

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

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

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.3459 and 3460/Ahd/2016
निर्धारण वर्ष/Asstt. Year: 2009-2010**

M/s.Krutika Developers P. Ltd. Kaycrest, Second Floor Parimal Garden Opp: Gujarat Gas Co Ltd. Ahmedabad. PAN : AAACK 8849 C	Vs.	ITO, Ward-2(1)(2) Ahmedabad.
--	-----	---------------------------------

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

Assessee by :	Shri Tushar Hemani, AR
Revenue by :	Shri Virendra Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/06/2019

घोषणा की तारीख/Date of Pronouncement: 25/06/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A)-2, Ahmedabad of even dated i.e. 7.11.2016 passed on the respective appeals of the assessee. ITA No.3460/Ahd/2016 arose from the assessment proceedings undertaken under section 144 r.w.s 147 in the Asstt.Year 2009-10; whereas ITA No.3459/Ahd/2016 has arisen from penalty proceedings initiated by the AO under section 271(1)(c) of the Act in the Asstt.year 2009-10.

2. First we take quantum appeal. In ground no.1, the assessee has challenged reopening of the assessment by issuance of notice under section 148 of the Income Tax Act.

3. With the assistance of the Id.representatives we have gone through the record carefully. It emerges out from the record that the assessment order was passed under section 143(3) on 20.9.2011 assessing total income at Rs.NIL. The AO thereafter reopened the assessment by recording following reasons:

"Reasons for reopening of assessment

The assessee company has filed return of income on 30.09.2009 declaring total income "NIL". The assessee company have mentioned receipts on account of 'Monthly Maintenance Income of Rs. 1,62,720/- in the trial balance for the period 01.04.2008 to 31.03.2009', but the same was not shown in the P&L Account and the statement of total income and this has resulted in underassessment of Rs.1,62,720/-.

I therefore, reason to believe that, by omission on part of assessee to disclose fully and truly all material facts necessary for the assessment. The income of assessee company has escape the assessment within the meaning of sec. 147 of the Act.

Issued notice u/s. 148 of the Act for A.Y. 2009-10.

*Date: 21.11.2014
Place: Ahmedabad*

*Sd/-
(DEEPAK PAREEK)
Income Tax Officer,
Ward - 2(1)(2), Ahmedabad."*

4. Notice under section 148 of the Act was issued on 21.11.2014. The AO thereafter passed assessment order *ex parte* on 31.7.2015 under section 144 r.w.s. 147. He made addition of Rs.1,62,720/-. On perusal of the above reasons, we find that the Id.AO has re-appreciated the trial balance which was already available to him when he passed original assessment order under section 143(3) of the Act. He has not taken cognizance of any fresh information. It is also pertinent to

observe that notice under section 148 of the Act was issued after expiry of four years from end of the relevant assessment year. Notice was issued on 21.11.2014 whereas four years for the Asstt.Year 2009-10 will expire on 31.3.2014. Since scrutiny assessment was also there in this case, and in that situation, proviso appended to section 147 would come to the rescue of the assessee. The interdiction in the proviso appended to section 147 puts an embargo in the exercise of power at the end of the AO in cases where scrutiny assessment has taken place and four years have expired from the end of relevant assessment year. In such cases, the assessment cannot be reopened unless it is demonstrated that income has escaped assessment on account of failure on the part of the assessee to disclose all material facts fully and truly in respect of his assessable income. A perusal of the reasons would indicate that no such circumstances have been pressed by the AO. He has re-appreciated trial balance-sheet which is also available to him when original assessment order was passed. Therefore, re-assessment is not sustainable. It deserves to be quashed. Accordingly, we quash the re-assessment order.

5. As far as levy of penalty under section 271(1)(c) of the Act is concerned, we find that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable by him, which shall not be less than , but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. In the present case, since we have already quashed re-assessment order, the very basis for computation of such penalty has been extinguished. Therefore, no penalty is imposable on the assessee. It is cancelled and ground of appeal of the assessee is allowed.

6. In the result, both appeals of the assessee are allowed.

Order pronounced in the Court on 25th June, 2019 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER