

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE**

**BEFORE: SHRI G. S. PANNU, ACCOUNTANT MEMBER
AND
SHRI R.S. PADVEKAR, JUDICIAL MEMBER**

ITA Nos. 104 to 110/PN/2011

Assessment Years : 1997-98 to 2003-04

Dr. Vinay Trilokchand Karnawat, Anand Hospital, Bhokardan Road Sillod, Distt. - Aurangabad (Appellant) PAN No. ABGPK0213L	Vs.	Income-tax Officer, Ward – 1(2), Aurangabad (Respondent)
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ITA Nos. 97 to 103/PN/2011

Assessment Years : 1997-98 to 2003-04

Dr. Madhubala Vinay Karnawat, Anand Hospital, Bhokardan Road Sillod, Distt. - Aurangabad (Appellant) PAN No. AIBPK7049Q	Vs.	Income-tax Officer, Ward – 1(2), Aurangabad (Respondent)
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Appellant By: **Shri Sunil Ganoo**
Respondent By: **Shri S.P. Walimbe**

Date of hearing : **12-06-2014**
Date of pronouncement : **30-06-2014**

ORDER

PER R.S. PADVEKAR, JM:-

This batch of fourteen appeals are filed by the two different assesseees are Doctors by profession and the assessment years involved are 1997-98 to 2003-04. Save the A.Y. 2003-04, the assessments for the A.Ys. 1997-98 to 2002-03 are completed by initiating the proceedings u/s. 147 of the Income-tax Act and assessment for the A.Y. 2003-04 is completed u/s. 143(3) of the Income-tax Act. The issues as well as facts are common in all these appeals and hence, these appeals are disposed off by this common order for the sake of convenience.

2. As agreed during the course of hearing of these appeals, we first take up the appeals filed by Dr. Vinay Trilokchand Karnawat i.e. ITA Nos. 104 to 110/PN/2011 for disposal of appeals. The first common ground in the A.Ys. 1997-98 to 2002-03 is in respect of the validity of the proceedings initiated u/s. 147 and issuance of the notice u/s. 148 has been challenged. On this issue the assessee has taken the following ground which is common in all the appeals:

1. *“On the facts and circumstances of the case and in law the Ld. C.I.T. (A) Aurangabad was not justified in holding that the action taken by Assessing Officer u/s. 147 for re-opening and re-assessment was justified. The action taken u/s. 147 was not justified and is bad in law. In view of this the assessments completed by the A.O. are illegal and without jurisdiction.”*

3. The facts which are revealed from the record as under. The assessee is an individual and engaged in medical profession as a practicing surgeon. A survey action u/s. 133A of the Act was conducted against the assessee on 20-03-2003. On the basis of the survey action u/s. 133A of the Act, the Assessing Officer initiated the proceedings u/s. 147 of the Act and issued the notices u/s. 148 for the A.Ys. 1997-98 to 2002-03. It is pertinent to note here that in this case, the assessee has filed his regular returns of income for the A.Ys. 1997-98 to 2002-03 u/s. 139 of the Income-tax Act. In the assessment order the Assessing Officer has observed that during the course of survey action, the assessee admitted that no books of account had been kept and maintained by him and his wife namely Dr. Madhubala Vinay Karnawat as required u/s. 44AA of the Income-tax Act. The Assessing Officer has further observed that neither the assessee nor his wife substantiated the basis of the filing of return of income. It was also seen by the Assessing Officer that the assessee has made investment in construction of the hospital building on Bhokardan Road Sillod, Distt. – Aurangabad. The details of

construction and source of investment made therein have not been submitted by the assessee. The Assessing Officer submitted the proposal to the Additional Commissioner of Income Tax, Range-I, Aurangabad to get the approval to issue notice u/s. 148 of the I.T. Act. As noted in the assessment order the reasons recorded for issuance of notice to the assessee go to root of the matter and hence, we are reproducing the same from the assessment order as under:

