also it was argued that the A.O. could not have had any reason to believe that the income of the appellant had escaped assessment. It was submitted before the CIT(A) that the reasonable belief of escapement of income was only on the basis of the finding of the ITAT. This could not give rise to "**reason to believe**" that income had escaped assessment. As far as the appellant is concerned it was also argued that since the appellant had made investments aggregating to Rs.93.05 Lacs and that she had very large amounts of tax free dividends from Mutual Funds, itself showed that the A.O. could never have "**reason to believe"** that any income had escaped assessment. After considering these submissions of the assessee and also relying upon the decision of the Supreme Court in the case of **ACIT** Vs **Rajesh Jhaveri Stock Brokers Pvt. Ltd., [(2007) 291 ITR 500 (SC)]** the CIT(A) rejected this contention of the appellant for challenging reopening of the assessment. We must also mention that even on merits, CIT(A) upheld the addition as was done by the A.O.

8. Being aggrieved by this order of CIT(A), the appellant approached the ITAT. The submissions of the appellant with regard

to reopening of the assessment was recorded by the ITAT in paragraph 7 of the impugned order. The submissions of the revenue were thereafter recorded in paragraph 8 thereof. After hearing both parties and perusing the material on record, the ITAT *inter alia* came to the conclusion that the A.O. was justified in reopening the assessment. The reasoning given by the ITAT can be found in paragraph 9 of this order which reads thus:

> *"9 We have heard both the parties and perused the material available on record. The AO reopened the assessment u/s 147 on the basis of information received in the form of observation of ITAT, in the proceedings of assessee's son, Shri S Ganesh wherein on the basis of assessee's son's submission it was observed that if at all any addition towards investment in mutual funds of Birla Mutual Funds and Standard Chartered Mutual Funds amounting to Rs.93.53 Lakhs can be made in the hands of assessee's mother, but not in the hands of assessee as the said investments in mutual funds has been made in the joint name of Shri S. Ganesh, son of the assessee and assessee being the first holder of units of mutual funds. The AO on the basis of observations of the ITAT, opined that income chargeable to tax had been escaped assessment within the meaning of section 147 of the Act, as the assessee has not filed her return of income u/s 139 to explain source of investment. The AO has formed reasonable belief of escapement of income which is based on observations of ITAT, wherein ITAT, on the basis of submissions of assessee's son has observed that investment in Birla Mutual Funds for Rs.29.53 lakhs and Standard Chartered Mutual Funds for Rs.64 lakhs is belonging to assessee, Smt. S. Rajlaxmi and if at all any addition can be made it can be made in the hands of Smt. S. Rajlaxmi. The reopening of assessment u/s 147 on the basis of information in the form of observations of ITAT is on sound footing and which constitutes a tangible material for the purpose of reopening as the assessee did not file her return of income as required u/s 139(1) of the Act explaining the source of investment. Therefore, we are of the considered view that the reopening of assessment is on sound basis and there is no merits in the arguments of the assessee that the AO has reopened the assessment without any tangible material which suggests escapement of income within the meaning of section 147 of the Act. In our considered*

> *view, the observations of the ITAT in assessee's son's case on the basis of assessee's son's admission constitute a valid tangible material for the purpose of reopening of the assessment and hence, this cannot be considered as change of opinion or formation of belief without any tangible material. Insofar as the case laws relied upon by the assessee, we find that all the case laws are rendered under different facts which are not at all applicable to the facts of assessee's case and hence, all those case laws relied upon by the assessee are rejected. Therefore, we are of the considered view that the reopening of assessment is valid and accordingly uphold the reopening of assessment and reject ground raised by the assessee."*

9. It is being aggrieved by the order of the ITAT, that the appellant is before us under Section 260A of the I.T.Act, 1961.

10. In this factual backdrop, the learned Senior Counsel appearing on behalf of the appellant, submitted that the A.O. had absolutely no reason to believe that the income of the appellant had escaped assessment which warranted issuance of a notice under Section 148 of the I.T.Act. In this regard, the learned Senior Counsel invited our attention to the reasons which can be found on page 30 of the paper book. He submitted that these reasons only state that the ITAT, whilst disposing of the appeal of Mr S. Ganesh for the A.Y. 2007-08, had opined that since the assessee's mother (the appellant herein) was the first holder, the addition, if any, should have been made on account of the unexplained investments in her hands and not in the hands of Mr S. Ganesh. He submitted that it is in view of this observation that the A.O. came to the conclusion that he had

reason to believe that the income amounting to Rs.1,43,50,000/- had escaped assessment within the meaning of clause (b) of explanation (2) to Section 147 of the I.T.Act, 1961. Learned Senior Counsel submitted that in fact, the ITAT had not made any such observation and in any event hadn't given any such finding as recorded by the A.O. in his reasons for reopening the assessment. He therefore submitted that the so called "**reason to believe"** was completely misconstrued. He submitted that the basis on which the assessment was reopened itself was not present, and therefore, there was no justification for issuing the notice under Section 148 of the I.T.Act, 1961. As a consequence, learned Senior Counsel submitted that, therefore, the authorities below had clearly gone wrong in allowing the notice to stand and thereafter making the addition on merits. Learned Senior Counsel submitted that merely because an assessee had made investments in a particular year and it is considered necessary to make an inquiry into the same cannot give the revenue reason to believe that income had escaped assessment. In support of this proposition, the learned Senior Counsel relied upon a decision of this Court in the case of **CIT Vs. Smt. Maniben Valji Shah [(2006) 283 ITR 354 (Bom)].** He submitted that the facts of the present case are almost identical to the facts in the case of **Maniben Valji Shah (supra)** and would, therefore, be governed by the ratio laid

down therein. For all these reasons, the learned Senior Counsel appearing for the appellant, submitted that the impugned order gives rise to a substantial question of law as reproduced by us hereinabove. He, therefore, submitted that the appeal be allowed and the order of the ITAT be set aside.

11. On the other hand, Mr Suresh Kumar, the learned advocate on behalf of the respondent – revenue, supported the findings given by the A.O., CIT(A) as well as the ITAT. He submitted that the findings given by all these authorities were on the facts of the case and did not suffer from any perversity or vitiated by any error apparent on the face of the record that would give rise to any substantial question of law, which in turn, would require our interference under Section 260A of the I.T.Act, 1961. He submitted that in the present case the appellant had not filed a return of income as required under Section 139(1) of the I.T.Act, 1961 and she had not disclosed her exempt income which was received by virtue of the dividends. He submitted that in fact it was argued by the appellant's son himself before the ITAT that the appellant herein, being his mother, and being the first holder of these investments, the addition if any with relation to these investments ought to be in the hands of the appellant and not Mr S. Ganesh (her son). This argument was

accepted by the ITAT in case of Mr S. Ganesh and that is how these amounts were not brought to tax in the case of Mr S. Ganesh. It was on this basis that the A.O. in the reasons forwarded to the appellant correctly recorded that in view of the observations of the ITAT in the appeal filed by Mr S. Ganesh, he had "**reason to believe"** that the income of the appellant herein had escaped assessment within the meaning of Section 147 of the I.T.Act, 1961. Mr Suresh Kumar also submitted that the Supreme Court in the case of **ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd. (supra)** has correctly held that the word "**reason**" in the phrase **"reason to believe"** would mean cause or justification. If the A.O. has cause or justification to know or suppose that income had escaped assessment, it can be said that he had reason to believe that income had escaped assessment. This expression cannot be read to mean that the A.O. should have finally ascertained the fact of escapement by legal evidence or conclusion. He submitted that the function of the A.O. is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayers. He submitted that for initiation of action under Section 147 of the I.T.Act, 1961, the A.O. had to only satisfy himself that there was "**reason to believe**" that the income had escaped assessment. At that stage the final outcome of the proceedings was not relevant. In other words, Mr Suresh Kumar

submitted that at the initial stage what was required is to "**reason to believe"** but not the established fact of escapement of income. He submitted that in the facts of the present case, and in view of the observations made by the ITAT in its order dated 11th November, 2012 passed in the appeal filed by her son Mr S. Ganesh, the A.O. clearly had "**reason to believe"** that income of the appellant had escaped assessment. This being the case, he submitted that no fault can be found with the order passed by the A.O. and which was thereafter upheld by the CIT(A) and the ITAT. He, therefore, submitted that as a consequence thereof, this appeal raises no substantial question of law and the same ought to be dismissed with costs.

12. We have heard the learned Counsel for the parties at length and have perused the papers and proceedings in the above appeal. We find considerable force in the arguments canvassed by Shri Suresh Kumar, learned advocate appearing on behalf of the respondent – revenue. As mentioned earlier, in the assessment proceedings against the son of the appellant the investments made in these three Mutual Funds (Birla Mutual Fund, Standard Chartered Mutual Fund and Standard Chartered Mutual Fund) were brought to tax in the hands of Mr S. Ganesh. It was the contention of Mr S.

Ganesh (the son of the appellant) that he being the second holder of these investments, these amounts could not be brought to tax in his hand and could be brought to tax, if any, in the hands of the appellant. This was the specific argument made by Mr S. Ganesh in his assessment proceedings as can be seen from the order of the ITAT dated 21st November, 2012. This argument of Mr S. Ganesh can be found in paragraph 10 of the said order (page 23 of the paper-book). It is not in dispute that these three investments stand in the name of the appellant herein as the first holder. It is also not in dispute that when she filed her return under Section 139(1) of the I.T.Act, 1961 she had not explained the source of her investments. In fact her exempt income from dividends did not form part of her return filed under Section 139(1) of the I.T.Act, 1961. Looking at all these facts, the A.O. came to the conclusion that he had "**reason to believe"** that the income of the appellant had escaped assessment as contemplated under Section 147 of the I.T.Act, 1961 and hence proceeded to issue the notice under Section 148 of the I.T.Act, 1961. This was upheld by the CIT(A) as well as the ITAT. Looking to all these facts and considering the decision of the Supreme Court in the case of **Rajesh Jhaveri Stock Brokers P.Ltd. (supra)**, we do not think that the findings given by the authorities below on this issue suffer from any perversity or error apparent on the face of the record that would

require our interference under Section 260A of the I.T.Act, 1961. As held by the Supreme Court in the aforesaid decision, there is "**reason to believe**" would mean cause or justification. If the A.O. had cause or justification to know or suppose that the income had escaped assessment, it can be said that he had "**reason to believe**" that the income had escaped assessment. It is the subjective satisfaction of the A.O. that has to seen and whether that satisfaction suffers from any perversity. In the facts of the present case and especially considering the argument canvassed by the appellant's own son in his own proceedings, we are clearly of the view that the A.O. had cause or justification, and hence **"reason to believe"** that the income of the appellant had escaped assessment.

13. We find that the reliance placed by the learned Senior Counsel on a decision of this Court in the case of **Maniben Valji Shah (supra)** is wholly misconceived. In the facts of that case, this Court inter alia held that a bare perusal of the notice reopening the assessment clearly indicated that the Assessing Officer was wanting to know the details with regard to the source of funds for purchasing the flat. It was on this basis that this Court came to a finding that there was no question of the Assessing Officer having any basis to reasonably entertain the belief that any part of the income of the

Assessee had escaped assessment. This decision can be of no assistance to the appellant, especially in the factual backdrop before us as discussed by us earlier. In the facts of the present case, as noted earlier, considering that the appellant, when she filed her return of the income under section 139(1) had not explained the source of her investments coupled with the fact that her exempt income from dividends did not form part of her return filed under section 139(1) of the Act, the Assessing Officer clearly had reason to believe that the income of the Appellant had escaped assessment as contemplated under section 147 of the Act. We therefore find that the reliance placed on this decision (**Maniben Valji Shah**) is wholly misconceived. It does not in any way support the case of the appellant before us.

14. In fact, when one looks at the merits of the matter, it is recorded that the appellant was unable to explain the source of income from which these investments have been made by furnishing her bank statements, and which finding has even not been challenged before us. The only so called explanation given was that since her husband had expired in the year 2011, the records were not available with her to explain the source of these investments. This excuse of the appellant was not believed by the authorities below, and

therefore, on merits also they proceeded to make the additions. In fact, if the appellant would have produced the material to show from what source these investments were made, she would have probably succeeded in the proceedings. However, she failed to do so as recorded by the authorities below. This being the case, and since the ITAT in her son's case accepted the submission that these investments should not be brought to tax in his hands as he was the second holder and they could have been brought to tax, if any, in the hands of the first holder, namely, the appellant, we find that the A.O., in view of these observations of the ITAT, clearly had reason to believe that the income of the appellant with reference to these three investments had escaped assessment. We do not find that this subjective satisfaction of the A.O. suffers from any peversity or is vitiated by any error apparent on the face of the record which, in turn, would give rise to any substantial question of law.

15. In view of the foregoing discussion, we do not find any merit in the appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P.COLABAWALLA J.) **(S.C.DHARMADHIKARI J.)**