

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE OM PRAKASH KANT, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 5036/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2006-07)

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|--|----------------------------|---|
| Deepak Trambaklal Mehta<br>502, ‘B’ Wing, 5 <sup>th</sup> Floor,<br>Cadle Plaza, Kirti College<br>Lane, Prabhadevi, Dadar,<br>Mumbai-400028. | <b><u>बनाम/</u></b><br>Vs. | ITO-18(2)(4)<br>Piramal Chamber, Parel<br>(Lalbaug), Mumbai-400012. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPM9251C  |                            |   |
| (अपीलार्थी /Appellant)   | ..                         | (प्रत्यर्थी / Respondent)   |
| Assessee by:   | Shri Nishit Gandhi         |   |
| Revenue by:  | Ms. Bhomika Patel          |   |

सुनवाई की तारीख / Date of Hearing: 29/11/2021

घोषणा की तारीख /Date of Pronouncement: 21/12/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 31.05.2019 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2006-07.

2. The assessee has raised the following grounds: -

*“ON NATURAL JUSTICE:*

*1.1 In the facts and circumstances of the case and in law the order passed by the Learned Commissioner of Income Tax (Appeals) - 48. Mumbai [the CIT(A)] which in turn affirmed the order passed by*



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*the Learned Income Tax Officer - 18 (2)(4). Mumbai (the AO) is had in law and deserves to be quashed since the Assessment order passed by the AO is in itself void as the same is passed in gross violation of principles of Natural Justice.*

**ON JURISDICTION TO FRAME THE RE-ASSESSMENT:**

*2.1 In the facts and circumstances of the case and in law, the CIT(A) erred in affirming the re-assessment order passed by the AO u/s 143(3) r.w.s. 347 of the Income Tax Act, 1961 (the Act).*

*2.2 While doing so the Ld. CIT (A) failed to appreciate that:*

*(i) The necessary preconditions for initiation and completion of a reassessment u/s 147 / 148 were not fulfilled in the present case;*

*(ii) There is no escapement of income in the present case since the transactions as alleged by the AO are not undertaken by the Appellant and the assessee cannot be asked to prove the negative;*

*(iii) The reassessment is void since no sanction as contemplated u/s 151 was obtained in the present case;*

*(iv) The reasons as recorded by the AO are not in accordance with law and therefore the entire assessment is vitiated and deserves to be quashed.*

*2.3 In the facts and circumstances of the case and in law the reassessment framed by the AO is void and deserves to be quashed.*

**ON MERITS:**



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*.1.1 In the facts and circumstances of the case and in law, the addition of Rs.3,90,894/- made by the AO and as affirmed by the CIT(A) is bad in law and deserves to be deleted.*

*3.2 While affirming the said addition the Ld. CIT (A) failed to appreciate that:*

*(i) The addition has been made merely on the basis of surmises and conjectures without any concrete evidence at all:*

*(ii) The addition is made on the basis of some confronted statements of some third parties before some other Authority and in fact the said parties are not even known to the Appellant:*

*(iii) The Appellant has not undertaken any such alleged transaction so as to enable the AO to make an addition in the hands of the Appellant:*

*(iv) The Appellant could not be asked to prove the negative and in fact admittedly there is no concrete evidence with the AO or even the CIT(A) on the basis of which the said addition has been made: and;*

*(v) Even otherwise the addition made on the basis only of some third party statements is not sustainable since the Appellant was not granted an opportunity to cross examine them in spite of specific requests in this regard.*

*3.3 In the facts and circumstances of the case and in law the addition made by the AO and as affirmed by the CIT(A) deserves to be deleted.*



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*In the facts and circumstances of the case and in law, the Appellant be granted the Set-off of deficit under the head Income from House property as claimed in the Return of Income amounting to Rs. 19896 which was neither rejected nor allowed by the Ld. AO in his order and such order affirmed by the Ld. CIT(A).*

*5. The Appellant craves leave to add, amend, alter, delete or modify all or any of the above grounds at the time of hearing.”*

3. The brief facts of the case are that the assessee filed his return of income on 31.03.2007 declaring total income to the tune of Rs.10,06,736/- for the A.Y.2006-07. Thereafter, the case of the assessee was reopened u/s 147 of the Act. Notice u/s 148 of the Act dated 26.03.2013 of the Act was issued and served upon the assessee. The assessment was reopened after the recording the reasons. In the instant case, an information was received from the DGIT(Inv.), Mumbai in which it was communicated that on account of search and seizure action in the case of Mr. Mukesh Chokshi & Others some information was received in connection with the assessee. The reveals of the search brought out a systematic and wide spread activity of providing fictitious and accommodating bills relating to Share transactions whereby the beneficiaries avail of concessional or nil rate of taxation by unscrupulously claiming such concessions on the strength of such bills provided by Mukesh Chokashi and/or Jayesh Sampat in the name of one of the entities managed and controlled them. In the instant case, such bills were provided to the assessee by one M/s. Alliance Intermediaries & Pvt. Ltd. Necessary notice was given and after the reply of the assessee, the AO raised the addition to the tune of Rs.3,090,894/-. The total income of the assessee was assessed to the tune of Rs.14,17,523/-. Feeling aggrieved, the



assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

### **ISSUE NO.1**

4. At the time of argument, this issue was not pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

### **ISSUE No. 2**

5. Under this issue the assessee has challenged the reopening of the assessment in view of the provisions u/s 147/148 of the Act. It is argued that there is no escapement of income in the present case since the transaction as alleged by AO are not undertaken to by the assessee could not be asked to prove the negative, therefore, the AO has no right to invoke the provisions u/s 147/148 of the Act. It is specifically argued that the reasons recorded by AO nowhere requires any cause of action, therefore, the reopening is bad in law. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the reasons for reopening u/s 147 of the Act on record: -

#### **ANNESURE**

#### **Reasons for Re-opening of Assessment**

*Deepak T. Mehta A.Y.2006-07*



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*On verification of the information available from the record it was noticed that the assessee is one of the beneficiaries of accommodation entry from M/s. Mahasagar Group facilities by Mukesh Choksi and his group:*

*The verification of the this transaction is required therefore, I have reason to believe that the assessee has not disclosed his true and full income in the return of income and the income chargeable to tax has escaped assessment as per section 147 of the I. T. Act 1961.*

*Issue notice u/s 148 of the I. T. Act.*

*(Seema Dhankhar)  
Asstt. Commissioner of Income- Tax-18(2)  
Mumbai*

**6.** On appraisal of the above mentioned reasons, it is specifically mentioned that the assessee was one of the beneficiaries of accommodation entry from M/s. Mahasagar Group facilitated by Mukesh Choksi and his group and required verification. No transaction has been mentioned in the reasons. Nothing on record how the assessee is beneficiaries of accommodation entry from M/s. Mahasagar Group facilitated by Mukesh Choksi. Transaction is required to be reopened for verification only. There is no reason on record to which it can be assumed that there is escapement of income of the assessee. Apparently reopening is not proper. The AO nowhere applied his mind upon the information received by DGIT(Inv.), Mumbai. In this regard, we also find support of legal proposition settled by Hon'ble Bombay High Court in the case of **PCIT Vs. Shodiman Investments (P.) Ltd., reported in (2018) 93 taxmann.com 153 (Bom) and Nu Power Renewables P. Ltd. Vs. DCIT reported in (2018) 94 taxmann.com 29 (Bom) and Varshaben Sanatbhai Patel V. ITO**



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**reported in (2015) 64 taxmann.com 179.** Taking into account of all the facts and circumstances, we are of the view that the AO has no jurisdiction to reopen the case of the assessee u/s 147/148 of the Act, therefore, we set aside the reopening and the decide this issue in favour of the assessee against the revenue.

7. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 21/12/2021

Sd/-  
(OM PRAKASH KANT)  
लेखा सदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated : 21/12/2021  
Vijay Pal Singh/Sr. PS

Sd  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai