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**(1998) 05 DEL CK 0111**  
**In the Delhi High Court**  
**Case No : C.W. No. 1088 of 1996**

Rattan Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 28-05-1998

**Acts Referred:**

Income Tax Act, 1961 — Section 147, 148

**Citation :** (1999) 154 CTR 418 : (1998) 234 ITR 220

**Hon'ble Judges :** Y.K. Sabharwal, J;C.K. Mahajan, J

**Bench :** Division Bench

**Advocate :** O.S. Bajpai, for the Appellant; R.D. Jolly, for the Respondent

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## Judgement

Y.K. Sabharwal, J.—In respect of the assessment year 1990-91, the return of income was filed by the writ petitioner on October 22, 1991, declaring an income of Rs. 72,940. The assessment was completed on January 23, 1993, on the income of Rs. 88,440. The assessment was made u/s 143(3) of the Income Tax Act, 1961 (for short "the Act"). The Income Tax Officer, Ward 13(5), New Delhi, has issued to the petitioner a notice dated May 3, 1993, u/s 148 of the Act for the assessment year 1990-91 stating that he has reason to believe that income chargeable to Income Tax has escaped assessment within the meaning of Section 147 of the Act and he, Therefore, proposes to reassess the income for the said assessment year. The petitioner was required within 30 days from the date of the service of the notice to file a return in the prescribed form. The petitioner says that he objected to the reopening of the assessment and requested for supply of the reasons on the basis of which the notice u/s 148 of the Act was issued. The reasons for reopening the assessment which have since been supplied to the petitioner are these :

"Reasons for obtaining approval to issue a notice u/s 148 of the Income Tax Act, in the case of Shri Rattan Gupta, C.A., assessment year 1990-91.

The assessment for the assessment year 1990-91 was completed u/s 143(3) of

the Income Tax Act, 1961, on January 28, 1993, at an income of Rs. 88,440 as against returned income of Rs. 72,940. Subsequently, a letter No. 18-M of 1990-91/Inv 19(1) of 1992-93 of 595 dated February 17, 1993, has been received from the ACIT, Inv. Cir. 19(1), New Delhi, wherein it has been intimated that the assessed is earning income in benami names and money totalling Rs. 15 crores approx., in the form of bank drafts purchased in smaller towns of the country by four Sikkim companies floated by the Dalmia group was received in the office of the assessee. Further, search and seizure operations were conducted in the case of the assessed on March 15, 1990, in the course of which certain cash and jewellery was found but not seized, whereas the books of account and other documents were seized. The fact regarding search and seizure operations in the case of the assessed was known only on receipt of the ACIT, Inv. Cir 19(1), New Delhi's letter referred to above. Since the assessment year 1990-91 is relevant to the financial year during which the search was conducted and in order to investigation of property the involvement of the assessed in the transactions of money amounting to Rs. 15 crores and to ascertain the extent of concealed income of the assessed and to bring the same to tax, the reopening of the assessment u/s 147/148 is imperative. Therefore, it is requested that necessary approval u/s 151(1) of the Income Tax Act, 1961, may kindly be accorded to issue a notice u/s 148 of the Income Tax Act, 1961.

(Sd.) (Malkiat Ram)

No. DC/R-15 of 1993-94/26.

I, DC, Range 13, am satisfied (under the provisions of Section 151(2) read with Section 147) that on the reasons recorded by the Income Tax Officer, Ward-13(5), New Delhi, it is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961, for the assessment year 1990-91.

(Sd.) (Sudhir Chandra)

DCIT, Range-13, New Delhi

Date : 21-4-1993."

2. The petitioner assails the validity of the notice dated May 3, 1993. According to the petitioner, no information or material was available with the Assessing Officer on the basis of which a reasonable belief could be formed that income chargeable to tax has escaped assessment. It is claimed that the issue of the impugned notice is without jurisdiction since the pre-conditions for exercise of power do not exist in the case. The petitioner says that the Assessing Officer is only making roving and fishing enquiries which is not permissible and is outside the scope of Section 147 of the Act.

