

आयकर अपीलीय अधिकरण।
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT- BENCH 'SURAT'
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANTO MEMBER

आयकर अपील सं./ **ITA.No.1505/Ahd/2017**
निर्धारण वर्ष/ **Asstt. Year: 2007-08**

ITO, Ward-2(3)(7) Surat.	Vs.	Shri Ashok Jain Prop: Super Jewels C/o. 302, Nishit Diamond Complex Gujjar Falia, Mahidharpura Surat 395 009. PAN : ABDPJ 6027 E
-----------------------------	-----	---

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
-------------------------------	--	---------------------------------

Revenue by :	Smt.Smita Nair, Sr.DR
Assessee by :	Shri Himanshu Gandhi, CA

सुनवाई की तारीख/Date of Hearing : 13/11/2018
घोषणा की तारीख /Date of Pronouncement: 14/11/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of Id.CIT(A)-3, Surat dated 29.03.2017 for the Asstt.Year 2007-08.

2. Revenue has taken four grounds of appeal, out of which ground no.1 and 2 are the substantial grounds. In ground no.2, it has pleaded that the Id.CIT(A) has erred in holding that notice under section 148 of the Income Tax Act, 1961 issued by the AO was *void ab initio*, and therefore, assessment order is not sustainable. In ground no.1, Revenue has pleaded that the Id.CIT(A) has erred in deleting addition of Rs.43,09,98,411/- which was added by the AO on account of bogus purchases.

3. Brief facts of the case are that the assessee has filed return of income on 12.10.2007 declaring total income at Rs.2,40,263/-. A scrutiny assessment order under section 143(3) of the Act was passed on 21.12.2009 determining total income at Rs.6,96,955/-. The ld.AO thereafter observed that a letter from DGIT (Invest), Mumbai was received containing therein that Shri Rajendra Jain has given accommodation entries of bogus purchases, sales, unsecured loans, share capital etc. Hence, assessment of the assessee was required to be reopened. Accordingly, he recorded reasons and issued notice on 28.3.2014 which was stated to be served upon the assessee on 23.3.2014 (this date has been mentioned in the assessment order). The ld.AO thereafter framed assessment order on 5.3.2015 under section 143(3) r.w.s. 147 of the Act. He made addition of Rs.43,09,98,411/-. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld.CIT(A). He contended that before the issuance of notice under section 148 of the Act necessary approval was required from the Commissioner of Income Tax as per section 151 of the Act. This approval was obtained by the AO on 29.3.2014, whereas notice was issued on 28.3.2014. The ld.counsel for the assessee has placed on record copy of the notice along with approval and contended that ld.CIT(A) has reproduced scanned copy of this notice as well as approval in the impugned order. The ld.CIT(A) thereafter held that the AO has issued notice without jurisdiction, hence, the assessment order is not sustainable. The ld.DR was unable to controvert the above finding of the fact recorded by the ld.CIT(A).

4. With the assistance of the ld.representatives, we have gone through the record carefully. Section 151 of the Income Tax Act, 1961 contemplates that no notice under section 148 shall be issued by the Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless necessary approval from Commissioner or competent authority is

obtained. No doubt in the present case, the ld.AO has applied for such approval which was granted on 29.3.2017, but before grant of approval, the ld.AO has already issued notice on 28.3.2014 which is without any jurisdiction. He can issue notice only after getting approval. Thus, the ld.CIT(A) has rightly quashed the assessment because the very foundation for issuance of notice under section 148 is the approval from the competent authority, i.e. Commissioner of Income Tax, and in the absence of such, such notice is *void ab initio*. Considering the above, we do not find any merit in this appeal of the Revenue. It is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 14th November, 2018 at Surat.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

Surat: Dated 14/11/2018