

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

Sl. Nos.	ITA No(s)	Assessment Year (s)	Appeal(s) by	
			Appellant	Respondent
1.	653/Ahd/2015	2004-05	Shailesh Ranchhodbhai Shah B-6, Dhanlaxmi Complex, Opp. Reliance Mall Lambhval Road, Anand-388 001 PAN:BCXPS1230 C	The ITO Ward-4 Anand
2.	654/Ahd/2015	2005-06	-Assessee	-Revenue
3.	655/Ahd/2015	2006-07	Assessee-	Revenue-
4.	656/Ahd/2015	2007-08	Assessee-	Revenue-
5.	657/Ahd/2015	2004-05	Assessee-	Revenue-
6.	658/Ahd/2015	2005-06	Assessee-	Revenue-
7.	659/Ahd/2015	2006-07	Assessee-	Revenue-
8.	660/Ahd/2015	2007-08	Assessee-	Revenue-
9.	1182/Ahd/2015	2004-05	Assessee-	Revenue-
10.	1183/Ahd/2015	2005-06	Assessee-	Revenue-
11.	1184/Ahd/2015	2006-07	Assessee-	Revenue-
12.	1185/Ahd/2015	2007-08	Assessee-	Revenue-

Assessee by :	Shri N.M. Darji, AR
Revenue by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	04/12/2017
घोषणा की तारीख/ Date of Pronouncement	04/12 /2017

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals filed at the instance of the assessee are against the separate orders of the Commissioner of Income Tax(Appeals)-4, [CIT(A) in short] dated 05/01/2015, 22/12/2014 and 26/02/2015 in the matter of assessment orders under s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 26/12/2011 and penalty orders under s.271(1)(b)/271(1)(c) of the Act dated 29/06/2012 relevant to Assessment Years (AYs) 2004-05 to 2007-08.

2. Since common and interconnected issues are involved in all these appeals, these appeals were heard together and are being disposed of by this common order for the sake of convenience.

3. The grounds of appeal in first bunch of four appeals i.e. ITA Nos.653 to 656/Ahd/2015 are broadly similar. Accordingly, all the four appeals are being grouped together for adjudication purposes.

4. We shall first take up the ITA No.653/Ahd/2015 – AY 2004-05. The common grounds of appeal raised by the Assessee read as under (extracted from ITA No.653/Ahd/2015):-

1) The Ld.CIT(A) has erred in law and in facts, in confirming the order u/s.144 rws 147 of the Act dtd. 26/12/2011 passed by the Ld.AO as the appellant has not been served any of the statutory notices issued u/s.148 and 142(1) of the Act as stated in the assessment order.

The Ld.AO has therefore not assumed the Jurisdiction u/s.147 of the Act to reopen the assessment.

The order passed by the AO u/s.144 rws 147 of the Act is therefore void ab initio.

2) The Ld.CIT(A) is not justified in confirming the reopening of the assessment by the AO assessing total income at Rs.638000/- relying on the information received from the police inspector LCB Anand being in the nature of bank statements which are not the books of accounts of the assessee as per case laws and therefore the case of the appellant is not covered by the provision of section 68 of the Act.

3) Without prejudice to the grounds of appeal no 1 and 2 above (reserving the right to emphasis in both the grounds of appeal no 1 and 2 above) the appellant may kindly be given the further opportunity of being heard before the AO on the principle of natural justice as the appellant has not been served any statutory notice issued by the AO and the CIT(A) has dismissed the appeal in very first appeal hearing fixed on 05/01/2015.

5. When the matter was called for hearing, the Ld.AR for the assessee at the threshold raised issue regarding jurisdictional defect in passing the assessment order under s.144 rws 147 of the Act for AYs 2004-05, 2005-06, 2006-07 & 2007-08 on the ground that notice issued

under s.148 of the Act was not served upon the assessee. It was similarly, submitted that notice purportedly issued under s.142(1) of the Act was also not served upon the assessee. The Ld.AR contended that in the absence of proper service of statutory notices, the Assessing Officer (AO) was not empowered to pass the impugned assessment orders appealed against. The Ld.AR vehemently contended that the impugned orders passed by the AO under s.144 rws 147 of the Act are void *ab initio* for want of service of statutory notices.