“a) During the survey action,, the then A.O. has impounded the available books and other documents and register vide order dated 20/03/2003 u/s. 131(3) of the I.T. Act. The books have been impounded to correlate the gross receipts and the total profit and loss accounts. During the recording the statements u/ s 131 of the Act ON 25/03/2003, the assessee responded to question. No. 6 that all the vouchers of expenses of hospital and clinic were lying with Mr. Ramesh Mahul who was resident of Deolgaon Raja. But it is surprising to note that the assessee responded to question no 14 during the recording of statement on oath on 20-03-2003 that the assessee had not maintained any books of accounts and other documents which are required to maintain u/s.44AA of file Act. During the recording of statement 04-04-2003 again, assessee responded to question No. 8 that he could not contact his accountant hence unable to produce the vouchers. Again he responded to question. No. 9 he would produce the documents within 15 days positively. Till this date the assessee has not produce any books of account, other documents and other vouchers in his case as well as in his wife's case.

b) The total receipt from X-Rays, OPD patients, indoor patients and maternity patients, it is found that his gross receipt are not tallied with the available impounded records. Had the “A” and his wife maintained entrywise patient register, receipt books and all other expenditure vouchers, then the gross receipt as well as net profit would have tallied with the figures shown in the profit and loss account. It means that the ‘a’ in his case as well as in his wife case has suppressed the gross receipt and shown gross and net profit on estimated basis only.

On going through the above points it is clear that income has escaped assessment and secondly I have reason to believe that such escapement had 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. The assessee is found to be understated his income.”

4. After recording the above reasons, the Assessing Officer issued the notices u/s. 148 of the Act on 24-03-2004. The assessment orders are almost common in all the cases where the proceedings u/s. 147 are initiated. The Ld. Counsel submits that before issuing the notice u/s. 148, the mandates of Sec. 147 must be complied with. He argues that as per the judicial precedents there must be some cogent material or evidence before the Assessing Officer to form the believe that the income has escaped as contemplated in the Income-tax Act and then only the Assessing Officer assumed the jurisdiction to issue notice u/s. 148 of the Income-tax Act. The Ld. Counsel took us through the reasons recorded by the Assessing Officer for issuing the notice u/s. 148 dated 24-03-2004. He submits that the assessee is the honest tax payer and as per the details given in the impugned order the assessee has filed his regular returns of income for the A.Ys. 1997-98 to 2002-03 u/s. 139 of the Act and no assessment was completed u/s. 143(3) of the Act and all returns filed by the assessee were accepted u/s. 143(1) of the Act. He argues that the assessee declared the substantial income in all those assessment years and no incriminating material was found against the assessee for any of the assessment years to form the believe that the assessee has understated his income for the A.Ys. 1997-98 to 2002-03. The Ld. Counsel referred to the chart placed at Page No. 6 of the Paper Book and he submits that as per the amount worked out by the Assessing Officer on the basis of the seized material, the same has been shown in column 7 of the Chart 1. He vehemently assailed the reasons recorded by the Assessing Officer for issuing the notice u/s. 148 by

submitting that those reasons are totally silent what was the income which was allegedly escaped within the meaning of Sec. 147 of the Act. He argues that when the regular returns were filed by the assessee for the A.Ys. 1997-98 to 2002-03 u/s. 139 the assessee cannot be held responsible for not selecting his case for the scrutiny. If the Assessing Officer had any doubt in respect of the regular returns filed by the assessee then there is a provision u/s. 143(2) of the Income-tax Act to take the returns filed by the assessee for scrutiny. The reasons recorded by the Assessing Officer are very vague and general in nature and the basic mandate of Sec. 147 is not complied with. He placed his heavy reliance on the following precedents:

- (i). ACIT Vs. Rajesh Jhaveri Stock 291 ITR 500 (SC)
- (ii). Prashant S. Joshi Vs. ITO 324 ITR 154 (Bom)
- (iii). Sayaji Hotels Ltd. Vs. ITO 339 ITR 498 (Guj)

5. He argues that in the statement recorded u/s. 131 of the Act, the assessee has clarified that he gets Rs.2,000/- gross receipt from his medical profession daily. The assessee has explained the source of expenditure for construction of the hospital in reply to Q. No. 7. He argues that the assessee's hospital medical record has been impounded by the Assessing Officer and retained the same without due authority of law on the pretext of completing the assessment. He submits that the reasons recorded u/s. 147 for formation of the believe must be clear and should be based on some cogent material and it should not be in the hope of discovery of some income with rowing and fishing inquiry. He pleaded for quashing the notice issued u/s. 148 of the Act for the A.Ys. 1997-98 to 2002-03. He argues that there is no provision u/s. 133A of the Income-tax Act empowering the Assessing Officer to examine any person of oath and it has evidential value. He relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. S. Kadar Khan & Sons

(2012) 25 Taxman.com 413. He argues that the Assessing Officer has placed his reliance mainly on the statement recorded u/s. 131 of the Act by expressing the doubt and there is no supporting material as the reasons do not disclose that there was any material for formation of the believe of the Assessing Officer as contemplated u/s. 147 of the Act.

