
(2012) 03 SHI CK 0406
In the High Court Of Himachal Pradesh
Case No : IT Appeal No. 45 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Sahil Knit Fab

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(1)(a), 143(2), 143(3), 147

Citation : (2012) 249 CTR 454 : (2012) 208 TAXMAN 233

Hon'ble Judges : R.B. Misra, J; Dev Darshan Sood, J

Bench : Division Bench

Advocate : Vinay Kuthiala and Ms. Vandana Kuthiala, for the Appellant; Vishal Mohan with R.L. Thakur, for the Respondent

Judgement

Dev Darshan Sud, J.—This is the Revenue's appeal against the order passed by the learned Tribunal affirming the order in appeal preferred by the assessee-respondent partly allowing the appeal. The brief facts which we notice for the determination of this case are that the AO proceeded to assess the income of the respondent-assessee herein disallowing deductions under s. 80-IA of the IT Act, 1961 (hereinafter referred to as "Act"). The AO holds that the respondent was engaged in business of manufacturing of knitted cloth from yarns and has thereafter discontinued his business/operations in Baddi and moved out.

2. The order was passed under s. 143(3)/147 of the Act. The AO noticed that the assessee had filed return for the asst. yr. 1998-99 declaring nil income after claiming deduction of Rs. 61,32,678 under s. 80-IA of the Act. The return was processed under s. 143(1) of the Act. The AO had reason to believe that the income of the respondent had escaped assessment because of the failure on the part of the assessee/respondent to disclose all material facts truly and fully which required further investigation. Consequently, the case was taken for reassessment under s. 147 and notice under s. 148 of the Act was issued to the assessee. The Asstt. CIT then noticed that neither the wages and attendance registers of the workers nor any details about their numbers and remuneration

drawn have been produced and in this event, proceeded to disallow the exemption claimed this, coupled with the fact that the assessee has declared gross profit of Rs. 67,11,564 on net sales of Rs. 1,73,23,023 making the GP ratio at 38.74 per cent, he holds that this is an astonishingly high rate which is not comparable to any other similar case in the line of business of the assessee. Copy of the assessment order is filed as Annex. A-1. The entire amount of deduction claimed was taken as income of the assessee and proceedings under s. 271(1)(c) of the Act for concealment of income were directed to be initiated.

3. The respondent preferred an appeal before the CIT(A), who allowed the appeal partly. One of the grounds urged for adjudication was that the AO had no jurisdiction under s. 147/148 of the Act to reopen assessment after a period of six years. A number of decisions were relied upon by the assessee. The CIT(A) notes that the return was processed under s. 143(1) of the Act on 15th Oct., 1999. The Union of India had introduced this provision after reposing confidence in the taxpayers who were expected to make a fair disclosure of facts. It also exempted their personal appearance. It was urged that the grounds for invocation of jurisdiction for reopening and reassessing under s. 147/148 of the Act were ultra vires the Act. The reasons which have been reproduced by the CIT(A) in his order, as furnished by the AO, are that there is a high rate of gross profit disclosed by the assessee which may mean that the assessee is suppressing manufacturing and administrative expenses or not debiting genuine expenses in his accounts. The purchase rates of raw material and sale rates of finished goods were required to be verified, the fact that whether the assessee has fulfilled the conditions of eligibility for exemption under s. 80-IA was also required to be verified/ascertained. One fact urged was that the expenses incurred under the head wages were not sufficient to engage 10 workers throughout the year. The manufacturing expenses debited were very meager. The CIT(A) holds that the case of verification and investigation falls beyond the purview of the said provisions of the Act for the reasons he adopts. He holds that the power under s. 147 is wide but not plenary and unbridled and is hedged in with several safeguards, which have to be followed. The order then proceeds that there must be material for forming the belief and circumstances must exist and cannot be assumed for the purposes of exercise of jurisdiction for reopening assessment. The crucial words used are "reasons to believe" and the order does not satisfy the legal requirements to invoke jurisdiction as resorted to. He takes into consideration a number of decisions on the point, namely, SRI KRISHNA PVT. LTD. ETC. Vs. INCOME TAX OFFICER and Others, , Chhugamal Rajpal Vs. S.P. Chaliha and Others, Rina Sen Vs. Commissioner of Income Tax and Others,