3. The respondents, opposing the writ petition, have contended that there was sufficient material for the Assessing Officer for formation of reasonable belief that the income of the petitioner in the assessment year in question had escaped assessment. Disputing that it is a case of non-existence of material on the basis

of which reasonable belief could be formed about escapement of income and also disputing that the Assessing Officer was merely making roving and fishing enquiry, it has been contended on behalf of the respondents, that there is sufficient material on record for the Assessing Officer to form a reasonable belief for issue of notice u/s 148 and that the sufficiency of the material cannot be challenged by the petitioner.

4. The reasons reproduced above, inter alia, refer to receipt by the Assessing Officer of letter dated February 17, 1993, from the ACIT, Investigation Circle 14(1), New Delhi, stating that the assessed is earning income in benami names and money totalling Rs. 15 crores approximately in the form of bank drafts purchased in smaller towns of the country by four Sikkim companies floated by the Dalmia group was received in the office of the assessed and further in search and seizure operations conducted on March 15, 1990, certain cash and jewellery was found but it was not seized whereas books of account and other documents were seized. It is further stated in the reasons that, in order to properly conduct the investigation to find out the involvement of the assessed in the transactions of the money amounting to Rs. 15 crores and to ascertain the extent of concealed income of the assessed and to bring the same to tax reopening of the assessment is imperative. The letter dated February 17, 1993, has been placed on record. It would be useful to reproduce the said letter as under :

"Please refer to this office's letter No. 18-H of 1990-91/Inv. 19(1) of 1992-93/569 dated 28-1-1993.

I have just received a copy of the appraisal report in the case of Shri Rattan Gupta vide No. DDIT (Inv.) III of 1992-93 of 772 dated 15-2-1993, under signatures of Shri Kunal Singh, Assistant Director of Income Tax (Inv.), Unit III, New Delhi. The conclusions of the appraisal report are as under :

The seized documents, statements of witnesses, etc., clearly show :

(a) That Sh. Rattan Gupta, C.A., was indulging in earning of income in benami names. The Assessing Officer must also verify all credits in the bank accounts of these employees in whose names investment in shares.

(b) The control and management of Sikkim cos. is in Delhi and Therefore their taxability is in Delhi.

(c) The formation and use of new Sikkim companies which now requires a serious effort to investigate the receipt of demand drafts worth about Rs. 15 crores. The Assessing Officer must follow it up by informing the CIT concerned to issue notice u/s 148. This can be done only by persistent enquiries from Sh. Rattan Gupta, C.A., who can otherwise be considered as the recipient of the money since the drafts were received by him and his nominees as directors of these companies.

The above information is passed on to you for necessary action at your end as the concealed income involved is more than Rs. 15 crores. If you so desire you

can have a copy of the complete appraisal report from me by sending your Inspector, at the earliest, lest matters are barred by time."

5. A perusal of the aforesaid letter shows that the conclusions were drawn from an appraisal report. The respondents have filed an affidavit stating that the record shows that the Assessing Officer had perused the complete appraisal report along with relevant annexures before passing the order and issuing the notice. Since, despite this affidavit, it was still disputed strongly by the petitioner that the officer had not perused the appraisal report, we directed the respondents to produce the record which may throw light on this issue. A perusal of the record shows that before issue of the impugned notice, the Assessing Officer had obtained a copy of the appraisal report and had perused the same. In this view, the only question that remains to be examined is whether there was any material before the Assessing Officer for forming the reasonable belief that the income of the assessed had escaped assessment or he was only making roving and fishing enquiries.

6. Mr. Bajpai in support of the contention that there was no material for forming the reasonable belief that the assessor's income had escaped assessment, vehemently contends that the material relied upon, namely, the letter dated February 17, 1993, and the appraisal report has no rational connection or live link with the formation of the requisite belief. It is also submitted that the letter dated February 17, 1993, in fact suggests an enquiry to find out if there was any involvement of the assessed at all and, Therefore, the said letter cannot be made the basis for formation of the requisite belief for issue of the impugned notice. Further, it is pointed out that in fact the letter suggests that investigation has to be carried out in the case of companies of the Dalmia group and only if the Department failed to tax those companies action may be taken against the assessee. Strong reliance has been placed by learned counsel on the decision of the Supreme Court in the case of Chhugamal Rajpal Vs. S.P. Chaliha and Others, . In this decision, the Supreme Court has held that the Income Tax Officer had not even come to a prima facie conclusion that the loan transactions to which he referred were not genuine transactions and he appeared to have only a vague feeling that they might be bogus transactions. Such a conclusion, it was held, did not fulfill the requirement of law. The Income Tax Officer should have some prima facie grounds before him for taking action u/s 148 of the Act. The conclusion of the Income Tax Officer that there was a case for investigating the truth of the alleged transaction was not the same thing as saying that there were reasons for the issue of the notice. Mr. Bajpai submitted that the present case is much stronger since the Assessing Officer has acted merely on the suggestion of a third person, as contained in the letter dated February 17, 1993, without prima facie forming a reasonable belief about the income of the petitioner having escaped assessment. The suggestion, it was submitted, was limited to making investigations. The suggestion in that letter was limited to finding out whether or not there was any involvement of the petitioner in the said transactions.

