

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 786/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2006-07)

<b>Dr. Bharat Ratilal Shah,</b> 3-A, Vikramnagar Society, Usmanpura, Ahmedabad	<b>बनाम/</b> Vs.	<b>Income Tax Officer,</b> Ward – 9(3)/ABD, Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AINPS2488K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Jignesh M. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Kamlesh Makwana, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	13/08/2018
घोषणा की तारीख /Date of Pronouncement	04/09/2018

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the CIT(A)-4, Ahmedabad ('CIT(A)' in short), dated 09.02.2015 arising in the assessment order dated 29.12.2011 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning assessment year 2006-07.

2. The solitary ground of assessee's appeal reads as under:

- “(1) In the facts of the case and in law addition of Rs.2421000/- U/s.69 of IT Act 1961 as unexplained investment by reopening the assessment U/s.147 is bad in law and be cancelled.*
- (2) Addition of Rs.2421000/- made on the basis of documents alleged to have been found at the search of the third party without giving any opportunity to disprove the same be deleted. It amounts to reopening of assessment made on the basis of borrowed satisfaction of DCIT Central Cir.1(1), Ahmedabad letter dt.30.03.2009 referred to in reasons recorded vide A.O.'s letter dt.17.11.2011 and therefore assessment U/s.143(3)/147 be cancelled.*
- (3) The A.O. has erred in not furnishing the evidences and information referred to in reasons recorded and used against the appellant treading the same as information in making addition of Rs.2421000/- be deleted.*
- (4) The action of the A.O. is in total violation of principles of natural justice. The CIT(A) 4, Ahmedabad erred in unilaterally considering the material mentioned in reasons recorded furnished by A.O. vide letter dt.17.11.2011 without furnishing the material requested by appellant repeatedly.*
- (5) The A.O. & CIT(A) have not disproved the confirmation dt.01.12.2011 of Samutkarsh Co. op. Housing Soc. that the appellant has paid Rs.1052210/- for purchase of plot of land No.18 admeasuring 958 sq.yds. Survey No.273, 274/1 and 271 at Makarba, Ahmedabad. The addition of Rs.2421000/- made on presumptive manner be deleted.”*

3. When the matter was called for hearing, the learned AR for the assessee submitted at the outset that action under s.147 of the Act has been wrongfully taken without authority of law. This being jurisdictional defect which goes to the root of the matter required to be given primacy in the matter of adjudication. The learned AR referred to the reasons recorded at page no.3 of the paper book and submitted that the reasons recorded shows lack of application of mind and apparently the action under s.147 of the Act was taken to verify the facts concerning alleged escapement of action. It was further contended that the AO has mechanically acted upon the information

received from another Officer of the department without having applied his own independent mind to the facts available, if any. Thus, purported belief of the AO is absent in the present case. The learned AR thereafter adverted to a detailed discussion filed before the AO dated 21.11.2011 raising various points agitating the action initiated under s.147/148 of the Act. The learned AR strenuously submitted that the objection raised by the assessee has not been disposed and therefore the re-assessment completed under s.147 of the Act is apparently bad in law. The learned AR accordingly insisted that neither the reasons recorded meets the requirements of law as enjoined by section 147 of the Act nor does the action of the AO is in conformity with the standard operating procedure for disposal of objection raised as mandated by the several judicial precedents. The learned AR accordingly submitted that the aforesaid jurisdictional defects are not curable and therefore, the re-assessment order requires to be cancelled and set aside.

4. The learned DR, on the other hand, relied upon the orders of the AO and CIT(A) in this regard.

5. Since, the issue raised on behalf of the assessee towards jurisdictional defect is fundamental and cardinal in nature which goes to the very root of the controversy, we consider it expedient to deal with the same in the first instance. We notice from the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. ITO 259 ITR 19 (SC) that on receipt of reasons from the AO, the assessee is entitled to file objections to the issuance of the notice and the AO is bound to dispose of the same by passing a speaking order. The AO has admittedly failed to dispose of the objections raised by the assessee. In view of the decision of the Hon'ble Supreme Court, the AO was under a sacrosanct obligation to dispose of the preliminary

objection raised by the assessee and could not have framed the re-assessment order without doing so. Similar issue was cropped up again before the Hon'ble Gujarat High Court for its consideration in the case of Arvind Mills Ltd. vs. ACWT 270 ITR 467 & Ors. (Guj.) and recently in MGM Exports vs. DCIT 323 ITR 331 (Guj). Applying the legal position as laid down in GKN Driveshafts (supra), the Hon'ble Jurisdictional High Court held the action of the AO in framing the re-assessment order without first disposing of the preliminary objections raised by the assessee to be unsustainable in law. Accordingly, the Hon'ble High Court quashed and set aside the re-assessment order. It however directed the AO to dispose of the preliminary objections by passing a speaking order and only thereafter proceed with the re-assessment proceedings in accordance with law. In the light of the decision of the Hon'ble High Court, the matter requires to be remitted back to the file of the AO for passing a fresh order after disposing of the objections with regard to alleged jurisdictional defect.

6. We also take into account the contention of the assessee that the reasons recorded are not sustainable as the action was taken to merely verify the concerned facts. While we may agree on principle on the aforesaid proposition but in the same vain find that reasons recorded under s.148(2) of the Act refers to certain facts towards unaccounted payments made by the assessee for the purpose of residential house emanating from search action carried out in the case of third party namely SAVVY Infrastructure Ltd. Therefore, we are of the view that the action of the AO cannot be labeled as bald and abstract. The statement of facts as noted in the reason so recorded, if found to be true, gives legally sound basis for formation of *prima facie* belief towards escapement of chargeable income for the purposes of action under s.147 of the Act. However, in the absence of complete

delineation on facts, we do not seek to delve further. It shall be open to the assessee to take all objections before the AO concerning lack of jurisdiction, if any. The AO is directed to deal with the objections so raised on behalf of the assessee in an objective manner and pass a speaking order thereon before proceeding further. Thus, all the issues are kept open for fresh adjudication with regard to the alleged illegality in assumption of jurisdiction. The re-assessment order passed under s.147 of the Act appealed against is thus, set aside in terms of directions noted above and the matter is remanded back to the file of the AO for necessary action as spelt out.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on 04/09/2018**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 04/09/2018

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।