

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND
Ms.MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA.No.1170/Ahd/2018**
निर्धारण वर्ष/ **Asstt. Year: 2012-13**

Archana Ramankumar Mundada [alias Archana Hitesh Somani] 8, Sevak Nagar Beside Gautam Nagar Race Course Vadodara 390 007. PAN : AMZPM 5094 M	Vs.	ITO, Ward-1(2)(2) Vadodara.
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(Applicant)		(Responent)
Assessee by :		Shri Sakar Sharma, AR
Revenue by :		Shri R.R. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 12/01/2021
घोषणा की तारीख /Date of Pronouncement: 15/03/2021

आदेश/O R D E R

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

The present appeal is filed by the assessee against the order of the Id.CIT(A)-4, Vadodara dated 26.3.2018 passed for the Asstt.Year 2012-13.

2. In the appeal, the Revenue has raised following three grounds:

"1. The Ld. CIT (A) erred on facts and in law in not adjudicating ground relating to validity of issuance of notice u/s 148 of the Act without complying with the requirements mandated for issuing notice u/s 148 by the Statute.

2. The Ld. CIT (A) erred on facts and in law in not adjudicating ground relating to assumption of jurisdiction u/s 147 by the Assessing Officer by issuing notice u/s 148 as there was no escapement of income within the meaning of section 147 and related conditions specified in the Act had not been satisfied at all.

1. *The Ld. CIT (A) erred on facts and in law in upholding the addition of Rs.8,48,621/- u/s. 50C made by the Assessing Officer without taking into account the explanations and submissions of appellant made in the course of assessment as well as in appellate proceedings.”*

3. In the first two grounds, the grievance of the assessee is that the ld.CIT(A) has erred in not considering the validity of reopening of the assessment under section 147 of the Income Tax Act, 1961 despite specific grounds raised in this behalf.

4. Before going to the merit of the case, the ld.counsel for the assessee submitted that the assessee has challenged validity of reopening of the assessment by the Assessing Officer under section 147 before the ld.CIT(A), as is evident from the ground no.1 and 2 of appeal raised before the ld.CIT(A) and mentioned in page no.2 of the CIT(A)'s order. The assessee has also filed a detailed submissions in this behalf, which have been recorded by the ld.CIT(A) in the impugned order from page no.24 to 45. Despite the assessee having taken a specific ground to the effect that assessment order under section 143(3) r.w.s. 147 is invalid, the ld.CIT(A) did not adjudicate the same and treated the same as general in nature. It is submitted that since adjudication on the validity of reopening of the assessment at the end of the ld.CIT(A) goes root of the matter, and have consequential effect on the survival of impugned reassessment order itself, being a legal issue, Tribunal may decide the issue or the issue may be set aside to the file of the ld.CIT(A) for readjudication of this issue. On the other hand, the ld.DR did not dispute the factum of non-adjudication of the issue of validity of reopening by the ld.CIT(A).

5. We have considered submissions of both the parties and gone through the record carefully. We also gone through the order of the ld.CIT(A). We find that the assessee has made a specific ground before the ld.CIT(A)

challenging the reopening of the assessment and validity of notice under section 148. The assessee has also made a detailed submissions in this behalf, and the same were incorporated by the Id.CIT(A) in the impugned starting from page no.24 to 45 of the order and the same was not dealt with by the Id.CIT(A) and he simply rejected the grounds as being general in nature. It is stipulated in the provisions of section 250(6) of the Act that appellate order must be in writing, stating points for consideration etc. Thus, section 250(6) provides that order of the first appellate authority requires to state the points arising in appeal along with the reasons for such decision. A decision by its nature must be firm and should not be vague and unclear. In the light of the above facts and finding, we are of the view that the issue has to be remanded back to the file of the CIT(A) for fresh adjudication on the basis of the submissions and material placed by the assessee, and decide the issue accordingly. We do so, and allow the ground no.1 and 2 of the appeal for statistical purpose.

Since the very core issue regarding validity of reopening has been set aside to the file of the Id.CIT(A) for reconsideration, other issue raised in ground no.3 is also set side, which shall be decided on the basis of decision taken on the ground no.1 and 2 of the appeal.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 15th March, 2021 at Ahmedabad.

Sd/-
(Ms.MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 15/03/2021