7. We are unable to accept the submission of Mr. Bajpai. The reasons are two. Firstly, we find it difficult to accept the submission that the letter dated February 17, 1993, did not suggest any involvement of the petitioner. The letter specifically states that "Sh. Rattan Gupta, C.A., was indulging in earning of income in benami names. The Assessing Officer must also verify all credits in the bank accounts of these employees in whose names investments in shares". The letter further states that "Sh. Rattan Gupta, C.A., who can otherwise be considered as the recipient of the money since the drafts were received by him and his nominees as directors of these companies." Secondly, the Assessing Officer, as noticed above, had also obtained and perused the appraisal report before recording reasons for obtaining approval to issue the impugned notice. The sufficiency of the material cannot be gone into by this court in exercise of the writ jurisdiction. The material cannot be held to be irrelevant or vague nor it can be said that the material has no rational connection or live link for formation of the opinion sought to be questioned by the petitioner. Further, it appears from the communication dated January 28, 1993, sent by the Assistant Commissioner of Income Tax, Investigation Circle 19(1) to the Income Tax Officer, Ward 13(5), that on May 30, 1990, a search was carried out at the locker held in the name of the petitioner and his wife in which the jewellery and the cash as stated in the letter were found. The cash was seized and was surrendered by the wife of the assessee. The jewellery was released to her. On the facts of the case before us neither can it be held that there was no material for formation of requisite belief for issue of notice u/s 148 of the Act nor is it possible to hold that the Assessing Officer did not form the requisite belief about the involvement of the assessed and he was only making roving and fishing enquiries to find out whether the assessed was involved or not.

8. Reference may be made to the decision of the Supreme Court in the case of Income Tax Officer, Jodhpur Vs. Purushottam Das Bangur and another, , relied upon by Mr. Jolly. In this case too, the information for formation of the opinion by the Income Tax Officer was laid in the letter of the Deputy Director of Directorate of Inspection (Investigation), namely, Sh. Bagai. The Supreme Court rejected the contention that the information contained in the letter of the Deputy Director cannot be relied upon for the purposes of formation of the reasonable belief for taking action u/s 147 of the Act. It was held (page 369) :

"On the basis of the information contained in the letter of Shri Bagai and the documents annexed to it, the Income Tax Officer could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from the Calcutta Stock Association shown by the assessed at the time of original assessment, were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in paragraph 2 of the letter of Shri Bagai was not definite information and it could not be acted upon by the Income Tax Officer for taking action u/s 147(b) of the Act."

9. Reliance was also placed by Mr. Jolly on the decision of the Supreme Court in the case of INCOME TAX OFFICER Vs. SELECTED DALURBAND COAL CO. (P) LTD., . In this decision too, the reasonable belief was formed by the Income Tax Officer on the basis of the report made by the Government Department after conducting a joint inspection. The Supreme Court held that the letter of the Chief Mining Officer constituted relevant material upon which the Income Tax Officer could have formed the requisite belief and that it has to be remembered that formation of the belief by the Income Tax Officer is essentially within his subjective satisfaction.

10. At this stage, the question is not whether what is stated in the letter dated February 17, 1993, or the conclusion drawn from the appraisal report are true or not. The only question at this stage is about the relevancy of the material for formation of the requisite belief. It cannot be held that the letter and the appraisal report do not constitute the relevant material. It is a different matter that during enquiry the petitioner may be able to establish that the conclusions are not correct. In our view, there is no illegality in the issue of the impugned notice.

11. For the aforesaid reasons, the writ petition is dismissed. The parties are left to bear their own costs.