4. In a nutshell what the CIT(A) held was that the powers could not be used to exercise jurisdiction simply for proceeding on a roving or fishing inquiry. Adverting to the decision of the Supreme Court in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, where it was held that expression "reason to believe" must be stronger than the word "satisfied" which in the present case were missing. The CIT(A) then holds that the reasons recorded by the AO are

inferential and belief according to the inferences drawn by him is not on the basis of any evidence or information on record. He then proceeds to make comparison of book results of M/s Shivam Knit Fab for the asst. yr. 2003-04 with the book results of the appellant-assessee for the year 1998-99, based on this the AO restricted the claim of the appellant to 14 per cent of the net profit and worked out the eligible profit under s. 80-IA at Rs. 24,25,223. There was no evidence on record to show as to how this could be applied to the assessee. The AO has also ignored the fact that in the asst. yr. 2001-02, the gross profit of 31.24 per cent has been accepted and the comparison of gross profit of M/s Shivam Knit Fab, Baddi, for the asst. yr. 2003-04, could not be used to assess the gross profit of the respondent for the year 1998-99 which is after the gap of five years as also without consideration of changed business environment. This was illogical and an unrealistic comparison. The CIT(A) then further holds that the AO has mentioned that the books of accounts were produced and were subjected to scrutiny by way of test-check method. The AO has failed to indicate anything on record, any discrepancy either in the method or in the manner of accounting or in the maintenance of the accounts books which were duly supported by bills and vouchers. He then proceeds to calculate the expenses on the basis of minimum wages payable etc. and determining as a fact that the correct fact-situation has not been determined by the AO. The assessment order was set aside.

5. The Revenue appealed to the learned Tribunal. Three grounds were urged in support of the appeal as detailed in its order, as under:

(a) The first being briefly summarized, that the CIT(A) was not justified in quashing the initiation of proceedings under s. 147 of the Act by holding that notice under s. 148 was issued for verification and investigation, whereas the AO has noticed that the assessee has claimed incorrect and excessive deduction under s. 80-IB;

(b) That the CIT(A) had erred in holding that the deduction in fact as claimed could be allowed to be set off against the income disclosed.

(c) That the CIT(A) had erred in admitting additional evidence (wages register) in violation of the provisions of r. 46A of the IT Rules.

6. The learned Tribunal proceeded to discuss the facts in detail as noted by the CIT(A) while disposing of the appeal before it. Reliance was placed upon the judgment of this Court in Green World Corporation Vs. Income Tax Officer and Others, to contend that higher profits were disclosed to take undue advantage of the deductions permissible under the provisions of the IT Act. A number of decisions were also cited by the respondent in support of its contention.

7. We find that the Tribunal records as an undisputed fact that the assessee had filed return for the asst. yr. 2000-01 which was processed under s. 143(1) of the Act and assessed under s. 143(3) of the Act and had recorded that the conditions for grant of deduction under s. 80-IB were satisfied. It then paraphrases the reasons for reopening the assessment which are:

(i) That the assessee had disclosed abnormal gross profit at 38.7 per cent and net rate of profit at 35.4 per cent. According to the AO, such a high rate of profit appears to have been worked out by either suppressing the manufacturing and administrative expenses or not debiting even genuine expenses.

(ii) That whether the assessee fulfils the conditions eligible for deduction under s. 80-IA or not are to be investigated and

(iii) That the expenses on wages amounting to Rs. 2,58,040 are too low for engaging 10 or more workers in the business of manufacturing of articles and things.

8. The learned Tribunal then proceeds that whether the net rate of profit of 35.4 per cent is reasonable or unreasonable would depend upon the facts and circumstances of each case. We cannot fault with this reasoning of the learned Tribunal as this is a question of fact to be arrived at on the material on record. The learned Tribunal then holds that the AO has not referred to any comparable case in the "reasons recorded" to justify reopening of assessment on the ground that the profit rate declared by assessee was unacceptable. Learned Tribunal also holds that the AO had already made the assessment in the case of the assessee for the asst. yrs. 2000-01, 2001-02 under s. 143(3) where profit rate disclosed in both the assessment years was between 30 per cent and 34 per cent. It was the assessee's own case which was comparable and not that of any other firm/business activity for which he had no material on the record and in these circumstances, there was no justification in invoking the provisions of s. 147/148 of the Act.

9. On the second ground urged, the learned Tribunal holds that fulfillment of the conditions under s. 80-IA was to be investigated by the AO and reopening of the assessment was not permissible. If the return of income was required to be verified, the AO was entitled to issue notice under s. 143(2) and then to proceed under s. 143(3) on the basis of the material gathered by him. The books of accounts were examined and in this view of the matter the jurisdiction for reassessment could not be invoked.

10. On the last point urged that under r. 46A no opportunity was given to the AO, the case was restored to the file of the CIT(A) for decision on merits. It was directed that the CIT(A) would not decide the issue until and unless the decision for reopening the assessment under s. 147 of the Act is not reversed by any superior Court. This in nutshell is a case put forth before the Tribunal.

11. It is in these circumstances that we are called upon to test the legality of the orders passed by the Tribunal.

12. What we are concerned with in this case is the scope and ambit of the jurisdiction of the AO under ss. 147 and 148 of the Act. This issue is no longer res Integra and has engaged the attention of Courts in a number of cases. We do not intend to multiply precedent but only refer to some of the cases. We first

adverted to the decision of the Supreme Court in *Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others*, . The Court holds :

25. The principles on this branch of law are well-settled.

26. To confer jurisdiction under cl. (a) of sub-s. (1) of s. 147 of the Act beyond the period of four years but within a period of eight years from the end of the relevant year under s. 148 of the assessment year, two conditions were required to be fulfilled: first is that the ITO must have reason to believe that the income, profits or gains chargeable to tax had been under-assessed or escaped assessment; the second was that he must have reason to believe that such escapement or under-assessment was occasioned by reason so far as relevant for the present purpose to disclose fully and truly all material facts necessary for the assessment of that year. Both these conditions are conditions precedent to be satisfied. Sec in this connection the observations of this Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, . The obligation, therefore, of the assessee primarily was to disclose fully and truly all material and relevant facts; that the obligation was only of disclosing the basic facts but not obligation to disclose what inference had to be drawn from such facts. It was further observed by Hidayatullah, J. as the learned Judge then was, that the mere production of evidence before the ITO was not enough and there might be an omission or failure to make a full and true disclosure, if some material for the assessment lay embedded in that evidence which the assessee could uncover but did not. If there was such a fact, it was the duty of the assessee according to the said learned Judge to disclose it. There was difference of opinion amongst the learned Judges in that case on certain aspect but for the purpose of this appeal, it is not necessary to refer to the same.

33. As is well settled now by the several authorities of this Court and of several High Courts, that there must be materials to come to the conclusion that there was omission or failure to disclose fully and truly all material facts necessary for the assessment of the year". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, an obligation is to disclose facts; secondly those which are material; thirdly the disclosure must be full and fourthly true. What facts are material and necessary for assessment will differ from case to case. In every assessment proceedings, for computing or determining the proper tax due from the assessee, it is necessary to know all the facts which help the assessing authority in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed or otherwise, the assessing authority has to draw inferences as to certain other facts. But one of the primary tasks of the taxing authority is to draw inferences. It is not necessary for the assessee to draw inferences for him. See in this connection the observations in *Calcutta Discount Co. Ltd.*'s case (supra).

13. On the facts of the case, the Court held that the learned Single Judge of the

High Court had noted the relevant provisions of law and held that all the facts in possession of the assessee were placed before the taxing authority prior to the finalising of the assessment and after having accepted the claim in spite of non-production of the relevant auditors' certificate which was asked for at one stage, it was not open to the Revenue to turn-around and say that the income of the assessee had escaped assessment or been under-assessed due to the failure of the assessee to disclose those very auditors' reports. Under-assessment was due to the laches on the part of the Revenue and not due to any omission on the part of the assessee and notice issued under s. 148 was quashed. This was challenged before a Division Bench of the Calcutta High Court which held that:

23.....the assessee had failed to disclose:

- (1) the basis of allocation of expenses;
- (2) correspondence between the London principal and the assessee-company on the relevant subject;
- (3) existence of auditor's certificate fixing percentage that would be reasonable for allocation in respect of the subsidiary companies including the assessee. These were some of the important materials which the assessee failed to disclose.

