

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

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

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.2115/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2012-13

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| Renukaben D. Patel C/o. Umesh B. Brahmhatt5, Bhagyodaya Flats Sattar Taluka Society Nr.C.U. Shah College Navjivan Ahmedabad 380 015. | Vs. | ITO, Ward-3(2)(4) Ahmedabad. |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
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| Assessee by : | Shri Prasant Shah, AR |
| Revenue by : | Shri Dinesh Singh, sr.DR |

सुनवाई की तारीख/Date of Hearing : 20/06/2019

घोषणा की तारीख/Date of Pronouncement: 15 /07/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-3, Ahmedabad dated 8.8.2017 passed for the Asstt.Year 2012-13.

2. Assessee has taken six grounds of appeal, which are not in consonance with Rule 8D of the Income Tax (Appellate Tribunal) Rules; they are descriptive and argumentative in nature. In brief, her grievance revolves around a single issue viz. the Id.CIT(A) has erred in upholding reopening of assessment.

3. Brief facts of the case are that the assessee had sold an immovable property on 27.5.2011 vide registered sale deed no.1852/2011. The sale consideration has been shown in the sale deed at Rs.9 lakhs. However for the payment of stamp duty its value was worked out at Rs.11,74,500/- and stamp duty was levied at Rs.60,300/-. According to the AO, she had failed to furnish return of income under section 139 of the Act and disclose the aforesaid property transaction as well as consequent capital gain for tax. The assessment of the assessee was reopened by recording reasons. Copy of such reasons has been placed by the Id.counsel for the assessee in the paper book, and the same reads as under:

"REASONS FOR RE-OPENING ASSESSMENT

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| <i>Name and address of the assessee :</i> | <i>RENUKABEN DINESHBHAI PATEL B/3 AVADHPURI BUNGLOWS NR RATNADEEP SOCIETY, DHOLKA ROAD, BAVLA TA.: BAVLA DIST: AHMEDABAD</i> |
| <i>PA Number</i> | <i>: AMYPP1774E</i> |
| <i>F.Y</i> | <i>: 2011-12</i> |
| <i>A.Y.</i> | <i>: 2012-13</i> |
| <i>Status</i> | <i>: Individual</i> |

In view of the information available with the department it is noticed that the assessee had sold Immoveable property on 27/05/2011 for Rs. 9,00,000/- during the year .However as per the jantri rate, the same is valued at Rs. H.,74,500/- Thus there is a deference of Rs. 2,74,500/- U/S 50C of the I.T. Act, which is chargeable to tax has escaped assessment However the assessee had not filed his return of income for the A.Y. 2012-13 It is therefore required to verify the genuineness of transaction made by the assessee.

In view of the above, I have reason to believe that the income to the extent of Rs.2,74,500/- chargeable to tax has escaped assessment. Therefore the assessment is reopened u/s 147 of the IT Act 1961. Accordingly a notice under section 148 of the Income-Tax Act, 1961 is being issued.

*Sd/-
(B.K. SOLANKI)
Income-tax Officer
Ward-3(2)(4),
Ahmedabad*

*Place : Ahmedabad
Date : 11-2-2016*

4. It further emerges out that notice under section 148 of the Income Tax Act was issued on 25.2.2016 vide which the assessee was directed to furnish return. According to the AO, she failed to furnish return of income in response to notice under section 148 of the Act. Thereafter, he issued one more letter on 6.4.2016 appraising the assessee to comply notice under section 148 of the Act. The AO thereafter issued notice under section 142(1) along with questionnaire on 27.6.2016. According to the AO no response came on behalf of the assessee. He further issued notice under section 142(1) on 15.7.2016, and thereafter on 3.8.2016. He passed *ex parte* assessment order on 30.11.2016 under section 144 r.w.s. 147 of the Act. The Id.AO has determined the taxable income of the assessee at Rs.4,96,230/-.

5. Appeal to the CIT(A) did not bring any relief to the assessee.

6. Before us, the Id.counsel for the assessee while impugning orders of the Id.Revenue authorities has raised three fold submissions. He contended that an application for permission to raise additional ground of appeal was filed in the Tribunal on 2.2.2019. This ground is a legal ground, whereby the assessee has pleaded that assessment order passed under section 144 r.w.s. 147 without issue of notice under section 143(2) of the Act, is invalid and deserve to be quashed. For buttressing this contention of the assessee and his proposition, he contended that the assessee has filed copy of letter before the AO contending therein that she has filed return of income under section 139(1) of the Act and that return be treated as return in response to notice under section 148. Once that letter was being filed by the assessee before obtaining reasons for reopening, then on such

returns a notice under section 143(2) ought to be issued before taking up the assessment proceedings. The Id.counsel for the assessee drew our attention towards page no.51 of the paper book, whereby copy of letter dated 21.9.2016 filed before the Id. AO on 9.11.2016 is available. He also drew our attention towards page no.53 where computation of income for this assessment year is available. He also drew our attention towards acknowledgement of return filed by the assessee available on supplementary paper book. This return was filed on 30.3.2013. Apart from that, he relied upon the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Jai Shiv Shankar Traders P.Ltd. and in the case of CIT Vs. Greater Noida Industrial Development Authority. He placed on record copies of these judgments.

7. On the direction of the Tribunal, Revenue has produced the record. Copy of the letter dated 21.9.2016 is available on the file of Revenue. Though in the copy filed before the Tribunal certain hand-writing narrations available in the original, are not part of the letter filed in the paper book. In the original letter available in the assessment record, the counsel for the assessee put in his hand-writing that return filed originally be treated as filed in response to this notice.

8. With the assistance of the Id.representatives, we have gone through the record carefully. There is no dispute with regard to the proposition that if an assessee has filed return in response to notice under section 148 then the AO was duty bound to issue notice under section 143(2) for taking cognizance of such return. It is also important to note that a perusal of section 143(2) contemplates two conditions, viz. it gives power to the AO to

scrutinize the return filed under section 139(1) and such power are to be exercised within the time limit provided in the proviso appended to this section; second condition is that before issuing a questionnaire it contemplates for providing an opportunity to the assessee what he/she wants to submit in support of his return filed under section 139(1) of the Act. As far as assumption of jurisdiction for scrutinizing the return is concerned, that situation is not available in the present proceedings, because, the assessment has been commenced under section 148 for reopening. The AO has assumed jurisdiction by virtue of section 148. The second situation is that in response to the notice under section 148 the assessee should file return, and thereafter the AO would issue notice under section 143(2) providing an opportunity to the assessee to submit anything in support of the return. In the present case, 148-notice was issued on 25.2.2016. The assessee did not file return upto September, 2016. For the first time, a letter was submitted by the assessee pleading therein that original return filed by her to be treated in response to the notice under section 148 of the Act. However, prior to that the Id.AO has already set the assessment machinery in motion, and issued questionnaire under section 142(1). In this situation, we are of the view that the AO is not depended upon the assessee to commence assessment proceedings. Once he has given an opportunity to the assessee to submit return in 30 days or in a particular time along with notice under section 148, and the assessee failed to file return in that time, then he has set the assessment machinery in motion. Thereafter assessee cannot complain that on that return he has not issued notice under section 143(2) of the Act. Let us take an example; the assessee

did not choose to file return in response to the notice under section 148, and the assessment would be going to be time barred on 31st December; the assessee filed the return on 29th December; can the assessee expect that the AO should have issued notice under section 143(2) and on his failure the assessment deserves to be quashed. Answer to the above is NO, because the assessment proceeding has to be conducted in accordance with the procedure and not depended upon the mercy of the assessee. Therefore, we do not find any merit in the first fold of contention raised by the assessee.

9. In the next fold of contentions, the Id.counsel for the assessee submitted that while granting approval, the Joint Commissioner has not recorded a satisfaction. Therefore, the assessment order deserves to be quashed.

10. With the assistance of the Id.representatives, we have gone through the record carefully. We have gone through the letter dated 17.2.2016 vide which approval of Joint Commissioner to the AO for reopening of the assessment was granted. This letter reads as under:

"No.Jt.CIT/R-3(2)/u/s.148/RDP/2015-16

Date:17/02/2016

*The Income Tax Officer
Ward3(2)(4),
Ahmedabad.*

Sub: Approval for issue of notice u/s.148 of the I.T.Act in the case of Renukaben Dineshbhai Patel for A.Y.2012-13-reg.

Reference is invited to your proposal dated 11.02.2016 for initiating proceedings u/s.148 of the Income Tax Act.

2. *The records of the assesses and reasons recorded by you for initiating proceedings u/s.147 of the Income Tax Act for Assessment Year 2012-13 have been gone through and considered by the undersigned.*

3. Approval in terms of the provision of Section 151 of the Income Tax Act; 1961 in respect of the Assessment Year 2012-13 is hereby granted.

Sd/-
(RAJ DEEP SINGH)
Jt. Commissioner of Income-tax
Range-3(2), Ahmedabad

11. On perusal of this letter, we are satisfied that due procedure has been followed. The Id.JCIT has gone through the record and applied his mind, and thereafter granted the approval. There is no merit in the contentions of the Id.counsel for the assessee.

12. In the next fold of contentions, the Id.counsel for the assessee submitted that there is no coherence or nexus between information available with the AO vis-à-vis the reasons recorded for reopening of the assessment. He emphasised the *lacunae* which crept in the reason is that according to the AO, the assessee had not filed his return of income for the Asstt.Year 2012-13. This fact is factually incorrect. The AO has not verified the record. In fact the assessee has filed return, and therefore, the basis for forming an opinion that income has escaped the assessment, is wrong and reopening deserves to be quashed. For buttressing this proposition, he mainly relied upon the judgment of the Hon'ble Gujarat High Court rendered in Special Civil Application No.21030 of 2017 rendered in the case of Mumtax Haji Mohmad Memon Vs. ITO. He placed on record copy of the judgment. He took us through the reasons noticed by the Hon'ble High Court, and thereafter finding recorded by the Hon'ble High Court in para 10 to 12. He also relied upon the decision of ITAT, Ahmedabad Bench in the case of Mahadev Trading Co. Vs. ITO, 143 TTJ 492. He placed on record copy of this order of the Tribunal.

13. We have duly considered rival contentions and gone through the record. We have extracted reasons recorded by the AO in the opening paragraph of this order. No doubt an effort is being made to strike parity between the facts available with the Hon'ble High Court in the case of Mumtaz Haji Mohmad Memon (supra) as well as with the case of the present assessee. In the case of Mumtaz Haji Mohmad Memon (supra) the assessee has sold a property and assessment was reopened by making a reason that the assessee has not filed return. Assessee did not disclose capital gain on such sale. This finding was found to be factually incorrect at the end of the Revenue. According to the Hon'ble High Court, the assessee has filed return and disclosed capital gain. It is true that there should be a live-nexus between the information available with the AO vis-à-vis formation of belief that the income has escaped assessment. In the present case, no doubt there is an error at the end of the AO while taking cognizance of the fact which goad him to harbor a belief that income has escaped the assessment, and that error is that the assessee has not filed return whereas the assessee has filed the return. Now question is, whether such an error is so fatal that re-assessment is to be quashed ? We have perused the return. The assessee did not disclose the sale transaction of the property and did not offer income under the head "capital gain" on transfer of real-estate. This is the difference between the facts available before the Hon'ble High Court vis-à-vis in the present case. Even if the AO has taken cognizance of the return of income filed by the assessee, and he has observed that return was perused, result would be the same, because the transaction is not available in the return. Therefore, this error does not affect the formation of

belief of the AO. It is not relevant in the present set of facts. In other words, it nowhere goads the AO on wrong conclusion; meaning thereby that had the AO perused the return, then he would not have formed this opinion. We are of the view that even if the return would have been perused, the opinion would be the same because capital gain has not been shown by the assessee in the return. Therefore, the assessee cannot draw any benefit from any of the judgments cited before us. We do not find any error in the finding of the Revenue authorities, and this appeal is devoid of any merit. It is dismissed.

14. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 15th July, 2019.

Sd/-
(RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER