

आयकर अपीलीय अधिकरण, अहमदाबाद □ आयपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 846/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2011-2012

Smt. Nalini Anil Amin, 11, Ramakrishna Bunglow, Nr. Akshar Farm Bunglow, Anand-388001. PAN: AIZPA9772A	Vs.	D.C.I.T., (International Taxation), Vadodara.
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(Applicant)		(Respondent)
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Assessee by :	Shri A.L.Thakkar, A.R
Revenue by :	Shri L.P. Jain, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **19/01/2021**
घोषणा की तारीख /**Date of Pronouncement**: **19/03/2021**

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-13, Ahmedabad, dated 28/02/2018 arising in the matter of assessment order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT(A)-13, Ahmedabad, erred in law and/or on facts in confirming the addition of Rs.40,00,000/- made by the AO, as Income from other sources.*
2. *The learned CIT(A) -13, Ahmedabad, erred in law and/or on facts in confirming the addition of Rs.40,00,000/- made by the AO, u/s.56(2)(vii) of the IT Act as amount received without consideration.*
3. *The learned AO as well as learned CIT(A), erred in not considering various facts, submissions, explanations and clarifications as given by the appellant and further erred in not appreciating the facts and law in their proper perspective.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

2.1 The assessee vide letter dated 06-11-2020 has also raised the additional ground of appeal challenging the validity of the assessment proceedings initiated under section 147 of the Act. The additional ground of appeal raised by the assessee is reproduced as under:

1. *The Appellant challenges the notice issued by the Assessing Officer u/s.148 of the I.T. Act, 1961 which is illegal and bad in law and hence the same should be quashed.*
2. *The Appellant states that the assessment completed u/s.143(3) r.w.s 147 of the I.T. Act, 1961 on the basis of illegal notice issued u/s.148 of the I.T. Act, 1961 is liable to be cancelled.*
3. *The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.*

3. The learned AR for the assessee, at the outset, submitted that the additional ground raised by the assessee goes to the root of the matter and all the facts related to the additional ground are available in the order of the authorities below. Therefore the same needs to be admitted in view of the judgment of the Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383 where it was held as under:

Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee

should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

In the instant case, therefore, the Tribunal had jurisdiction to examine a question of law which arose from the facts as found by the lower authorities and having a bearing on the tax liability of the assessee.

4. On the other hand the learned DR did not raise any objection on the admission of the additional ground of appeal raised by the assessee.

5. Heard the rival contentions of the parties and perused the materials available on record. The additional ground raised by the assessee is legal in nature and therefore the same can be raised at any stage in pursuance to the judgment of the Hon'ble Supreme Court in the case of NTPC Ltd (*supra*). Hence we admit the additional ground of appeal raised by the assessee and proceed to adjudicate the same.

6. At the outset, the learned AR for the assessee contended that the proceedings under section 147 of the Act were initiated by the AO on account of escapement of income of the capital gain generated on the sale of the property. For this purpose, the learned AR drew our attention on page 2 of the paper book where the reasons recorded by the AO is placed.

7. However, the AO has made the addition under the provisions of section 56(2)(vii) of the Act on account of the money received by the assessee amounting to Rs. 40 lakh from the company namely M/s Multi Industrial Ceramic Pvt Ltd. As

per the AO, the money has been received by the assessee without any consideration and therefore the same should be treated as income of the assessee under the head income from other sources under the provisions of section 56(2)(vii) of the Act. The addition made by the AO came to be confirmed by the learned CIT (A).

7.1 As per the learned AR for the assessee, the basis on which the proceeding under section 147 of the Act were initiated did not survive as there was no addition made in the assessment proceedings qua to that reason. Accordingly, the learned AR contended that the AO cannot make any addition under any other head as the basis for reopening the assessment under section 147 of the Act did not survive.

8. On the other hand the learned DR contended that the assessee during the assessment proceedings failed to provide the financial statements of the company to justify his stand that the money received by her represents her money which was given as loan to the company on the earlier occasion. Accordingly, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. First of all, we find pertinent to refer the reasons recorded by the AO for initiating the proceedings under section 147 of the Act which reads as under:

In this case, as per AIR information, the assessee has sold immovable property worth Rs.25,52,160/- during the F.Y. 2010-11 relevant to A.Y. 2011-12. The assessee has not filed his return of income for A.Y. 2011-12.

Considering the facts of the case, I have reason to believe that assessee's income w.r.t. LTCG/LTCL has escaped assessment for A.Y. 2011-12 within the meaning of section 147 of the Act. Therefore, this is a fit case to initiate proceedings u/s.147 of the income tax Act, 1961. Issue notice u/s.148 of the Act.

9.1 On perusal of the above reasons, it is transpired that there was the property which was sold by the assessee but the assessee failed to disclose the income under the head capital gain on account of transfer of such property. Accordingly, the AO formed his reason to believe that income of the assessee has escaped assessment.

9.2 Moving further, we find that the AO in the assessment framed under section 147 read with section 143(3) of the Act has made the addition for the money received by the assessee from the company namely M/s Multi Industrial Ceramic Pvt Ltd amounting to Rs. 40 Lakh. The relevant finding of the AO as appearing in the assessment order is reproduced as under:

In the absence of such details, it can be safely assumed that the said amount of Rs.40,00,000/- received by the assessee from the company is "Income from other sources" u/s.56(2)(vii) having been received without consideration.

In view of the discussion above, the entire amount of Rs.40,00,000/- received by the assessee from M/s. Multi Industrial Ceramics Pvt. Ltd. is treated as "Income from other Sources" of the assessee. This amount is clearly reflected as receipts in the assessee's bank account and the same has been subsequently invested in mutual funds.

9.3 From the above, there remains no dispute to the fact that the basis/reason on which the proceedings were initiated under section 147 of the Act, there was no addition made by the AO qua to that reason. Thus, the basic premise on which the satisfaction was recorded by the AO for initiating the proceedings under section 147 of the Act i.e. escapement of income on account of sale of the property does not survive. Once the basic foundation goes, then there cannot be any addition on account of any other income which has come to the notice of the AO during the proceedings under section 147 of the Act. In holding so, we draw support and guidance from the judgment of Hon'ble Jurisdictional High Court in case of CIT vs. Mohmed Juned Dadani reported in 355 ITR 172 wherein it was held as under:

In the result, it is held that the Tribunal was right in law in coming to the conclusion that when on ground on which the reopening of assessment was based, no addition were made by Assessing Officer in the order of assessment, he could not make additions on some other grounds which did not form part of reasons recorded by him. [Para 33

9.4 In view of the above, we draw our conclusion that the proceedings initiated under section 147 of the Act is invalid as there was no escapement of income in the hands of the assessee on account of sale of the property. Accordingly, the assessment proceedings initiated under section of the Act is invalid and therefore we quash the same. Hence the additional ground of appeal of the assessee is allowed.

9.5 As we have decided the issue in favour of the assessee on the technical ground raised by her by holding that the assessment proceedings under section 147 of the Act are invalid, accordingly, we do not find reason to adjudicate the issue raised by the assessee on merit. As such the issues raised by the assessee on merit become infructuous. Thus we dismiss the same as infructuous.

10. In the result, the appeal of the assessee is **partly allowed**.

Order pronounced in the Court on 19/03/2021 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

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

Ahmedabad; Dated
Manish

(True Copy)
19/03/2021