

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. 2429, 2430 and 2431/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2009-10, 2010-11 and 2011-12

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| DCIT (Exemptions) Cir.2, Ahmedabad. | Vs | Surat Urban Development Authority(SUDA) SUDA Bhavan, Nr.Collector Office Nanpura, Surat 395 001 PAN : AAALS 0197 G |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|---------------------------|
| Assessee by : | Shri Prateek Tosniwal, AR |
| Revenue by : | Shri M.S.A. Khan, CIT-DR |

सुनवाई की तारीख/Date of Hearing : 13/01/2020

घोषणा की तारीख /Date of Pronouncement : 16/01/2020

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Present three appeals are directed at the instance of the Revenue against separate orders of the Id.CIT(A)-9, Ahmedabad of even dated i.e. 28.8.2017 passed for the Asstt.Year 2009-10, 2010-11 and 2011-12.

2. In the first ground of appeal, Revenue has pleaded that the Id.CIT(A) has erred in holding that reopening of the assessment is bad in law.

3. With the assistance of the Id.representatives, we have gone through the record carefully. It emerges out from the record that originally assessments have been framed under section 143(3) of the Act

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in the case of the respondents. The AO thereafter recorded reasons, and reopened the assessments. He did not grant benefit of sections 11 and 12 and determined its taxable income. Dissatisfied with order of the AO, the assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) has quashed the reassessments in all three years. Order of the Id.CIT(A) is verbatim same except variations of dates in all these three years. Therefore, for the facility of reference, we take note of findings recorded by the Id.CIT(A) in the Asstt.Year 2009-10, which reads as under:

"4.1 I have considered the facts of the case as well as the contention of the appellant. It is observed from the order of re-assessment i.e. the impugned order that the appellant had filed the original return of income on 17/9/2009 declaring its income at Rs. NIL. The original assessment was finalized u/s. 143(3) of the Act determining total income at Rs.Nil. During the appellate proceedings the appellant has submitted further details with regard to original assessment proceedings. The appellant has submitted that the original assessment order u/s.143(3) of the Act was passed on 24/11/2011. The appellant has further submitted that during the original assessment proceedings all the relevant details were provided to the A.O for verification. The appellant also produced the copy of reasons recorded dated 12/08/2015 for the reopening of the assessment proceedings. According to the appellant the A.O has not brought anything on record that the appellant had either withheld any information or had furnished incorrect information during the course of original assessment proceedings. Further the appellant has compared the original assessment order vis-a-vis the observations of the A.O in the impugned re-assessment order. According to the appellant in both the orders the activities of the appellant elaborated by the A.O are the same.

I have gone through the reasons recorded for the re-opening of assessment proceedings as well as the original assessment order and the impugned re-assessment order. It is observed that during the original assessment proceedings the A.O has asked for various details including the important activities carried out by the appellant The appellant has submitted these details before the A.O along with complete books of

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accounts with bills and vouchers for verification. It is a matter of fact that the appellant has produced all the necessary required details before the A.O. On going through the reasons recorded for the reopening of assessment the A.O has also not mentioned anything adverse which has come to his notice or any new facts that has emerged in order to reopen the assessment proceedings. There is no new Information or fresh evidence in the possession of the A.O for re-opening of assessment proceedings. It is seen from the reasons recorded for re-opening of assessment the main reasons appears to be the change of opinion based on the same set of facts. It is presumed that during the original assessment proceedings the A.O had formed an opinion based on certain facts. However, while re-opening the reassessment proceedings the A.O seem to have changed the opinion based on the same set of facts and information. There are various case law such as CIT vs Kelvinator of India 320 ITR 561, Calcutta Discount Co. vs ITO 41 ITR 191 (SC). J.V A vs ITO 40 Taxmann.com Guj H.C, Gujarat State Board of School Text Book vs ACIT SCA 15715 of 2010, Guj H.C etc. with regard to reopening of assessment proceedings. In all these cases it has been held that based on change of opinion and in absence of any adverse tangible material the A.O cannot re-open the assessment proceedings. I agree with the contention of the appellant as well as place the reliance on these case law. When the similar set of facts and information was available and the A.O has passed an original assessment order based on those facts, if the A.O is again re-opening the assessment proceedings based on same set of facts and in absence of any adverse information in his possession then, the re-opening of assessment proceedings would be considered as a case of change of opinion. Therefore, in my opinion, the re-opening of assessment proceedings for A.Y.2009-10 is itself wrong, null and void ab initio. Therefore, the ground of appeal No. 1 is hereby allowed."

4. The ld.counsel for the assessee has relied upon the orders of the ld.CIT(A), whereas, the ld.CIT-DR relied upon orders of the AO of these three years.

5. A perusal of the record would indicate that copy of the reasons for reopening of the assessment has been placed on record by the assessee. It reads as under:

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Asstt.Year 2009-10

“OFFICE OF THE
DY.COMMISSIONER OF INCOEM-TAX
(EXEMPTIONS) CIRCLE-2, 2ND FLOOR
NATURE VIEW BUILDING,
ASHRAM ROAD, AHMEDABAD.

Notice under Section 148 of the Income - Tax Act, 1961
Office of Dy. Commissioner of Income-tax(Exemptions)Circle-2,A'bad
PAN : AAALS0197G Dated : 01/12/2015

To

M/S SURAT URBAN DEVELOPMENT RUTHORITY '
SURAT URBAN DEVELOPMENT RUTHORITY
SUDA BHAVAN
NR-COLLECTORS OFFICE
NANPURA
SURAT
GUJARAT 395001

Sir/Madam,

Whereas I have reasons to believe that your income chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

2. I, therefore, propose to assess/re-assess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the service of this notice, a return, in the prescribed form of your income for the said assessment year.

3. This notice is being issued after obtaining the necessary satisfaction of the commissioner of Income Tax Exemptions the Central Board of Direct Taxes.

Sd/-/1.12.2015
(J.K.Parikh)

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Deputy Commissioner of Income-tax
(Exemptions)Circle-2, Ahmedabad

Note :

1. If you feel any difficulty in the matter of filing in the return form or desire clarification on any other matter pertaining to your Income Tax liability, you may contact the :

Public Relation Officer Or

Deputy Commissioner of Income-tax (Exemptions)Circle-2, Ahmedabad”

Asstt.Year 2010-11

“OFFICE OF THE
DY.COMMISSIONER OF INCOEM-TAX
(EXEMPTIONS) CIRCLE-2, 2ND FLOOR
NATURE VIEW BUILDING,
ASHRAM ROAD, AHMEDABAD.

Notice under Section 148 of the Income - Tax Act, 1961

Office of Dy. Commissioner of Income-tax(Exemptions)Circle-2,A'bad

PAN : AAALS0197G Dated :

01/12/2015

To

M/S SURAT URBAN DEVELOPMENT RUTHORITY '
SURAT URBAN DEVELOPMENT RUTHORITY
SUDA BHAVAN
NR-COLLECTORS OFFICE
NANPURA
SURAT
GUJARAT 395001

Sir/Madam,

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Whereas I have reasons to believe that your income chargeable to tax for the assessment year 2010-11 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

2. I, therefore, propose to assess/re-assess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the service of this notice, a return, in the prescribed form of your income for the said assessment year.

3. This notice is being issued after obtaining the necessary satisfaction of the commissioner of Income Tax Exemptions the Central Board of Direct Taxes.

Sd/-/1.12.2015

(J.K.Parikh)

*Deputy Commissioner of Income-tax
(Exemptions)Circle-2, Ahmedabad*

Note :

1. If you feel any difficulty in the matter of filing in the return form or desire clarification on any other matter pertaining to your Income Tax liability, you may contact the :

Public Relation Officer Or

Deputy Commissioner of Income-tax (Exemptions)Circle-2, Ahmedabad"

6. Similar reasons are recorded in the Asstt.Year 2011-12 also. A perusal of the above would indicate that in all these three years, assessments have been framed under section 143(3) of Act. Notice under section 148 of the Income Tax Act was issued after expiry of four years from the end of the relevant year in the Asstt.Year 2009-10 and 2010-11. AO has recorded reasons on 1.12.2015 in both these years. As far as Asstt.Year 2011-12 is concerned, notice under section 148 was issued on 14.3.2016 i.e. within four years from end of the assessment

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year. Thus, as far as Asstt.Year 2009-10 and 2010-11 are concerned, proviso appended to section 147 would come to the rescue of the assessee for challenging reopening of the assessment because this proviso puts an embargo upon power of the AO to reopen any assessments where four years have expired and original assessment was framed under section 143(3) of the Act. In such cases, assessments can be reopened only if an income assessable to tax has escaped on account of failure of the assessee to disclose all the material facts fully and truly. In other words, the AO has to demonstrate that income of the assessee has escaped assessment on account of its failure to disclose all material facts of the assessments in its income fully and truly. A perusal of the reason would indicate that no such circumstance has been highlighted by the AO. It is also pertinent to observe that perusal of the reasons extracted (supra) would disclose that AO has not assigned any reason to show how the income of the assessee chargeable to tax has escaped the assessment. The same very facts were available to him when he passed original assessment orders. Even as far as Asstt.Year 2011-12 is concerned the AO has not brought on record any tangible material which came to his notice after passing of regular assessment order under section 143(3) of the Act. The Id.CIT(A) has recorded a categorical finding in his order, and held that complete books of accounts with bills and vouchers were submitted before the AO for verification. Nothing has been come to the notice of the AO showing basis for harping a belief that income has escaped the assessment. Therefore, after considering well reasoned order of the Id.CIT(A), we do not see any merit in the appeals of the Revenue. Since we concur with the Id.CIT(A) that the

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reopening is bad in law, we do not deem it necessary to go into other issues on merit. We uphold the orders of the Id.CIT(A) and dismiss all these appeals.

7. In the result, appeals of the Revenue are dismissed.

Pronounced in the Open Court on 16th January, 2020

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**