

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH: SURAT**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**ITA No. 1460/Ahd./2017**

**Assessment Year:**

Shri Vimalchand M Jain Prop. M/s Gem Art C/o 901, Rajhans Tower, Mini Bazaar, Varachha Road, Surat. <b>PAN No. ACUPJ0819L</b>	vs	ITO Ward 3(3)(5) Majura Gate, Surat.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri Himanshu Gandhi, CA</b>
<b>Revenue by</b>	<b>Shri S.R. Meena, Sr. DR</b>

<b>Date of Hearing</b>	<b>24.07.2019</b>
<b>Date of Pronouncement</b>	<b>27.08.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-3, Surat dated 22.03.2017 for AY 2007-08, challenging the initiation of reassessment proceedings u/s 147 of the Act and addition of Rs. 1,56,82,850/- on account of bogus purchases from M/s AVI Exports.

2. Briefly the facts of the case are that assessee individual had filed original return of income for assessment year under appeal

on 21<sup>st</sup> September, 2007 declaring total income at Rs. 1,42,307/-.

On the basis of information received from DGIT(Inv.), Mumbai, the case was reopened by issuing notice u/s 148 dated 29.03.2014, after getting prior approval from the Addl. CIT, Range-9, Surat. The AO issued statutory notices, the assessee informed the AO that return of income filed originally may be treated as return having been filed in response to notice u/s 148 of the Act. The AO considering report of Investigation Wing and other material found the assessee being proprietorship of M/s Gem Art, Surat has taken accommodation entry from AVI Exports in a sum of Rs. 12,48,93,566/-. The assessee pleaded before the AO that he has not made any purchases from M/s AVI Exports. The assessee has made transaction with M/s AVI Exports (Rajendra Jain Group) on commission basis only and commission income has been offered for taxation. The AO, however, did not accept the contention of the assessee and held that assessee must have suppressed his profit by 25% either through bogus purchases/invoices of purchase price or through sale at higher rate. Therefore, addition of Rs. 3,12,23,392/- was made being 25% of Rs. 12.48 crores and passed the reassessment order u/s 143(3) r.w.s. 147 of the Act dated 28.03.2015.

3. The assessee challenged the reopening of the assessment as well as addition on merit before Ld. CIT(A). However, Ld. CIT(A) confirmed the order of the AO as regards reopening of the assessment. The Ld. CIT(A), however, estimated the addition by reducing the income of the profit at 12.5% on these impugned

purchases and restricted the addition to Rs. 1,56,82,850/-. Appeal of assessee was partly allowed.

4. Ld. Counsel for assessee reiterated the submissions made before authorities below. He has submitted that assessee is proprietor of M/s Gem Art. The assessee acted as commission agent of M/s AVI Exports. PB 25 is the reason for reopening of the assessment which reads as under:

<b>Shri Vimalchand Manikchand Jain, [M/s Gem Art] 7/3221, Kacha Sheri, Saiyadpura, Surat.</b>	
PAN	: ACUPJ0819L
STATUS	: Individual
O/O	: ITO, Ward 9(4), Surat
A.Y.	: 2007-08

**Reasons for the belief that income has escaped assessment:**

*Search action was carried out by the Investigation wing, Mumbai on various groups which are involved in providing accommodation entries by way of issuing non genuine bills. On examination of the above information I have reason to believe that the above named assessee is a beneficiary of non genuine transactions of **Rs. 12,48,93,566/-** during FY 2006-07 from the following parties:*

<b>S.No.</b>	<b>Name &amp; PAN of the concern with whom transaction made</b>	<b>Amount (Rs.)</b>
1.	Gem Art	12,48,93,566/-

*In view of the above, I have reason to believe that the assessee has earned income exceeding Rs. 1,00,000/- on the above non genuine transaction, which is not shown in the return of income filed for AY 2007-08. Thus, the above income exceeding Rs. 1,00,000/- has escaped assessment by reason of failure on the part of the assessee to disclose*

*fully and truly, all material facts necessary for assessment for AY 2007-08. Hence, notice u/s 148 of the I.T. Act is being issued to verify the genuineness of the above transactions made by the assessee during the AY 2007-08. Hence, notice u/s 148 of the Act is being issued to verify the genuineness of the above transactions made by the assessee during AY 2007-08.*

*Sd/-  
(RAMKHILARI MEENA)  
Income-tax Officer,  
Ward 9(4), Surat.*

4.1 He has submitted that AO has wrongly mentioned the proprietary concern of the assessee "M/s Gem Art" in the reason which is not the concern with whom transactions made. The AO, therefore, recorded wrong reasons. Further notice u/s 148 of the Act have been issued to verify the genuineness of the transaction of the purchases. Therefore, initiation of the reassessment proceedings is clearly illegal and bad in law. He has relied upon judgment of the Hon'ble Gujarat High Court in the case of Pr. CIT vs. Manzil Dinesh Kumar Shah, Tax Appeal No. 451/2018 and others dated 7<sup>th</sup> May, 2018 in which the AO recorded reasons for reopening of the assessment in order to make deep verifications. The Tribunal held the notice for reassessment invalid and bad in law. The Revenue preferred the appeal before the Hon'ble High Court, however, departmental appeal has been dismissed. The findings of the Hon'ble High Court in para 9 to 12 of the order are reproduced as under:

*"9. If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income*

*chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.*

*10. Ld. Counsel for the Revenue, however, urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'it needs deep verification'.*

*11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it.*

*12. Both these Tax Appeals are dismissed."*

4.2 He has referred to PB 26 to 28 in which the Addl. CIT, Range-9, Surat granted sanction for reopening of the assessment in which also AO has wrongly mentioned proprietary concern of assessee M/s Gem Art, the concern with whom transaction of bogus purchases has been conducted. He has submitted that in column no. 12 the Addl. CIT has mentioned "Yes, satisfied" while giving sanction/approval for issue of notice u/s 148 of the Act. He has submitted that in the same circumstances, the Hon'ble MP High Court in the case of CIT vs. S. Goenka Line & Chemicals Ltd. 56 taxmann.com 390 did not approve the sanction/approval u/s

148 in accordance with law and departmental appeal has been dismissed. The findings of the Hon'ble High Court in para 7 to 11 are reproduced as under:

*“7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so “Yes, I am satisfied”. In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down : -*

*“The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format “Yes, I am satisfied” which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.”*

*8. If the case in hand is analyzed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice u/s 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*

*9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.*

*10. In view o the concurrent findings recorded by the Ld. Appellate Authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.*

*11. The appeals are, therefore, dismissed.”*

5. Ld. Counsel for assessee, therefore, submitted that reopening of the assessment is illegal and bad in law. Ld. Counsel for assessee on merits submitted that assessee did not make any purchases from M/s AVI Exports. The assessee acted as commission agent only and commission income has been declared in the return of income. He has referred to audited balance sheet of the assessee u/s 44AB in which the nature of business of assessee has been explained as commission agent. PB 73 to 79 are details of sale and purchases made on commission basis from AVI Exports on commission basis by assessee. PB 95 is the assessment order u/s 143(3) in the case of same assessee for AY 2006-07 dated 21.10.2008 in which the AO accepted that assessee derived income from commission agent of diamonds. He has, therefore, submitted that reopening of assessment is illegal and bad in law and addition is wholly unjustified.

6. On the other hand, Ld. DR relied upon orders of the authorities below and submitted that information was received from Investigation Wing, Mumbai that assessee received accommodation entries. The AO, therefore, correctly initiated the reassessment proceedings in the matter.

7. We have considered the rival submission and perused the material available on record. It is well settled law that validity of reassessment proceedings have to be determined with reference to the reasons recorded for reopening of the assessment. The

reasons for reopening of the assessment are reproduced above in which the AO noted that search action was carried out by Investigation Wing, Mumbai on various groups which are involved in providing accommodation entries by way of issuing non-genuineness bills. The AO on examination of this information have reasoned to believe that the assessee is beneficiary of non-genuine transaction of Rs. 12.48 crores from M/s Gem Art. It is a wrong recording of the reasons because assessee is proprietor of M/s Gem Art which fact is also mentioned in the orders of the authorities below as well as reasons. Thus, the assessee himself cannot take an accommodation entry from his own proprietorship concern. The AO, therefore, clearly recorded wrong facts in the reasons for reopening of the assessment and did not apply his independent mind to the information received from Investigation Wing, Mumbai. The AO in the same reasons has also mentioned that notice u/s 148 of the Act is being issued to verify the genuineness of the transaction of purchases made by the assessee. Ld. Counsel for assessee relied upon judgment of Hon'ble Gujarat High Court in the case of Manzil Dinesh Kumar Shah (supra) in which the AO in the reasons recorded that he reopened the assessment because it needs deep verification. The Tribunal had held that notice to be invalid. The Hon'ble High Court confirmed the view of the Tribunal. The findings of the Hon'ble High Court are reproduced above which clearly support the fact that reopening of the assessment in the matter is wholly illegal and invalid. The issue is, therefore, covered by above

judgment of Hon'ble High Court. Further, while granting sanction for reopening of the assessment, Ld. Addl. CIT Range-9, Surat has merely mentioned "Yes, satisfied". In the same form for recording the reasons and approval the AO has wrongly mentioned that assessee has made transaction with M/s Gem Art instead of M/s AVI Exports. Such an approval u/s 148 was not considered favourably by Hon'ble MP High Court in the case of CIT vs. S. Goenka Line & Chemicals Ltd. (supra). In view of the above, it is clear that initiation of reassessment proceedings as well as approval/sanction of Addl. CIT u/s 147/148 of the Act are invalid, illegal and against the provisions of law. In view of the above, we are of the view that reopening of the assessment is invalid and bad in law and liable to be quashed. We, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment into the matter. All additions stands deleted.

8. In the result, the appeal of assessee is allowed.

Order pronounced in the open Court.

Sd/-

**(O.P. MEENA)**

**ACCOUNTANT MEMBER**

Dated: 27/08/2019

\*Kavita Arora

Sd/-

**(BHAVNESH SAINI)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR  
ITAT NEW SURAT