

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA Nos.302 to 304/PUN/2019
निर्धारण वर्ष / Assessment years : 2005-06 to 2007-08

Sunil Kanahaiyalal Gidwani,
Plot No.302, Ashirwad Bungalow,
Shivaji Park, Sahyadri Nagar,
Sangli.

..... अपीलार्थी /
Appellant

PAN : AFDPG9973Q.

बनाम v/s

The Asst. Commissioner of Income Tax,
Circle – 2, Sangli.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Sunil Ganoo.

Revenue by : Shri Rajeev Mathur.

सुनवाई की तारीख / Date of Hearing : 10.10.2019	घोषणा की तारीख / Date of Pronouncement: 01.11.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These appeals filed by the assessee are emanating out of the consolidated order of Commissioner of Income Tax (A) – 1, Kolhapur dated 27.11.2018 for the assessment years 2005-06 to 2007-08.

2. Before me, at the outset, both the parties submitted that though the appeals are for three different assessment years but the facts and issues involved in all the three appeals are identical except for the assessment years and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeals also and thus, all the three appeals can be heard together. In view of the aforesaid submissions of both the parties, I, for the sake of convenience, proceed to

dispose of all the three appeals by a consolidated order but however, proceed with narrating the facts for assessment year 2005-06 in ITA No.302/PUN/2019.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be having income from business. Assessee filed his return of income for A.Y 2005-06 on 27.10.2006 declaring total income of Rs.9,13,090/-. The return of income was initially processed u/s 143(1) of the Act. Thereafter, the case was reopened by issuing notice u/s 148 of the Act dated 19.03.2012 which was served on the assessee on 21.03.2012. In response to notice u/s 148 of the Act, the assessee vide letter dated 19.04.2012 submitted that the return of income filed by him on 27.10.2005 be treated as return of income in response to notice u/s 148 of the Act. The case was thereafter taken up for scrutiny and consequently the assessment was framed u/s 143(3) r.w.s 147 of the Act vide order dated 19.03.2013 and the total income was determined at Rs. 15,13,090/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide consolidated order for A.Ys. 2005-06 to 2007-08 dated 27.11.2018 (in appeal No. SLI/219/13-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), the assessee is now in appeal and has raised the following grounds :

“1. Learned A.O. has erred in fact and in law in upholding the reopening of the assessment without appraising that there is no valid satisfaction / approval for reopening and reason recorded are arbitrary.

2. Learned CIT (A) has erred in fact and in law in confirming addition u/s.68 of Rs.350000/- in respect of loan given by the appellant to Gajanan Koli in spite of the fact that the loan is given out of tax paid Income and disclosed income and addition amounts to double taxation.

3. Learned CIT (A) has erred in fact and in law in confirming the view of the AO in treating genuine business income of the appellant of Rs 6,99,960 as income from other source without any contrary evidence.”

4. Similar grounds have been raised by the assessee in ITA Nos.303 & 304/PUN/2019 for A.Ys. 2006-07 and 2007-08, respectively.

5. Before me, the Ld AR in the 1st ground of appeal is challenging the validity of the impugned reassessment order.

5.1. Ld.A.R. submits that the original return of income for AY 2005-06 was filed by the assessee on 27.10.2005 and it was initially processed u/s 143(1) of the Act. Thereafter, the notice u/s 148 dated 19.3.2012 was issued and served on the assessee on 21.03.2012. He submitted that on receipt of notice u/s 148 of the Act, the assessee before AO had raised objections against the reopening of the assessment. The AO vide order dated 15.02.2013 had disposed of the objections to the reopening raised by the assessee by rejecting the objections of assessee. Undisputedly, the notice u/s 148 of the Act is issued beyond the period of 4 years from the date of assessment year in question. He pointing to the copy of the reasons recorded for reopening the assessment (a copy of which is placed at page 10 of the Paper Book) submitted that the alleged reasons are advancing of interest free loans without obtaining any security by the assessee to Mr. Gajanan Koli with whom the assessee does not have any business relation. According to the AO, the sources of the aforesaid investment is not proved. He submitted that similar are the reasons recorded for re-opening in A.Y. 2006-07 and 2007-08. He submitted that in the reasons recorded for reopening the assessment there is no indication as to how income of the assessee chargeable to tax has escaped assessment. He submitted that from the reasons recorded it appears that the AO merely on the basis of suspicion and for further verification of the

transaction has resorted to the reopening. He submitted that various High Courts have held that for making roving/fishing inquiry or for the purpose of investigation and without there being a specific finding of the escapement of income, reopening of assessment is not permissible. He therefore submitted that in the present cases, there is no reasonable belief by the AO of the income escaping assessment before issuing notice u/s 148 of the Act and therefore the reopening should be held to be invalid. He further submitted that the loans given by the assessee to Shri Gajanan Koli are reflected in the Balance sheet of the assessee which was filed by the assessee along with the original return of income and in support of which he pointed to the copy of the Balance Sheet placed in the Paper Book. He thereafter submitted that there is no evidence of escapement of income and that for mere verification, reassessment proceedings cannot be initiated. He therefore submitted that the reassessment be held to be invalid. He thereafter submitted that for identical reasons, the reopening was resorted to by the Department in the case of the family members of the assessee, viz, Shri Kailash Gidwani, Shri Sunil Gidwani and Shri Amit Gidwani. When the matter in their cases was carried before the Tribunal, the Co-ordinate Bench of the Tribunal vide order dated 11.09.2019 struck down the initiation of re-assessments in their cases. In support of his aforesaid contentions, he pointed to the order of the Tribunal and also pointed to the relevant paras therein where the reasons for reopening in those cases are noted. He therefore submitted that since the facts & circumstances of the present case are identical to that of his family members, then for this reason also following the order of the Co-ordinate Bench of the Tribunal, the reassessment in the case of the assessee for all the three years be held to be invalid.

6. Ld DR on the other hand submitted that in the present case assessee had filed the return of income for A.Y 2005-06 on 27.10.2005 declaring total income of Rs.9,13,090/- and the same was processed u/s 143(1) of the Act without scrutiny. Subsequently as noted by the AO in the reasons recorded, it was found that assessee had advanced interest free unsecured loan to Shri Gajanan Koli with whom the assessee has no relationship of any nature whatsoever. He submitted that advancing of unsecured interest free loan to an unrelated person was against the normal action of a normal businessman. He submitted that in such a situation the source of such advancing of loan needs verification more so when the original return of income was summarily accepted u/s 143(1) of the Act and the AO had a reason to believe that income chargeable to tax has escaped assessment and the AO had rightly reopened the assessment in exercise of power u/s 147/148 of the I.T Act. He therefore submitted that the AO has rightly issued the notice u/s 148 of the Act and the Ld.CIT(A) has also rightly upheld the proceedings initiated u/s 148 of the Act. He thus supported the order of lower authorities.

7. I have heard the rival submissions and perused the material on record on the preliminary issue of re-opening the assessment. The Assessee in the present ground is challenging the validity of the reassessment proceedings u/s 147/148 of the Act. The law on re-opening of an assessment under the Act, is fairly settled. The Assessing Officer can re-open an assessment only in accordance with the express provisions provided in Section 147/148 of the Act. It is only on the Assessing Officer strictly satisfying the provisions of Section 147 of the Act that he acquires jurisdiction to re-open an assessment. Section 147 of the Act, clothes the Assessing Officer with jurisdiction to reopen an assessment on satisfaction of the following: (a) The Assessing Officer must have reason to believe that (b) Income chargeable to tax has

escaped the assessment and (c) In cases where the assessment sought to be reopened is beyond the period of four years from the end of the relevant assessment year, then an additional condition is to be satisfied viz: there must be failure on the part of the Assessee to fully and truly disclose all material facts necessary for assessment. The requirement in the first proviso to Section 147 of there having to be a failure on the part of the Assessee "to disclose fully and truly all material facts" does not at all apply where the initial return has been processed under Section 143(1) of the Act.

8. In the present case it is required to be noted that by the impugned notice, the assessment for AY 2005-06 is sought to be reopened in exercise of power under Section 147 of the I.T Act. The reasons recorded to reopen the assessment are as under :

“According to information gathered from informed sources, local enquiries and media reports, it has come to be known that Shri Karihaiyalal Gidwani, owns three flats, one in his name and two in the names of his two sons - Kailash and Amit in .the Adarsha Housing Society. Again, one flat is learned to be booked in the name of Shri Gajanan S. Koli, where apparently it is believed that Shri Sunil K. Gidwani, son of Kanhiyalal Gidwani, has lent finance to purchase the same. All payments for the same were apparently made through Gidwani Family's various bank accounts in which apparently cash amounts were deposited and the same were transferred into the accounts of Gidwani's wife, son and daughter-in-law in HDFC Bank at Worli. Thereafter the said amounts were apparently transferred into the account of Ms. Jay Maharashtra CPL, HFDC Bank, Worli, in which Gidwariis sons are directors for. making payments towards cost of the flats. On verification, it is seen that Shri Sunil Gidwani, the assessee, is assessed to income-tax and that he has advanced in terest-free loans to the extent of Rs 51.3 lakhs to Shri Gajanan Koli for purchase of flat in Adarsha Coop. Housing Society, Mumbai, payments as under :-

S.No	Date	Amt (Rs.)
1	15.07.2004	50,000
2	15.09.2004	3,00,000
3	27.10.2005	9,75,000
4	06.07.2006	5,00,000
5	07.08.2007	5,00,000
6	25.10.2007	10,71,000
7	19.03.2008	5,70,000
8	12.02.2009	11,65,000
		51,31,000

The loan advanced to Shri Koli is interest-free loan and there are no business connection I relation between Shri Sunil Gidwani and Shri Gajanan Koli. No security of any kind against the loan from Shri Gajanan Koli is obtained.

In view of the above and on verification of return of income filed for the assessment year 2005-06, along with its enclosures, it is revealed that -

(i) During the year under consideration, the assessee has given Rs.3,50,000/- to Shri Gajanan S. Koli towards investment in Adarsha CHS, the genuineness of the sources of this investment is not proved. Therefore in view of the above, I have reasons to believe that the income chargeable to tax to the extent of Rs 350,000 has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.”

Thus, as per the reasons noted hereinabove the reasons recorded by the AO is on the basis of verification of the return of income filed by the Assessee alongwith with the enclosures. According to the AO it shows that assessee has given loan to Shri Gajanan Koli for investment in Adasrsh CHS, the genuineness of the source of investments is not proved and thus he has reason to believe that income chargeable to the extent of loan given has escaped assessment.

9. So far as the proposition of the Ld DR to the effect that when a return of income is processed u/s 143(1) of the Act, the Revenue has great latitude in reopening an assessment is concerned, I fully agree only to that extent with the aforesaid proposition but at the same time various high courts have held that, even in such cases, where return of income is processed u/s 143(1) of the Act, the reopening of an assessment can only be done if there is reason to believe that income chargeable to tax has escaped assessment. Here it would be relevant to refer to the observations of Hon'ble Delhi High Court in the case of CIT Vs. Orient Craft Ltd reported in [2013] 29 taxmann.com 392 (Delhi) wherein the Hon'ble High Court has observed that the expression “reason to believe” cannot have two different standards or sets of meaning, one applicable where the assessment was earlier made u/s

143(3) of the Act and the other applicable where an intimation was earlier issued u/s 143(1) of the Act. It observed that it is open to the assessee to contend that notwithstanding that the argument of “change of opinion” is not available to him, it would still be open to him to contest the re-opening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment. It further observed that in doing so, it is further open to the assessee to challenge the reasons recorded u/s 148(2) of the Act on the ground that they do not meet the standards set in various judicial pronouncements.

10. I also find that various High Courts have held that for a mere verification of the claim, the power of reopening of assessment could not be exercised. The High Courts have also held that the AO under the guise of power to reopen an assessment cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment. Here the reference could be made to the decision of Hon’ble Gujarat High Court in the case of Inductotherm (India) P Ltd Vs. M Gopalan, DCIT reported in (2013) 356 ITR 481 (Guj) wherein it has been observed by Hon’ble High Court that for a mere verification of the claim, the power of reopening of assessment could not be exercised. It further observed that the Assessing Officer under the guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims, as if it were a scrutiny assessment.

11. When the facts of the present case is seen in the light of the decisions cited hereinabove, I am of the view that the reopening is sought by the AO on the basis of the return of income filed by the assessee and is for the purpose of verification of the issue and is not based on any tangible material.

12. I further find that identical reasons were recorded by the AO for reopening the assessments in the case of Shri Kilash Kaniyalal Gidwani, Shri Sunil Kanhaiyalal Gidwani and Shri Sunil Kanhiyalal Gidwani. When the reopening was challenged before the Co-ordinate Bench of the Tribunal, in their cases, the Tribunal vide order dated 11.09.2019 (ITA No769/PUN/2014) held that the AO was not justified in taking recourse to the provisions of Sec. 147 of the Act and it struck down the initiation of assessment proceedings and the consequential assessment order passed u/s 147 of the Act.

13. Considering the totality of the aforesaid facts, I am of the view that AO in the present case was not justified in taking recourse to the provisions of s. 147 of the Act and therefore the initiation of reassessment proceedings are not in accordance with law. I therefore set aside the initiation of reassessment proceedings and the consequential assessment order. **Thus, the grounds of the assessee in ITA No.302/PUN/2019 for A.Y. 2005-06 is allowed.**

14. As far as the issue involved in ITA Nos.303 and 304/PUN/2019 for A.Ys. 2006-07 and 2007-08 are concerned, before me since both the parties have submitted that the issue in all the three years are identical except for the assessment years and the amounts involved and in view of the aforesaid submission of both the parties and for the reasons stated herein while deciding the issue for A.Y 2005-06 in ITA No.302/PUN/2019 and for similar reason I set aside the reassessment proceedings and the consequential orders in both the years. **Thus, the grounds of assessee in ITA Nos.303 & 304/PUN/2019 for A.Ys. 2006-07 and 2007-08, respectively, are allowed.**

15. Since I have held the reassessment to be not valid, the grounds raised on merits have been rendered as academic and therefore require no adjudication. Thus all the three appeals of the assessee are allowed.

16. **In the result, all the appeals of assessee are allowed.**

Order pronounced on 1st day of November, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 1st November, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Kolhapur.
4. Pr. CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.