6. Per contra, the Ld. DR submits that there was no regular assessment u/s. 143(3) of the Act and all the returns filed by the assessee were accepted by the Department. He submits that when the survey action was taken, it was noticed that the assessee was not having any books of account. He submits that even in the statement recorded u/s. 131 of the Act, there were discrepancies in the answers. The Ld. DR supported the action of the Assessing Officer for initiating the proceedings u/s. 147 of the Act.

7. Relevant provisions of Sec. 147 of the Act reads as under:

“If the Assessing Officer has reason 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 any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose

fully and truly all material facts necessary for his assessment, for that assessment year.”

8. It is pertinent to note here that Sec. 147 of the Income-tax Act has undergone substantial changes from the A.Y. 1989-90 but the basic mandate in respect of the formation of believe by the Assessing Officer was not disturbed by the amendment. The wording used in Sec. 147 contemplates the believe of reasonable man familiar with the basic value of the justice and fairness the expression reason to believe means cause or justification and they need not be established fact on assessment at this stage. But at the same time there should be some cogent material before the Assessing Officer. We have perused the chart prepared by the assessee which is filed in the Compilation at Page No. 6. The reasons recorded by the Assessing Officer only suggest that some documents and hospital records were seized during the course of survey and the Assessing Officer has mentioned that the books have been impounded to co-relate the gross receipts and the total profit and loss account. It appears that in the statement recorded u/s. 131 of the Act which was also recorded on 25-03-2003 after 5 days from the date of survey in which the assessee stated that all the vouchers of the expenses of the hospital and clinic were lying with Mr. Ramesh Mahul. The Assessing Officer tries to point out in reasons that there was a contradiction in the statement of the assessee. From the plain reading of the reasons recorded by the Assessing Officer only suggest that the record expected by the Assessing Officer was not found at the place of profession. We are afraid that the reasons recorded by the Assessing Officer for issuance of the notice u/s. 148 cannot be accepted as the same are not in compliance with the mandate of Sec. 147. There is no whisper in the reasons recorded that there was a material or evidence in the impounded record from which it was noticed that the assessee has understated his income for the A.Ys. 1997-98 to 2002-03.

9. In the case of Prashant S. Joshi (supra) the Hon'ble jurisdictional High Court has held as under:

“9. Section 147 provides that if the Assessing Officer has reason 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 163, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The first proviso to section 147 has no application in the facts of this case. The basic postulate which underlies section 147 is the formation of the belief by the Assessing Officer that any income chargeable to tax has escaped assessment for any assessment year. The Assessing Officer must have reason to believe that such is the case before he proceeds to issue a notice under section 147. The reasons which are recorded by the Assessing Officer for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well settled that the question as to whether there was reason to believe, within the meaning of section 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under section 148.

10. A Division Bench of this court, speaking through Mrs. Justice Sujata Manohar (as the learned judge then was), held thus in *N. D. Bhatt, IAC of I. T. v. I. B. M. World Trade Corporation* [1995] 216 ITR 811, 823 (Bom).

"It is also well-settled that the reasons for reopening are required to be recorded by the assessing authority before issuing any notice under section 148 by virtue of the provisions of section 148(2) at the relevant time. Only the reasons so recorded can be looked at for sustaining or setting aside a notice issued under section 148. In the case of Equitable Investment Co. P. Ltd. v. ITO [1988] 174 ITR 714, a Division Bench of the Calcutta High Court has held that where a notice issued under section 148 of the Income-tax Act, 1961, after obtaining the sanction of the Commissioner of Income-tax is challenged, the only document to be looked into for determining the validity of the notice is the report on the basis of which the sanction of the Commissioner of Income-tax has been obtained. The Income-tax Department cannot rely on any other material apart from the report."

11. The same principle was reiterated in a judgment of the Division Bench of this court in Hindustan Lever Ltd. v. R. B. Wadkar, Asst. CIT (No. 1) [2004] 268 ITR 332 (Bom) (page 338) :

" . . . the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons . . . The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons must be able to justify the same based on material available on record. . . . That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which are lacking in material particulars would get supplemented, by the time the matter reaches to the court, on the strength of affidavit or oral submissions advanced."

10. In the case of Rajesh Jhaveri Stock Brokers P. Ltd. (supra) it is held as under:

“16. Section 147 authorises and permits the Assessing Officer 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 Assessing Officer 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 Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer 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. v. ITO [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment 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 Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. P. Ltd. [1996] 217 ITR 597 (SC) ; Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).

17. The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (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 section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer 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 Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer 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 section 147. The case at hand is covered by the main provision and not the proviso.

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

11. As we have mentioned here-in-above nowhere it is disputed that the assessee has filed its regular returns of income for the A.Ys. 1997-98 to 2002-03 nothing was prevented to the Assessing Officer to select any of the return for the scrutiny by exercising powers u/s. 143(2) of the Act. The failure of the Assessing Officer to take the steps u/s. 143(2) will not give power to initiate the proceedings u/s. 147 as it's substitute unless there is some cogent material before the Assessing Officer as per the mandates of Sec. 147 as held in the case of Rajesh Jhaveri Stock Brokers P. Ltd. (supra). After anxiously examining the reasons recorded by the Assessing Officer (which are reproduced in the assessment order), in our humble opinion there was no cogent material except raising the doubts before the Assessing Officer for issuing the notices u/s. 148 of the Act for the A.Ys. 1997-98 to 2002-03. We, therefore, quash all the notices issued by the Assessing Officer u/s. 148 by holding that those

are bad in law as the substantive mandate of Sec. 147 has not been complied with. Accordingly, the respective ground taken by the assessee in the A.Ys. 1997-98 to 2002-03 are allowed and all the assessments for these years are cancelled.

12. Now, we take up the appeal filed by Dr. Madhubala Vinay Karnawat, i.e. ITA Nos. 97 to 103/PN/2011. In this case also the assessee has challenged the legality and validity of the proceedings initiated by the Assessing Officer u/s. 147 of the Income-tax Act and issuance of the notices u/s. 148 of the Act. The assessee has taken the ground on the issue of legality and validity of the proceedings u/s. 147 reads as under:

1. *On the facts and circumstances of the case and in law the Ld. C.I.T. (A) Aurangabad was not justified in holding that the action taken by Assessing Officer u/s. 147 for re-opening and re-assessment was justified. The action taken u/s. 147 was not justified and is bad in law. In view of this the assessments completed by the A.O. are illegal and without jurisdiction.*

13. The facts of this case are identical as in the case of Dr. Vinay Trilokchand Karnawat. The assessee is a Dr. by profession and she is specialized in the Gynecologist. There was a survey action u/s. 133A of the Act on 20-03-2003. As noted by the Assessing Officer during the survey action. After survey action statement of the assessee were also recorded u/s. 131 on 25-03-2003 and the Assessing Officer issued the notices u/s. 148 for the A.Ys. 1997-98 to 2002-03. The reasons recorded by the Assessing Officer in the case of the assessee for issuance of the notices u/s. 148 are as under:

- a) *During the survey action, the then A.O. had impounded the available books and other documents and register vide order dated 20/03/2003 u/s. 131(3) of the I.T. Act. The books have been impounded to correlate the gross receipts and the total profit and loss accounts. During the recording the statements u/s. 131 of the*

Act on 25/03/2003, the assessee responded to question No.6 that all the vouchers of expenses of hospital and clinic were lying with Mr. Ramesh Mahul who was resident of Deolgaon Raja. But it is surprising to note that the assessee responded to question no. 14 during the recording of statement on oath on 20-03-2003 that the assessee had not maintained any books of accounts and other documents which are required to maintain u/s. 44AA of the Act. During the recording of statement 04-04-2003 again assessee responded to question No. 8 that he could not contact his accountant hence unable to produce the vouchers. Again he responded to question No.9 he would produce the documents within 15 days positively. Till this date the assessee has not produce any books of accounts, other documents and other vouchers in his case as well as in his wife's case.

b) The total receipt from X-Rays, OPD patients, indoor patients and maternity patients, it is found that his gross receipt are not tallied with the available impounded records. Had the "A" and his wife maintained entrywise patient register, receipt books and all other expenditure vouchers, then the gross receipt as well as net profit would have tallied with me figures shown in the profit and loss account. It means that the "a" in his case as well as in his wife case has suppressed the gross receipt and shown gross and net profit on estimated basis only.

On going through the above points it is clear that income has escaped assessment and secondly, I have reason to believe that such escapement had 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. The assessee is found to be understated his income.

14. It is pertinent to note that the reasons recorded by the Assessing Officer in the case of present assessee are identical in all the assessment years i.e. A.Ys. 1997-98 to 2002-03 as in the case of her husband Dr. Vinay Trilokchand Karnawat. In the case of the assessee she has filed the returns of income u/s. 139 of the Act for the A.Ys. 1997-98 to 2002-03 as under:

A.Y.	Date of filing return of income	Income returned
1997-98	30/08/97	74,080
1998-99	01/11/98	1,18,827
1999-00	31/08/99	1,19,961
2000-01	05/08/01	1,85,280
2001-02	07/09/01	2,62,430
2002-03	12/08/02	2,63,070

15. The facts are identical in this case as in the case of Dr. Vinay Trilokchand Karnawat in which the issue of the legality and validity of the proceedings u/s. 147 and the notices issued u/s. 148 have been decided by us and after examining the reasons recorded by the Assessing Officer before issuing notices u/s. 148 of the Act. We have held that there was no material before the Assessing Officer to form the belief within meaning of Sec. 147 of the Act. Following our reasons in the case of Dr. Vinay Trilokchand Karnawat ITA No. 104 to 110/PN/2011, in this case also we hold that the reasons recorded by the Assessing Officer for issuing the notices u/s. 148 to the assessee for the A.Ys. 1997-98 to 2002-03 do not disclose that there was any cogent material to suggest that there was escapement of the income except the suspicion of the Assessing Officer. We, further hold that the notices issued by the Assessing Officer for the A.Ys. 1997-98 to 2002-03 are bad in law. We, accordingly, cancel the notices issued u/s. 148 for all the concerned assessment years. Accordingly, the assessments framed by the Assessing Officer u/s. 143(3) r.w.s. 147 of the Act for the A.Ys. 1997-98 to 2002-03 are cancelled as the basic mandate/substantive requirement of Sec. 147 has not been met with. Accordingly, Ground No. 1 in all the appeals in the A.Ys. 1997-98 to 2002-03 are allowed.

16. As we have allowed the assessee's appeals for A.Ys. 1997-98 to 2002-03 on legal issue of validity of proceeding u/s. 147 of the Act, we

do not consider it necessary to decide grounds taken on merit in the cases of both the assesseees.

17. Now, we take up the appeal of Dr. Vinay Trilokchand Karnawat for the A.Y. 2003-04 being ITA No. 110/PN/2011. In this year the regular assessment of the assessee has been completed u/s. 143(3) of the Act making the ad hoc addition at 15% of the gross professional receipts shown by the assessee in the return filed u/s. 139 of the Act. As observed by the Assessing Officer in the survey action conducted u/s. 133A of the I.T. Act on 20-03-2003, the assessee's statement was recorded in which he stated that no regular books of account were maintained. As noted by the Assessing Officer, some documents and registered were impounded on the same date. The Assessing Officer has referred to the statement of the assessee recorded during the course of survey action. He noted that the assessee admitted that he has not maintained regular books of account. He has further noted that primarily record for preparation of the regular books of account was not found at the business premises. He further noted that the record was not found maintained in Form No. 3C. The Assessing Officer has given the details of the impounded record as under:

- (i). Sonography Register
- (ii). Operation consent form.

18. In this year, the assessee filed the regular return of income declaring the income of Rs.2,42,890/- from his medical practice. The assessee has shown the gross professional receipts at Rs.8,26,160/-. On the basis of the statement recorded during the course of the survey action, the Assessing Officer proceeded to estimate the receipts of the assessee at 15% more than whatever was declared in his books of account. The assessee resisted the action of the Assessing Officer and filed the reply dated 23-01-2006 which is reproduced in the assessment

order. In the said reply the assessee stated that for his profession he has maintained the books of account for the period 01-04-2002 to 31-03-2003 and details are as under:

- (i). Daily case registers in Form No. 3C.
- (ii). Sonography Register.
- (iii). Operations-surgical services Register.
- (iv). Admission book for indoor patient service.
- (v). Cash book alongwith detailed day-wise analysis of professional fees with names of patient, date of receipt, amount of fee received from them.
- (vi). Bank books.
- (vii). Ledger
- (viii). Carbon copies of bills issued to patients.
- (ix). Original bill for purchase of medicines etc.
- (x). Expenditure vouchers.
- (xi). Inventory of drugs.
- (xii). Rojmel (Marathi).
- (xiii). Building construction account.
- (xiv). Register containing details of each and every patient with names, professional services rendered and dates of fees received and amount collected.
- (xv). Operation case papers.

19. He also explained as to how he follows the procedure in his profession. It appears that there was some allegation by the assessee against the Assessing Officer which is mentioned in the assessment order but the details of the allegation are not noted. In Para No. 11 of the assessment order, the Assessing Officer has noted that the assessee has produced books of account and other documents and OPD registers during the course of assessment proceedings. In his opinion, the

assessee should have maintained the books of account as per Sec. 44AA r.w. Rule 6F. The Assessing Officer on estimate basis made the addition at 15% of the profession receipts recorded by the assessee in his books of account. In sum and substance the total addition was to the extent of Rs.1,23,924/-. The assessee challenged the addition before the Ld. CIT(A) and Ld. CIT(A) sustained the addition at 7.5% of the gross receipts i.e. Rs.61,962/-. Now the assessee is in appeal before us.

20. We have heard the rival submissions of the parties and perused the record. So far as the A.Y. 2003-04 is concerned, the Ld. Counsel vehemently argued that the assessee produced all the books of account before the Assessing Officer at the time of assessment. He submits that the Assessing Officer has placed his reliance on the statement recorded on 20-03-2003 i.e. at the time of survey action u/s. 133A of the Act. He placed his reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. S. Kadar Khan & Sons (supra) for the proposition that the statement recorded during the course of survey action has no evidential value. He argues that the Assessing Officer has made the ad hoc addition and the Ld. CIT(A) partly sustained the addition on ad hoc basis only. He argues that nothing is on record to show that the assessee has understated the profession receipt or income. He pleaded for deleting the entire addition sustained by the Ld. CIT(A). We have also heard the Ld. DR.

21. So far as the A.Y. 2003-04 is concerned the limited controversy is whether the addition sustained by the Ld. CIT(A) to the extent of Rs.61,962/- is justified. Admittedly, the Assessing Officer has not rejected the books of account but has accepted the return of income and also made the addition at 15% of the professional receipts shown by the assessee. The Assessing Officer mentioned in the assessment order that provisions of Sec. 145 has been invoked then he should have proceeded

to estimate the income independently. We find that the Assessing Officer has placed his heavy reliance on the statement of the assessee recorded during the course of survey action. In the case of CIT Vs. S. Kadar Khan & Sons (supra), the Hon'ble Supreme Court has held that the statement recorded during the course of survey action has no evidential value. As per the chart placed before us in respect of records/documents impounded nothing is there to suggest that from the impounded record it can be said that the assessee has understated his profession receipts. It is pertinent to note that both the authorities below have not questioned the expenditure part of it as recorded in the books of account. We find no reason to support the addition sustained by the Ld. CIT(A). We, accordingly, delete the same and Ground No. 2 is allowed. The assessee has taken Ground No. 1 which is pertaining to the legality of the notice issued u/s. 148 of the Act. In this year no notice u/s. 148 has been issued hence, the Ground No. 1 is infructuous. Accordingly, same is dismissed.

22. Now, we take up the appeal of Dr. Madhubala Vinay Karnawat for the A.Y. 2003-04 being ITA No. 103/PN/2011. The assessee has taken the following grounds:

1. *On the facts and circumstances of the case and in law the Ld. C.I.T. (A) Aurangabad was not justified in holding that the action taken by Assessing Officer u/s. 147 for re-opening and re-assessment was justified. The action taken u/s. 147 was not justified and is bad in law. In view of this the assessments completed by the A.O. are illegal and without jurisdiction.*
2. *On the facts and circumstances of the case and in law the Ld. C.I.T. (A) was not justified in estimating the addition @ 7.5% of the gross receipts disclosed by the assessee as against estimated by the A.O. @ 50%. In view of the books having maintained and confirmed by the Hon'ble High Court in Tax*

Appeal Nos. 62 to 70 of 2005, the results disclosed be accepted and additions be deleted.

3. *On the facts and circumstances of the case and in law the assessee denies her liability to pay interest u/s. 234-B and 234-C of the Act and the same be deleted.*

23. Ground No. 1 is in respect of challenging the re-assessment proceedings. In this case the assessee's assessment has been completed for the A.Y. 2003-04 u/s. 143(3) of the Act and hence, Ground No. 1 is infructuous as no notice u/s. 148 was issued by the Assessing Officer. Accordingly, same is dismissed.

24. So far as Ground No. 2 is concerned the assessee has challenged the addition partly sustained by the Ld. CIT(A) to the extent of Rs.54,670/-. In this case the assessee filed the return of income for the A.Y. 2003-04 u/s. 139 of the Act on 30-03-2004 declaring total income of Rs.2,59,090/-. The assessee's case was selected for scrutiny and assessment has been completed u/s. 143(3) of the Act. In this case also the Assessing Officer has referred to Survey action against the assessee and her husband i.e. Dr. Vinay Trilokchand Karnawat conducted u/s. 133A of the I.T. Act on 20-03-2003. The Assessing Officer has observed that during the course of survey action the statement of the assessee and her husband was recorded and some documents and registers were impounded on the date of survey, which details are given as under:

- (i). Delivery Register
- (ii). Operation consent form
- (iii). OPD Register

25. The assessee is a Gynecologist by profession. The Assessing Officer has observed that the assessee has not maintained the register in Form No. 3C. The assessee has declared the profession receipts of

Rs.7,28,940/-. The Assessing Officer proceeded to make addition to the income declared by the assessee by adding 15% of the receipts shown by the assessee. The assessee resisted the action of the Assessing Officer and filed the reply dated 23-01-2006 which is reproduced in the assessment order in Para No. 7. In the case of present assessee the reasons given by the Assessing Officer for making the addition is verbatim with that of her husband i.e. Dr. Vinay Trilokchand Karnawat. Moreover, the reply filed by the assessee is also almost common. The main reservation of the Assessing Officer to accept the return of income of the assessee is that on the date of survey action books of account and other documents were not found. It is not disputed in this case that at the time of assessment proceedings, the assessee produced the books of account and other record. Except making the general observations, no specific deficiency is pointed out by the Assessing Officer in the books of account produced by the assessee at the time of assessment proceedings. The Assessing Officer made the ad hoc estimated addition of Rs.1,09,340/- to the total income declared by the assessee which is at 15% of the gross professional receipts recorded by the assessee in the books of account. The Ld. CIT(A) sustained the addition at 7.5% of the gross total professional receipts which is 50% of the addition made by the Assessing Officer.

26. We have heard the parties. The reasons given by both the authorities below are common and facts are also identical in this case as in the case of Dr. Vinay Trilokchand Karnawat. We have deleted the addition at entirety in the case of Dr. Vinay Trilokchand Karnawat, her husband. To avoid the repetition of reasons and findings, we follow the reasons given in the case of Dr. Vinay Trilokchand Karnawat and delete the addition sustained by the Ld. CIT(A) at Rs.54,670/-. Accordingly,

Ground No. 2 is allowed. So far as Ground No. 3 is concerned it is consequential.

27. In the result, all the appeals of both the assesseees are allowed.

Pronounced in the open Court on **30-06-2014**

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Sd/-
(R.S. PADVEKAR)
JUDICIAL MEMBER

RK/PS
Pune, Dated: 30th June, 2014

Copy to

- 1 Assessee
- 2 Department
- 3 The CIT(A), Aurangabad
- 4 The CIT, Aurangabad
- 5 The DR, ITAT, "B" Bench, Pune.
- 6 Guard file.

//True Copy//

By Order

Private Secretary
Income Tax Appellate Tribunal
Pune