

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.665/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2007-08)

(Virtual Court Hearing)

Smt. Anshita Vimal Jain, 303, Shilp Apartment, Opp. Gokulam Diary, Athwalines, Surat.	Vs.	The ITO, Ward-2(3)(8), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGAPJ4153F		
(Assessee)		(Respondent)

Assessee by : Shri Mitish S. Modi, CA

Revenue by : Shri Deependra Kumar, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 28/10/2021

घोषणाकीतारीख/Date of Pronouncement: 23/12/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2007-08, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat [in short “the ld. CIT(A)”] in Appeal No. CAS/2/219/2015-16, dated 19.12.2016, which in turn arises out of an order passed by the Assessing Officer (assessing officer) u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 19.12.2016.

2. Grievances raised by the assessee are as follows:

“(1) On the facts and in the circumstances of the case and in law, the learned CIT (Appeals), Surat's order confirming the action of the assessing officer for initiating the proceedings u/s 147 and issuance of notice u/s 148 of the Act and hence, the order passed u/s 148 of the Act making addition of Rs.69,53,846/- for the alleged bogus purchases of goods is being without jurisdiction, bad in law, perverse, arbitrary, conjectural and therefore liable to be annulled or quashed.

(2) On the facts and in the circumstances of the case and in law, both the lower authorities have grievously failed to consider in the right, lawful and proper perspectives, the detailed submissions, with the explanations duly substantiated by the authentic, credible and cogent evidences for the genuine, transactions of

purchase of goods and therefore, the order of the CIT (Appeals) confirming the addition of Rs. 69,53,846/- made by the assessing officer on factually incorrect inferences, but exclusively based on the report of the Investigation Wing of the department is liable to be struck down.

(3) Your assessee further reserves its right to add, alter or to amend any of the aforesaid grounds before or at the time of hearing of an appeal.”

3. The facts of the case which can be stated quite shortly are as follows: On the basis of the information received from, the Investigation Wing Mumbai the assessing officer found that assessee has taken accommodation entries of bogus purchase bills from Gautam Jain, Prop. of M/s Mihir Diamonds of Rs.7,80,847/- and Shri Gautam Jain, Director M/s Krishna Diamond Pvt. Ltd. of Rs.61,73,099/-. The case was reopened u/s 147 of the Act and the notice u/s 148 was issued on 28.03.2014. In response to the notice the assessee filed the written submission on 28.04.2014 and enclosed a copy of the return filed for assessment year 2007-08, as being filed in compliance to notice u/s 148 of the Act. The reasons recorded for the reopening was provided to the assessee during the course of the assessment proceedings. The assessing officer found that assessee had purchased polished diamonds for Rs.69,53,946/- from M/s Mihir Diamonds and Gautam Jain by known entry operators, Gautam Jain Group who had been searched by the Investigation Wing Mumbai. Looking to the above facts, the assessing officer made addition of Rs.69,53,846/- on account of bogus purchases.

4. Aggrieved, the issue was taken up before the first appellate authority for relief. Learned CIT(A) held that reopening of assessment under section 147/148 was valid. Besides, on merits, Ld CIT(A) has confirmed the action of the assessing officer. Aggrieved, the assessee has come up with the present appeal.

5. Shri Mitish S. Modi, Learned Counsel for the assessee pleads that assessing officer has merely relied on the information passed on to him by the DDIT (Investigation Wing), Mumbai regarding the search in the case of Shri Gautam Jain and Others Group of Mumbai, indulged in bogus purchase bills/unsecured loans through their various benami concerns, without making any efforts to verify with application of his independent mind before recording such

reasons for escapement of income of the relevant year. The own satisfaction of the assessing officer for the alleged escapement of income is the prerequisite condition for initiating the reassessment proceedings, which is absent in the present case. The reasons recorded by assessing officer, demonstrate that assessing officer does not apply his mind. The Id Counsel pointed out that link between the information made available to the assessing officer and the formation of belief is absent. He further pointed out that the reasons must be self-evident, they must speak for themselves. The Ld Counsel then buttress assessee's case with the aid of various judicial precedent as well. Finally, Id Counsel prays the Bench that reassessment proceedings initiated by the assessing officer may be quashed.

6. Shri Deependra Kumar, Sr. DR for the Revenue contends that assessing officer got information from the Investigation wing and then applied his mind and reached on the conclusion that in assessee's case income has escaped assessment. The reasons are recorded as per the mandate of the provisions of section 147 of the Act, therefore reasons recorded by the assessing officer are valid.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that by way of this appeal, in ground no.1, the assessee has challenged correctness of the order passed by the assessing officer under section 143(3) r.w.s. 147 of the Income Tax Act 1961 dated 27.03.2015 and stated that reassessment proceedings are invalid. Therefore, it is necessary to examine the reasons recorded (vide assessee's paper book page no.224) by the assessing officer under section 147 of the Act, which is reproduced below:

"Annexure"

Reasons for issue of Notice u/s.148 of the Income-Tax Act, 1961.


Name & address of the Assessee : Kumari Anistha Vimal Jain
303, Shilp Apartment
Opp.Gokulam Daiary,
Athwalines, Surat.

PA No. : AGAPJ4153F

A. Y. : 2007-08

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The information is received from the DDIT Investigation Wing, Mumbai that search was carried out by the Investigation Wing, Mumbai in the case of Shri Gautam Jain & others (Surat Diamond concerns) group of Mumbai. The group is indulged in providing bogus purchase bills/ unsecured loans through their various benami concerns. The assessee, Kumari Anistha Vimal Jain has received bogus purchase bills of Rs.7,80,847/- from M/s.Mihir Diamond, Prop: Gautam B Jain and Rs.61,73,099/- from M/s.Krishma Diamonds Pvt. Ltd., benami concerns of Gautam B Jain during F.Y.2006-07.

2. In view of the above, I have reason to believe that income of Rs.69,53,846/- on account of bogus purchases/unsecured loans has escaped assessment for the A.Y. 2007-08 within the meaning of section 147 of the I.T. Act, 1961. Therefore, the case of the assessee required to be reopened for the A. Y. 2007-08. Hence, the reasons are recorded to issue notice u/s.148 r.w.s. 147 of the Act for escapement of assessment for the A. Y. 2007-08.


[K.C.DHAME]
Income Tax Officer,
Ward 3(3), Surat.

8. From the above reasons recorded, it is vivid that reasons were recorded based on the information received from DDIT Investigation wing Mumbai that search was carried out by the investigation wing, Mumbai in the case of Gautam Jain & others (Surat Diamond concerns) group of Mumbai. The group is indulged in providing bogus purchase bills / **unsecured loans** through various benami concerns.

We note that "**unsecured loans**" is not a subject matter or an issue in the case of assessee under consideration; therefore, it seems that assessing officer did not apply his mind while recording reasons. Thus, reasons were recorded based of suspicion and in a mechanical way without application of mind.

9. In second para of reasons recorded, the assessing officer stated as follows:

*“In view of the above, I have reason to believe that income of Rs.69,53,846/-, on account of bogus purchases/**unsecured loans** has escaped assessment....”*

We note that in assessee's case, the **“unsecured loans”** has not escaped assessment, therefore, it is abundantly clear that in assessee's case the reasons were not recorded as per the scheme of section 147 of the Act. The position in law is well settled that if the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, such requirements are, in all cases absolute and neglect to attend to such requirement will invalidate the whole proceeding. Based on the above facts we are of the view that reasons recorded by the assessing officer are not in accordance with the scheme of the provisions of section 147 of the Act.

10. We note that section 147 of the Act authorizes and permits an Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that the said income for any assessment year has escaped assessment. The provisions of section 147 require that the Assessing Officer should have **'reason to believe'** that any income chargeable to tax has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has a cause or justification to think or suppose that income had escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. We note that in assessee's case, the reasons recorded by the assessing officer are not **“reason to believe”** rather these are **“reason to suspect”**. Reasons must have a live link with the formation of the belief. This is supported by Circular No.549 dated 31.10.1989 which clarified that the words **“reason to believe”** did not mean a change of opinion. The Hon'ble Supreme Court in ITO vs. Lakhmani Mewal Das [1976]103 ITR 437 has lucidly explained the power of assessing officer to bring to tax income escaping assessment u/s.147 of the Act. The Hon'ble Court first held that the section provides that there must

exist “reasons to believe” and not “reasons to suspect”. The following were the relevant observations:

“The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence. The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed.”

11. The purpose behind the relevant provisions imposing condition precedent for initiating reassessment proceedings is to ensure finality of proceedings. The Act also provides that such reason must be recorded in writing before issue of notice of reassessment so as to judge the existence of such belief before initiating reassessment proceedings by issue of notice u/s.148 of the Act. The above requirements are meant to ensure that powers to initiate reassessment proceedings are not exercised in an arbitrary manner.

In the present case, the assessing officer assumed the jurisdiction u/s 147 of the Act solely on the basis of the information received from the Investigation Wing, Mumbai with reference to the search carried out by the Investigation Wing, Mumbai in the case of Shri Gautam Jain and Others.

It is thus, very much evident that the assessing officer has merely relied on the information passed on to him by the DDIT (Investigation Wing), Mumbai regarding the search in the case of Shri Gautam Jain and Others Group of Mumbai, indulged in bogus purchase bills/unsecured loans through their various benami concerns, without making any efforts or inquiry or to verify with application of his independent mind before recording such reasons for escapement of income of the relevant year. The own satisfaction of the assessing officer for the alleged escapement of income is the prerequisite condition for initiating the

reassessment proceedings, which is absent in the present case. We note that “**unsecured loans**” is not the subject matter or issue in the case of assessee under consideration, hence reasons recorded are not as per the scheme of the provisions of section 147 of the Act. It is the condition precedent that before initiating the reassessment proceedings, the assessing officer has to carry out deep verification of the information and to apply his independent and judicious mind before issuing notice u/s 148 of the Act but, in the present case, without any effort to examine and to discuss the material received from the Investigation Wing, solely on such borrowed satisfaction, carried out the reassessment proceedings, which is bad in law.

12. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, are bad in law. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

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

Order is pronounced on 23/12/2021 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat / दिनांक/ Date: 23/12/2021

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat