

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.608/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2007-2008

Smt.Dharmishthaben Madhusudanbhai Patel B-103, Himalaya Zicron In front of IIT Eng. College Ahmedabad. PAN : AACCC 2531 M	Vs.	ITO, S.K. Ward-1 Himatnagar.
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Assessee by :	Shri T.P. Hemani, AR
Revenue by :	Shri Ranjan Kumar, Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 09/01/2019

घोषणा की तारीख/Date of Pronouncement: 10/01/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-2, Ahmedabad dated 22.1.2016 passed for the Astt.Year 2007-08.

2. In the first ground of appeal, the assessee has challenged reopening of the assessment by issuance of notice under section 148 of the Income Tax Act.

3. Brief facts of the case are that the assessee did not file return of income for the Asstt.Year 2007-08. The AO came to know from verification of data that the assessee had purchased five properties during the year. He took note of these details in reasons recorded for reopening of the assessment. He, thereafter, observed that since the assessee has not filed details, therefore, it is not ascertainable what are the source for purchases of such properties, hence, in order to verify these transactions, he recorded reasons and reopened the assessment. The Id.counsel for the assessee contended that in the reasons, the AO has nowhere observed that income has escaped assessment. The investment in property cannot be construed as escapement of income, and therefore, reopening cannot be made.

4. On due consideration of the above submissions and the reasons recorded by the AO, we are of the view that since the assessee has not filed return of income, it was not possible for the AO to form a belief that income has escaped assessment unless details are cross-verified. Had the assessee has filed copy of balance sheet, and other documents, he could have made out funds available with the assessee at the opening of the year vis-à-vis at the closing of the year. In the absence of these details, he has to make a mention that verification of these investments is required, which could be done by reopening of the assessment. Therefore, we do not find any error in the reopening of the assessment. This ground of appeal is rejected.

5. In the next ground of appeal, grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.21,19,500/- which was added by the AO on account of alleged unexplained investment.

6. With the assistance of the Id.representatives, we have gone through the record. There is no dispute with regard to the fact that five properties have been purchased by the assessee along with co-owners. Investment in the property is also not in dispute. The Id.counsel for the

assessee at very outset submitted that share of the assessee was one-fourth, and the AO should have inquired source of this one-fourth amount of the total investment. He further drew our attention towards copy of the assessment order passed in the case of Kapilaben V. Oad who is stated to be other co-owner. In her case also total of this investment has been added as unexplained investment. The Id.DR, on the other hand pointed out that assessee neither produced copy of the sale deed nor produced source of investment i.e. how much fund was contributed by her.

7. On due consideration of the above facts, we are of the view that Id.AO has not carried out investigation. He should have called for copies of sale deed from the Registrar's office where sale deeds were registered. He could find out who are the vendees and to what extent they have the shares. Once the assessee has raised a specific plea, and on such plea a remand report was called for by the Id.CIT(A), then by exercising of statutory power, the Id.AO should have ascertained complete facts. The Id.CIT(A) has also committed an error by simply observing that the assessee should have submitted copies of sale deed. This fact can be verified from the office of Registrar only. The *quasi* judicial authorities are being respected not on account of their power to legalise the injustice on technical ground but because, they are capable of removing injustice and is expected to do so. It is the AO who has alleged a charge against the assessee on account of unexplained investment. He has to work out exact amount. He could not expect the assessee to prove how much investment she has made. Once she has alleged that her share was only one-fourth, then it was for the Revenue to prove that she has made investment of more than one-fourth. High-handedness and lackadaisical attitude at the end of the Revenue are appearing from the fact that same amount has been added in the hands of other co-owners also. Copy of the assessment of order of Smt. Kapilaben V. Oad is placed at page nos.18 to 26 of the paper book.

Such type of things would give rise unnecessary litigation. The Id.CI(A) ought to have looked into this aspect before confirming the addition. Considering all these aspects, we set aside both orders of the Id.CIT(A) as well as AO and remit this issue to the file of AO. The Id.AO shall call for the copies of the sale deed from the office of Sub-Registrar where these sale deeds were registered, and then identify exact share of the assessee and thereafter confront the assessee to explain the source of a particular amount. He could not expect that the assessee should prove negative. This exercise be carried out after giving due opportunity of hearing to the assessee. In view of the above, the appeal of the assessee is partly allowed for statistical purpose.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Court on 10th January, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER