

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 182/PAT/2022  
Assessment Year: 2012-2013**

***Dolly Ghosh,..... Appellant  
Om Anadi Ashram,  
RBSSS Road, Bhikanpur,  
Gumti No. 3, Bhagalpur-812001,Bihar  
[PAN: AHDPG0594K]***

***-Vs.-***

***Assistant Commissioner of Income Tax,.....Respondent  
Central Circle-1, Patna,  
6<sup>th</sup> Floor, Central Revenue Building (Annexe),  
Beerchand Patel Marg, Patna-800001, Bihar***

**Appearances by:**

*Shri Manish Rastogi, Advocate, appeared on behalf of the  
assessee*

*Shri Ashwani Kr. Singal, JCIT, D.R., appeared on behalf of  
the Revenue*

Date of concluding the hearing : September 10, 2024

Date of pronouncing the order : October 08, 2024

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Patna-3 dated 31<sup>st</sup> December, 2021 passed for A.Y. 2012-13.

2. The assessee has challenged reopening of assessment by issuance of a notice under section 148 of the Income Tax Act.

3. Brief facts of the case are that a search and seizure operation was conducted upon the premises of the assessee on 6<sup>th</sup> September, 2018. According to the Revenue, during the course of search, it revealed that assessee had raised loan from M/s. Shrijan Mahila Vikash Sahyog Samiti Limited. She has repaid the loan in cash and she has received certain amount in cash. Therefore, the Id. Assessing Officer has reopened the assessment. The copy of the reasons for reopening of assessment are placed on record at page no. 44 of the paper book, which reads as under:-

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                      |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------|----------------------------------------------------------|
| <br><b>GOVERNMENT OF INDIA</b><br><b>MINISTRY OF FINANCE</b><br><b>INCOME TAX DEPARTMENT</b><br><b>OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX</b><br><b>DCIT/ACIT CEN CIR 1, Patna</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                      |                                                          |
| To,<br>DOLLY GHOSH<br>11, D N SINGH ROAD<br>KHAILFABAGH 812001, Bihar<br>India                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                      |                                                          |
| PAN:<br>AHDPG0594K                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Assessment Year:<br>2012-13 | Dated:<br>28/12/2019 | DIN & Letter No :<br>ITBA/AST/F/17/2019-20/1023326790(1) |
| Sir/ Madam/ M/s,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |                      |                                                          |
| <b>Subject: Providing reason for reopening of assessment u/s 147 of the Income tax Act, 1961</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |                      |                                                          |
| <p>As per information received from ADIT (Inv), Bhagalpur and verification of the same in respect of the above named assessee it came to know that the assessee Smt Dolly Ghosh, W/o Kishore Kumar, Anadi Ashram, Bhikhanpur, Bhagalpur has repaid a total of Rs. 33,99,655/- during the FY 2011-12 to SRIJAN.</p> <p>During the course of post search investigation, the assessee was asked to submit the documentary evidence of repayment of Rs. 33,99,655/-, the assessee could not submit any documentary evidence to substantiate the source of this repayment. When she was asked to submit her books of account in order to substantiate her claim, she submitted that all the issues are disclosed in her income tax return is one way or the other hence she is unable to produce the same.</p> <p>Non submission of paper reply despite giving several opportunities indicates that assessee is wilfully evading compliance on above point. Hence in the lack of satisfactory explanation, her repayment of Rs. 33,99,655/- during FY 2011-12 to SRIJAN remains unexplained expenditure as substantial part is repaid in cash.</p> <p>Therefore, I have reason to belief that income of Rs. 33,99,655/- is undisclosed income of the assessee and has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.</p> |                             |                      |                                                          |
| ATANU MALIK<br>DCIT/ACIT CEN CIR 1, Patna                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                             |                      |                                                          |

4. A notice for reopening was issued on 29.03.1919 and the copy of such notice issued under section 148 is available on page no. 38 of the paper book. In response to

the notice, the assessee filed the return, thereafter the ld. Assessing Officer has passed the assessment order. The ld. Assessing Officer did not make any addition to the income of the assessee. The observations made by him deserve to be noted, which read as under:-

*“The case was transferred to this Circle on 18/09/2019. Notice u/s 142(1) along with questionnaire was issued to the assessee on 26/11/2019 compliance on 03 12/2019. The assessee filed return of income u/s 148 on 27/12/2019, disclosing total income of Rs.17,07,150/-. Notice u/s 143(2) was issued to the assessee on 27/12/2019 for compliance on 30/12/2019. The reason of reopening of assessment u/s 147 of the I.T. Act, 1961 was provided to the assessee. But again no compliance made by the assessee.*

*From the ledger of the assessee as provided by Investigation Wing, it was seen that during F.Y. 2011-12, Smt. Dolly Ghosh took loan in cash of Rs 13,00,000/- on various dates and repaid a total of Rs.33,99,655/-. Out of the total repayment, Rs.15.73.502/- has been made through bank account while the rest Rs.18,26.153/- was repaid in cash. Thus by accepting loan in cash of Rs.13.00,000/- she violated section 269SS and is liable to penally u/s 271D for F.Y. 2011-12 and by making repayment of loan in cash worth Rs.18,26,153/-, she violated section 269T of the I.T. Act. 1961 and is liable for penalty u/s 271E of the I.T. Act. 1961 for F.Y 2011-12.*

*Hence, assessed u/s. 143(3)/147 of the Income-tax Act. 1961 on the total income of Rs.17,07,150/-. Charge interest as per provision of chapter-XVII of the Income-tax Act. 1961 (u/s. 234A, 234B, 234C). Issue demand notice and penalty proceedings are initiated u/s. 271D & u/s. 271E”.*

5. Dissatisfied with this reopening, the assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) dismissed the appeal by observing that since

no addition has been made to the total income of the assessee, therefore, she should have not made any grievance. The relevant finding of the ld. CIT(Appeals) is reproduced as under:-

*“The appellant should not have had any grievances as no addition has been made and returned Income has been accepted. The appellant has, however, raised technical objections. On perusal of narration of facts as recorded in assessment order, it becomes clear that the Assessing Officer had in his possession, documentary evidence which were found during the course of search which disclosed repayment of loan aggregating of Rs. 18,26,153/- in cash. The evidence also disclosed that the appellant has also taken loan in cash on various dates, aggregating to Rs.13,00,000/-. Under the background facts, therefore, the Assessing Officer had sufficient documentary evidence to having formed reason to believe that income assessable to tax had escaped assessment and accordingly had acquired jurisdiction under section 147. The grievance of appellant that the re-assessment proceedings had been - dated suspiciously and there was no concealment of income are not corroborated by the surroundings facts of the case. It is further observed from assessment order that necessary opportunity had been granted to appellant which she didn't utilize. Therefore, the grounds relating to not providing adequate opportunity is not supported by the background facts of the case. It is also observed that the appellant has responded to the notice u/s 148 and filed return in compliance to the said notice on 26.12.2019 disclosing total income of Rs.17,07,150/-. The appellant has also communicated with the assessing officer. Complying with the request of appellant, the Assessing Officer had provided the reasons u/s 147 of the Act to the appellant. Under the circumstances, it is clear that the appellant had accepted the notice u/s 148, filed return of income in compliance to this notice and also corresponded with the Assessing Officer. Therefore, it appears that many of the objections raised against re-assessment proceedings are superfluous.*

*Ongoing through the record, it is found that the appellant has filed written submission, the content of*

*which is reproduced under para no. 3 of the order. She has raised several objections, but she has participated in re-assessment proceedings and apparently has not raised these objections before the Assessing Officer. Moreover, the Assessing Officer has not done any injustice. He has accepted the returned income. There doesn't appear to be any reasons for grievances to the appellant. Under the abovementioned factual background, in my considered view, I do not find any merit in the grounds raised by the appellants. They are accordingly disposed off. I confirmed the assessment order and dismiss the appeal filed by the appellant”.*

6. With the assistance of ld. Representatives, we have gone through the record carefully. A very interesting issue has come up in this appeal and the issue is that where there is no escaped income and no addition is being made after reopening, whether a reassessment order could be passed only to gain the limitation for the purpose of visiting the assessee with penalty under section 271D or 271E. It is pertinent to note that for the purpose of visiting the assessee with penalty under these provisions, there is no requirement of any assessment order. Let us take note the opening line of section 147, which authorizes the ld. Assessing Officer to reopen an assessment order. In the relevant assessment year, this section contemplates ‘income escaping assessment’:-

“if Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also



*Explanation—For the purposes of this sub-clause, "trust" includes any other legal obligation;*