14. The Supreme Court quashed the order of the Division Bench upholding the order of the learned Single Judge.

15. Considering the facts in this case the Supreme Court, upholding the decision of the learned Single Judge of the High Court of Calcutta, held:

21. The learned Single Judge of the High Court noted the relevant provisions of law and was of the opinion that all the facts in the possession of the assessee were placed before the taxing authority prior to the making of the assessment. It was held that it was for the taxing authority either to accept the claim or to reject the claim either wholly or in part. After having accepted the claim in spite of the non-production of the relevant auditor's certificate which was asked for at one stage, it was held that the Revenue could not later turnround and say that the income of the assessee had escaped assessment or been under-assessed due to the failure of the assessee to disclose those very auditors' reports. The learned Judge felt that the under-assessment, if any, was due to the laches of the Revenue and not due to any act or omission on the part of the assessee and notices under s. 148 had to be quashed.

16. The Supreme Court, then proceeded further holding that the information in possession of the ITO, as noted by the learned Single Judge, might have been good ground for action under cl. (b) of sub-s. (1) of s. 147 of the Act, but it could not be treated as good ground for reopening under cl. (a) of sub-s. (1) of s. 147 on the ground that there was failure or omission on the part of the assessee to disclose fully and truly all relevant and material facts.

17. In *IPCA Laboratories Ltd. Vs. Gajanand Meena*, Deputy Commissioner of

Income Tax and Others (No. 3), the expression "reason to believe" was the subject-matter for consideration before the Bombay High Court. The Court holds:

.....We may also mention that the expression "reason to believe" refers to the belief which prompts the AO to apply s. 147 to a particular case; that it will depend on the facts of each case; that the belief must be of an honest and reasonable person, based on reasonable grounds; that the AO is required to act, not on mere suspicion, but on direct or circumstantial evidence; that the expression "reason to believe" does not mean a subjective satisfaction on the part of the AO....

18. In Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., , the Supreme Court considered the ambit and scope of s. 143(1)(a), (3) and s. 147. The Court holds:

16. Sec. 147 authorises and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. Vs. I.T.O., Nagpur, , for initiation of action under s. 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction [see INCOME TAX OFFICER Vs. SELECTED DALURBAND COAL CO. (P) LTD., Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,

17. The scope and effect of s. 147 as substituted w.e.f. 1st April, 1989, as also ss. 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of s. 147, separate cls. (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under s. 147(a) two conditions were required to be satisfied: firstly the AO must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the

part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under s. 148 r/w s. 147(a) But under the substituted s. 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to s. 147. The case at hand is covered by the main provision and not the proviso.

18. So long as the ingredients of s. 147 are fulfilled, the AO is free to initiate proceeding under s. 147 and failure to take steps under s. 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation under s. 143(1) had been issued.

19. Reliance was also placed by the Revenue on the decision of the Allahabad High Court in Shyam Bansal Vs. Assistant Commissioner of Income Tax, which we need not consider in detail as the principles are now well settled by the Supreme Court in the cases (supra) which have been reaffirmed in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, holding:

6. On going through the changes, quoted above, made to s. 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the AO to make a back assessment, but in s. 147 of the Act (w.e.f. 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the AO has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the AO. Hence, after 1st April, 1989, the AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to s. 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in s. 147 of the Act. However, on receipt of representations from the companies against omission of the words

"reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the AO. We quote hereinbelow the relevant portion of Circular No. 549 dt. 31st Oct., 1989 [(1990) 82 CTR (St) 1: (1990) 182 ITR (St) 1, 29], which reads as follows:

7.2 Amendment made by the Amending Act 1989, to reintroduce the expression "reason to believe" in s. 147.--A number of representations were received against the omission of the words "reason to believe" from s. 147 and their substitution by the "opinion" of the AO. It was pointed out that the meaning of the expression, "reason to believe" had been explained in a number of Court rulings in the past and was well settled and its omission from s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s. 147 to reintroduce the expression "has reason to believe" in place of the words "for reasons to be recorded by him in writing, is of the opinion". Other provisions of the new s. 147, however, remain the same.

20. Learned counsel relies upon the decision of the Supreme Court in *Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd.* (supra). There, again, the provisions of ss. 147, 148 to 152 were considered by the Supreme Court by holding:

21. The scope and effect of s. 147 as substituted w.e.f. 1st April, 1989, as also ss. 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of s. 147, separate cls. (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under s. 147(a) two conditions were required to be satisfied, firstly, the AO must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly, he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under s. 148 r/w s. 147(a) But under the substituted s. 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to s. 147. The case at hand is covered by the main provision and not the proviso.

22. So long as the ingredients of s. 147 are fulfilled, the AO is free to initiate proceeding under s. 147 and failure to take steps under s. 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation under s. 143(1) had been issued.

23. The inevitable conclusion is that the High Court has wrongly applied *Adani's* case (supra) which has no application to the case on the facts in view of the

conceptual difference between s. 143(1) and s. 143(3) of the Act.

21. Lastly, Shri Vinay Kuthiala relies upon the decision of this Court in IT Appeals Nos. 33 of 2008 and 34 of 2008, titled Ankita Deposits & Advances (P) Ltd. (in both Ankita Deposits and Advances (P.) Ltd. Vs. Commissioner of Income Tax, , where this Court also held:

In view of the law laid down above, it is apparent that the powers of the AO to reopen assessment are very wide. True it is that the words "reason to believe" do not mean a mere change in opinion. If the AO has at any time expressed an opinion or come to a finding on the facts before him and decided the matter in a particular way then just because a different interpretation is possible the AO may not have the power to issue a notice under s. 148. However, in case, no opinion has been expressed then whatever be the reason as long as they prima facie satisfy the conscience of the Court, the Court would not interfere in the issuance of a notice.....

22. We need not consider any other precedent as the law settled by the Supreme Court is clear on the point. It is not the mere whim or opinion of the AO which would entitle him to invoke the powers for reopening assessment.

23. From the order of the Tribunal, what we find is that after paraphrasing the reasons set out by the AO for reopening the assessment proceedings, the learned Tribunal holds that: (a) whether the net rate of profit of 35.4 per cent is reasonable or unreasonable depends upon the facts and circumstances of each case. The AO does not indicate as to how this ground for reopening exists. The Tribunal then holds that the AO had already proceeded to accept the returns of the respondent herein for the asst. yrs. 2000-01, 2001-02 under s. 143(3) where the profit rate disclosed was between 30 per cent and 40 per cent. The assessee's own case was comparable as an indicator/factor which should have been taken into consideration and not that of any other assessee for a different period which could not be the foundation or the reason to reopen assessment. We may not go that far but we hold that when this high rate of profit is accepted in subsequent assessment years, mere high profit without anything more could not be the ground for reopening assessment. Comparison with another firm for a different assessment year subsequent to the assessment year, in which the case of the respondent was sought to be reassessed, cannot form the ground for ordering reassessment. The second ground urged that the eligibility of the assessee for deduction under s. 80-IA could be claimed only after fulfilling mandatory conditions required, the learned Tribunal holds that reopening of assessment is permissible to bring to tax escaped income and not to make investigation or verification. The Tribunal upholds the decision of the CIT(A) that if the return filed by the assessee is required to be verified by the AO for which what is required is notice under s. 143(2) and to proceed with assessment under s. 143(3) on the basis of material gathered by him.

24. Adverting to the factual situation, where the AO holds that expenditure on

wages of Rs. 2,58,040 was not sufficient to defray the wages of ten or more workers, the observation of the AO was wrong. The Tribunal finds as a fact that the minimum wages required to be paid to the workers in the previous year which was subject-matter of assessment proceedings was Rs. 1,641 per month for ten workers, which would make it at an aggregate Rs. 16,410 per month was correct. The AO had recorded that assessee had started production in October, 1997 and in this event, wages were required to be paid only for six months and on the basis of the material before the learned Tribunal, it is worked out to Rs. 98,460 and not Rs. 2,58,040 as held by the AO. The learned Tribunal then proceeded to hold that the reason to believe would not mean suspicion as laid down by the Supreme Court in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, and *Indian Oil Corporation vs. ITO* (supra). In this view of the settled position we cannot accept that the AO was right in reopening assessment. We hold that as held in *Kelvinator's* and *Eicher's* case (supra), reason to believe cannot be interpreted to mean mere just opinion. We, therefore, concur with the reasoning of the learned Tribunal. On the last submission that there has been violation of r. 46A of the IT Rules we do not find any fault with the reasoning of the learned Tribunal. We, accordingly, answer the question against the Revenue and in favour of the assessee. The order of the CIT(A) as affirmed by the Tribunal is upheld.