ITAT orders Gist (Pune ; Bangalore and Hyd benches Jan'12 Orders digested and compiled)

REOPENING : 23rd January, 2012. IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCH "A", PUNEBharati Vidyapeeth ITA No. 916 /PN/2010 (Asstt. Year: 1999-2000) In the present case, the first reason that no schedules to the balance sheet was submitted with income and expenditure account and the balance sheet filed with the return, in our view, is not sufficient to come to a conclusion or form a reasonable belief that there was escapement of assessment of income. In our view, at the most, it was a subject for making enquiries. Thus it can not be a basis for reopening of the assessment. The A.O noted that the assessee has earned rent of Rs.9,78,10,785/-. He observed that the object of the assessee is to run the Educational Institutions and not to give properties on rent. Therefore, the rental income is to be taxed as income from house property/business income separately Considering the above submission, we find substance therein in the contention of the Ld. A.R. as there is no prohibition in Section 11 that a Charitable Trust cannot give its properties on rent. For example, if a Charitable Trust has rental income from a number of properties and such rental income is spent on charitable activity, this income would be exempt u/s. 11 of the Act. We thus concor with the contentions of the Ld. A.R. that A.O was not justified in holding a reason that there is an escapement of income because its rental income was high. We are also of the view that the A.O was not justified in holding that the rental income is to be assessed as income from house property/business income in the hands of the assessee since in our view, in the case of a Charitable Trust u/s. 11, it is an established proposition of law that income is to be computed as per the commercial principles and not under the various heads of income prescribed in the Act. In this regard, we find support from the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Institute of Banking Personnel Selection (Supra) relied upon by the Ld. A.R. holding that income of the Trust is required to be computed u/s. 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. Besides, such rental income has already been shown by the assessee in its income and expenditure account and hence, it is not a case of escapement of income. We thus find that the reason(b) shown by the A.O for escapement of assessment of income was not having live link with formation of belief that rental income has escaped assessment. The next reason shown by the A.O is that the assessee is earning income from sale of books and printing press. The contention of the Ld A.R. on this reason remained that assessee is having students in lakhs. Thus, it has to make arrangements for providing books, exercise books, examination papers and syllabus, study material etc., to the students. It is for that purpose the assessee is having a press and is also having income from sale of books. Thus, this activity is incidental to the object of the Trust. We thus find no substance in this reason (c) as well to form a reason to belief that there was escapement of

assessment of income earned from sale of books and printing press to justify the re-opening in this regard by the A.O. students. The contention of the Ld. A.R that the business was carried on in the course of the actual carrying out of the primary purpose of the Trust i.e. imparting of education, as , in the last number of years, the A.O has been granting exemption on such income, has not been rebutted by the revenue before the Tribunal. Besides, the income in question has been included by the assessee in the income and expenditure account and such income is also exempt u/s. 11 of the Act.

Under these circumstances, when the Department has been accepting a similar donation in past and future years, the reopening of the assessment on the basis that the said donation remained to be taxed for the A.Y. under consideration i.e. under 1999-2000 is nothing but mere change of opinion, which is not allowed as a basis for initiating re-opening proceedings. In this regard, we find strength from the decisions of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. (Supra) and from the decision of Hon'ble jurisdictional Bombay High Court in the case of Vijaykumar M. Hirakhanwala (HUF) Vs. ITO (Supra). To examine the validity of the existence of reason it is to be seen that the reason must be of an honest and prudent person based upon reasonable grounds and should not be based upon mere suspicion, gossip or rumour. In our view sufficiency of reasons follows validity of existence of the reasons. So far as sufficiency of reasons is concerned, we fully agree with the contention of Ld. D.R. that we are not supposed to examine the same as even a prima facie believe as of a prudent person under the circumstances of a case regarding escapement of assessable income is sufficient to initiate reopening proceedings.

Under these circumstances, we concur with the contention of the Ld. A.R that there was no reasons to believe on the part of the A.O during the year that some taxable income has escaped assessment, as discussed above. We thus hold that the A.O was not justified in invoking the provisions of Section 147 of the Act to initiate re-opening proceedings in the present case. In consequence, the initiation of re-opening proceedings is not valid and assessment made u/s. 147 read with Section 143(3) of the Act in furtherance thereto is also not valid. It is ordered accordingly. We would like to mention over here that principle of Res judicata is not applicable in the cases of Income Tax Act but consistency in approach on a similar issue under similar facts is required to be maintained by the revenue.