*(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;*

*(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;*

*(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;*

*(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;*

*(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;*

*(v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;*

*(va) any sum chargeable to income-tax under clause (iiia) of section 28;*

*(vb) any sum chargeable to income-tax under clause (iiib) of section 28;*

*(vc) any sum chargeable to income-tax under clause (iiic) of section 28;*

*(vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;*

*(ve) any sum chargeable to income-tax under clause (v) of section 28;*

*(vi) any capital gains chargeable under section 45;*

*(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;*

*(viia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;*

*(viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;]*

*(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.*

*Explanation—For the purposes of this sub-clause—*

*(i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;*

*(ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;*

*(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees;*

(xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

*Explanation —For the purposes of this clause\*, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10D) of section 10 ;*

(xii) any sum referred to in clause (va) of section 28;

(xiiia) the fair market value of inventory referred to in clause (via) of section 28;

(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;

(xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;

(xv) any sum of money or value of property referred to in clause (vii) or clause (viia) of sub-section (2) of section 56;

(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;

(xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;

(xviia) any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56;

(xviib) any compensation or other payment referred to in clause (xi) of sub-section (2) of section 56;

(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than—

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or

*(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;*

8. In the complete list of items, nowhere it has been provided that levy of penalty would also fall within the ambit of income, but no such item is being included in the definition of income. In the present case, the ld. Assessing Officer has not made any addition of the escaped income. He has no information about the escaped income for reopening of the assessment. Therefore, the moment he arrived at the conclusion that no addition is to be made on account of escaped income. He ought to have dropped the reassessment proceedings.

9. It is pertinent to observe that six years in this A.Y. would end on 31<sup>st</sup> March, 2019. The notice under section 148 was issued on 29.03.2019. In other words, after 31<sup>st</sup> March, 2019, no notice could have been issued upon the assessee. It is true that for the purpose of levy of penalty under sections 271D and 271E, no assessment is required. The ld. Assessing Officer could record his satisfaction and refer the matter to the Joint Commissioner, who is empowered to visit the assessee with the penalty as contemplated in sub-clause (2) of sections 271D and 271E.

10. The time limit for imposing penalties under Chapter-XXI have been provided in section 275 of the Income Tax Act. Sub-clause (1) of this section starts with:

*No order imposing a penalty under this Chapter shall be passed-*

*(a) x x x x x x x*

*(b) x x x x x x x*

*(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.*

11. A perusal of this section would reveal that under clause (a), those cases will be covered where penalty proceedings have been initiated during an assessment proceeding and they are subject matter of an appeal. In clause (b), penalty proceedings are initiated in an assessment proceeding, which were subject matter of revision under sections 263 and 264. Sub-clause (c) is the clause, where penalty proceedings in other cases, which do not fall in (a) and (b), are to be considered. The time limit to impose penalty under sections 271D and 271E is

dependent upon two conditions, namely it should be imposed before the expiry of financial year in which the initiation of visiting with the penalty was made. The second condition is within six months from the end of the month in which action for imposition of penalty is initiated. In both these conditions, whichever period expires later will be applicable.

12. In the present case, the ld. Assessing Officer would have initiated the penalty against the assessee without reassessment order but he did not take any step in this regard. The steps may be taken only on the basis of observation made in the re-assessment order, which otherwise not sustainable because no escaped income has been determined in such reassessment order. Had this re-assessment proceeding was not initiated, then six years period would have expired on 31<sup>st</sup> March and the assessment/reassessment order could have not been made. If assessment order could have not been made on account of escapement of income, then penalty under sections 271D and 271E could have not been imposed on account of expiry of reasonable period from the end of the assessment year. Therefore, to our mind, this re-assessment order has been only made with an angle to cover up the period of limitation for visiting the assessee with the penalties under sections 271E and 271B, which is not a permissible step. Accordingly, we quash the

reopening of assessment and vacate all the consequential proceedings, namely quash the reassessment order also.

**13. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 08.10.2024.

Sd/-

**(Manish Borad)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President**

**Kolkata, the 8<sup>th</sup> day of October, 2024**

*Copies to : (1) Dolly Ghosh,  
Om Anadi Ashram,  
RBSSS Road, Bhikanpur,  
Gumti No. 3, Bhagalpur 812001, Bihar*

*(2) Assistant Commissioner of Income Tax,  
Central Circle-1, Patna,  
6<sup>th</sup> Floor, Central Revenue Building Annexe),  
Beerchand Patel Marg, Patna-800001, Bihar*

*(3) CIT(Appeals), Patna-3;*

*(4) Commissioner of Income Tax- ;*

*(5) The Departmental Representative*

*(6) Guard File*

TRUE COPY

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**