6. To support the non-service of notices under s.148 and 142(1) of the Act, the Ld.AR adverted our attention to an application made under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 and pleaded for admission of additional evidences in the form of Affidavit of the assessee dated 09/09/2017; original decree of the family court dated 3107/2013 etc. Making reference to the affidavit dated 09/09/2017, the Ld.AR submitted that the assessee was not staying at the address (G-2, Ansul Apartment, V.V.Nagar, Anand) where the notices under s.148 and 142(1) were purportedly issued. The notice issued at the aforesaid address was probably received by ex-wife Bindu who is not the authorized person on behalf of the assessee. The Ld.AR accordingly submitted that in view of the aforesaid affidavit and the divorce decree in this regard, the statutory notice for assumption of jurisdiction under s.148 and consequent notice under s.142(1) was issued to a wrong and unauthorized person and

therefore the entire proceedings are devoid of legitimacy. The Ld.AR submitted that impugned the assessment orders in appeal as well as penalty orders passed under s.271(1)(b) and 271(1)(c) for AYs 2004-05, 2005-06, 2006-07 & 2007-08 were given to him 26/02/2013. Consequent thereto, an appeal was filed before the CIT(A) thereafter. Under these circumstances, the Ld.AR contended that all the assessment orders and consequential penalty orders under s.271(1)(b) & 271(1)(c) of the Act requires to be quashed at the threshold.

7. The Ld.DR, on the other hand, strongly opposed the wrongful services of statutory notices alleged on behalf of the assessee. The Ld.DR pointed out that the assessee has not been able to demonstrate that any other address other than Ansul Apartment address (where the notice has been served) was brought on record of the department. The Ld.DR contended that the income-tax proceedings, including assessment and penalty proceedings are required to be carried out and proceeded in a time-bound manner and are fettered by bar of limitation as prescribed in the statute. The notice under s.148 was issued to the assessee at the address made available to the department. The same address (Ansul Apartment) is appearing in the records of the bank also from where the facts of unusual cash deposits was deduced. Similarly, a notice under s.142(1) was also served at the address notified to revenue coupled with intimation to the assessee by way of affixture as prescribed in law. The

Ld.DR submitted that in the total absence of any information whatsoever on some new address as claimed, the AO was left with no choice but to issue the notices at the address as available on record. It was the duty of assessee to bring correct address to the knowledge of department and none other. Hence, the assessee cannot blame the revenue for mistake committed by him and cannot be take advantage of wrong committed by himself. Under these circumstances, no fault can be found attributable to the Revenue. The Ld.DR further contended that the assessee has not brought any evidence on record to controvert the findings on merits towards lack of explanation on cash deposits. The Ld.DR accordingly submitted that the order of the CIT(A) does not call for any interference.

8. We have carefully considered the rival submissions. The assessee has moved application under Rule 29 of ITAT Rules, 1963 for admission of additional evidences in the form of affidavit of the assessee reiterating facts towards change in address along with Court order towards divorce decree with his wife. In order to weigh the admissibility of these additional evidences, we refer to the income-tax proceedings before the CIT(A). We note that the appeal was filed before the CIT(A) on 16/07/2013. The order was passed by the CIT(A) on 05/01/2015. The assessee was privy to the relevant additional evidences such as court order/decree issued by the family court at the time of proceedings before the CIT(A). No reasonable cause has been shown as to why these

evidences could not be produced before the CIT(A). Likewise, the affidavit only dwell upon the facts which were well within the knowledge of the assessee at the time of proceedings before the CIT(A). Apparently, the assessee has failed to bring sufficient cause on record to warrant admission of additional evidences. The pre-requisites for admission of additional evidences are thus not satisfied. Consequently, the petition for admission of additional evidences are rejected.

9. We shall now turn to the plea of the assessee that notice under s.148 and s.142(1) was not actually served on the assessee *per se* and therefore the proceedings in consequence of such notice are void *ab initio*. In this regard, we take note of the statutory position whereby notice under s.148 of the Act is required to be 'issued' for assumption of jurisdiction for re-opening assessment under s.148 of the Act. The AO has admittedly issued notice at the address available as per PAN records and address registered with the bank by assessee himself. Therefore, the address at which notice under s.148 and 142(1) has been issued cannot be labeled as an erroneous address. the notice has been correctly issued at the address provided. The family dispute which prevented the assessee to get hold of the statutory notice is of no consequence to determine the bonafides of actions of revenue. Once a notice has been served on the right address, the AO stands absolved of any further duty in this regard. Any other interpretation would lead to serious ramifications in view of

bar of limitation for issuance/service of various statutory notices. An assessee, in our view, cannot take advantage of his own lapse in not informing the new address and thus cannot be permitted to take a plea about non-service of notice for same having been served at notified address. Thus, we do not find any substance in the plea of the assessee questioning assumption of jurisdiction unders.148 of the Act. A notice issued under s.142(1) was not only served at the address so provided but was also informed to the assessee by way of affixture in this regard. Therefore, the AO has substantially complied with the prescribed procedure for service of notice for continuance of proceedings. The assessee has failed to file a return of income in response to notice under s.148 of the Act as well as failed to appear the AO. The AO has therefore rightly invoked section 144 of the Act and passed assessment order on the basis of material available on record. In these circumstances, we do not find merit in the plea of the assessee towards jurisdiction for completion of assessment under s.147/148 as null and void.

10. We now advert to the plea of the assessee for deletion of additions on merits. The assessee has sought to demonstrate that the dispute with his wife and continuous jeopardy prevailed upon him at the time of assessment etc. It was contended that the assessee was put in jail and went through serious turmoil in his private life. Therefore, in our

considered view, sufficient mitigating circumstances exist to warrant a fresh opportunity to explain has case towards source of cash deposits as per assessment order. Therefore, we deem it expedient to set aside the appellate order of the CIT(A) on merits and restore it back to the file of CIT(A) for fresh adjudication on merits after granting proper opportunity to the assessee as well as to the AO. In the result, order of the CIT(A) is set aside for *de novo* adjudication on merits.

11. Resultantly, appeal of the assessee in ITA No.653/Ahd/2015for AY 2004-05 is allowed in part for statistical purposes.

12. We next take up the Assessee's appeals in ITA Nos.654, 655 and 656/Ahd/2015 for AY 2005-06, 2006-07 & 2007-08 respectively. Both the sides consented that identical issues are involved in these three appeals too. Thus, for parity of reasons noted above, our view in ITA No.653/Ahd/2015 for AY 2004-05 above shall apply *mutatis mutandis* to these appeals captioned above. As a result, all the appeals of the Assessee in ITA Nos.654, 655 & 656/Ahd/2015 for AYs 2005-06, 2006-07 & 2007-08 respectively are allowed in part for statistical purposes.

13. We now take up the Assessee's appeals in ITA Nos.657, 658, 659 & 660/Ahd/2015 for AYs 2004-05, 2005-06, 2006-07 & 2007-08

respectively pertaining to imposition penalty under s.271(1)(b) of the Act for non-compliance of statutory notices issued for completion of assessment.

14. In view of the claim of the assessee that he was not privy to the statutory notices issued from time to time for compliance, we find merit in the plea of the assessee that mitigating circumstances exist for cancellation of penalty. Resultantly, penalty orders passed under s.271(1)(b) appealed against in aforesaid ITA Nos.657, 658, 659 & 660/Ahd/2015 for AYs 2004-05 to 2007-08 are quashed and penalty imposed under s.271(1)(b) is cancelled in all the appeals.

15. We now take up the Assessee's appeals in ITA Nos.1182, 1183, 1184 & 1185/Ahd/2015 for AYs 2004-05, 2005-06, 2006-07 & 2007-08 respectively which relate to consequential penalty imposed under s.271(1)(c) of the Act emanating from respective assessment orders passed in ITA Nos.653, 654, 655 and 656/Ahd/2015(supra). Since the appellate orders of the CIT(A) arising in the respective assessment orders have been set aside and restored back to the file of CIT(A), the penalty imposed under s.271(1)(c) of the Act is cancelled in all these appeals. A fresh liberty is however granted to the AO to exercise its discretion towards imposition of penalty on the issues involved in the respective assessments afresh in accordance with law on adjudication of the issues

involved in quantum on merits. In view of the above, appeal of the assessee for cancellation of penalty in the impugned appeals are allowed for statistical purposes. Thus, these four appeals of the assessee are allowed.

16. In the result, Assessee's appeals in ITA Nos.1182, 1183, 1184 & 1185/Ahd/2015 for AYs 2004-05, 2005-06, 2006-07 & 2007-08 respectively are allowed for statistical purposes.

17. In the combined result :-

- (i) ITA Nos.653 to 656/Ahd/2015 for AYs 2004-05 to 2007-08 are allowed in part for statistical purposes.
- (ii) ITA Nos.657 to 660/Ahd/2015 for AYs 2004-05 to 2007-08 are allowed.
- (iii) ITA Nos.1182 to 1185/Ahd/2015 for AYs 2004-05 to 2007-08 are allowed for statistical purposes.

This Order pronounced in Open Court on	04 / 12 /2017
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Sd/-
(एस.एस.गोदारा)
न्यायिक सदस्य
(S.S. GODARA)
JUDICIAL MEMBER

Ahmedabad; Dated 04/ 12 /2017

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

*ITA Nos.653 to 660/Ahd/2015 &
ITA Nos.1182 to 1185/Ahd/2015
Shailesh Ranchhodbhai Shah vs. ITO
Asst.Years – 2004-05 to 2007-08*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-4, Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad