

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

Sr.No	ITA No.	Name of Assessee/ PAN No.	A.Y.	CIT(A) order dated	Appeal by
1.	1347/Ahd/2015	Smt. Sonal D. Mehta ABOPM4404B	2005-06	31/03/2015	Assessee
2	1858/Ahd/2015	Sonal D. Mehta ABOPM4404B	2005-06	31/03/2015	Department
3	2792/Ahd/2017	Smt. Sonal D. Mehta ABOPM4404B	2005-06	14/09/2017	Department
4	1398/Ahd/2015	Rakshaben S. Mehta ABOPM4405A	2005-06	31/03/2015	Assessee
5	1855/Ahd/2015	Rakshaben S. Mehta ABOPM4405A	2005-06	31/03/2015	Department
6	1399/Ahd/2015	Ushaben P. Mehta ABOPM4406D	2005-06	31/03/2015	Assessee
7	1856/Ahd/2015	Ushaben P. Mehta ABOPM4406D	2005-06	31/03/2015	Department
8	1400/Ahd/2015	Kantaben S. Mehta ABLPM3419K	2005-06	31/03/2015	Assessee

**Appellant by : Shri Bandish Soparkar &  
Shri Parin Shah, A.R.**

**Respondent by : Shri Ajai Pratap Singh, CIT/DR. &  
Shri V.K. Singh, Sr. D.R.**

Date of hearing : 23-06-2022

Date of pronouncement : 13-07-2022

**आदेश/ORDER**

**PER BENCH:**

These bunch of cases though relating to different assessees, but common issue involved is namely sale of shares to be treated as “capital gain” or “income from business” in all the above cases, except ITA No. 2792/Ahd/2017 which is penalty levied u/s.

271(1)(c) of the Income Tax Act. The assessee's herein are from same family members, so all the appeals have taken up for disposal by passing this common order. The lead case taken for our adjudication is Smt. Sonal D. Mehta in ITA No. 1347/Ahd/2015 relating to the Assessment year 2005-06.

2. The assessee is an individual and for the assessment year 2005-06, the assessee filed her return of income on 31.10.2005 showing total income of Rs. 7,38,93,068/- wherein the assessee claimed Long Term Capital Gain of Rs. 7,24,24,241/- on sale of various shares at conventional rate of tax @10%. In the subsequent assessment year 2006-07, the same pattern was adopted by the assessee however, the Revenue treated the same "income for business" and taxed at higher rate vide assessment order dated 27.12.2011 passed u/s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act). Accordingly, for the Assessment Year 2005-06, the case of the assessee was reopened by issuance of notice u/s. 148, to tax the sale of shares as "business income". As against the notices issued u/s. 143(2) and 142(1), the assessee sent a letter dated 11.01.2013, however the assessee has not given proper reply to the notices. Therefore, the assessing officer completed the assessment on the ground that verification of records reveals that Vishal Exports Overseas Ltd., through a public limited company who subsequently owned by family members of Shri Sureshchandra C. Mehta. Due to 75% shareholding of family members, the share price was kept artificially high and the shares of assessee were sold within very short period. The entire exercise was stage managed. Eventually,

the individual who purchased shares of M/s. VEOL showed “business losses” which were adjusted against their “business profits” while the individuals of the assessee, who claimed Long Term Capital Gain for sale of share which was treated on conventional rate of 10% only. In view of the above facts, the share transactions of the assessee is treated as “income from business” and added to the total income of the assessee and penalty proceedings is also be initiated.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals)-3, Ahmedabad. The ld. CIT(A) uphold the reopening of assessment as good in law and applying CBDT circular no. 4/2007 dated 15.06.2007, the ld. CIT(A) held that profits on sale of shares held by the assessee is to be treated as “Long Term Capital Gain” and also liable to be taxed at 20% as per Section 112 of the I.T. Act.

4. Aggrieved against the same both the assessee and the revenue are in appeal before us raising the respective grounds of appeal:

**ITA N. 1347/Ahd/2015 for A.Y. 2005-06 (Assessee's appeal )**

1. *Ld. CIT (A) erred in law and on facts in confirming re - opening of assessment u/s 148 of the Act beyond a period of 4 years. Ld. CIT (A) ought to have quashed reassessment as being without jurisdiction. It be so held now.*
2. *Ld. CIT (A) erred in law in examining the issue of rate of tax on long term capital gain on sale of shares which is not raised before him and without jurisdiction. It be so held now.*
3. *Ld. CIT (A) erred in law and facts in holding appellant liable for tax @20% instead of 10% on long term capital gain on sale of shares.*

4. Levy of interest u/s 234B & 234C of the act is not justified.
5. Initiation of penalty proceedings u/s 271 (l)(c) is unjustified

**ITA N. 1858/Ahd/2015 for A.Y. 2005-06 (Revenue's appeal )**

1. The CIT(A) has erred in law and on facts in directing to treat the profit from sales of shares of Rs.7,24,24,241/- as long term capital gain as against the business income treated by the AO.
2. On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.
3. It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored.

5. Ld. Counsel for the assessee Mr. Bandish Soparkar submitted before us the reasons recorded for reopening of assessment u/s. 148 as follows:

*Shri Subhash C Mehta and his family members, namely, Pradip S Mehta, Dipak S Mehta, Kantaben S Mehta, Usha P Mehta, Sonal D Mehta, Raksha S Mehta and Rachna Y Parikh are promoters of Vishal Exports Overseas Ltd, some of these promoters, namely, Kantaben S Mehta, Usha P Mehta, Sonal D Mehta, Raksha S Mehta and Rachna Y Parikh off loaded some shares at the time of IPO of Vishal Exports Overseas Ltd in F.Y. 2004-05. The aforesaid letter mainly discusses sale of shares:of Vishal Exports Overseas Ltd by Usha P Mehta, Sonal D Mehta, Raksha S Mehta and Rachna Y Parikh during F.Y. 2005-06. The transactions are suspicious in view of the following fact.*

1. "Usha P Mehta, Sonal D Mehta, Raksha S Mehta and Rachna Y Parikh sold shares of Vishal Exports Overseas Ltd on different dated in July and August, 2005. The timing of these transactions is well-synchronized. One starts selling after the other stops. The whole pattern of transactions is well orchestrated.
2. There is huge amount of circular bank transaction between the aforesaid four assessees, M/s. Vishal Exports Overseas Ltd. and various entities who were introduced to Kalapur Co-op Bank. By Vishal Exports Overseas Ltd, one person, namely, Tejas Patel got loans from the promoters, has transacted in the shares of Vishal Exports Overseas Ltd and incurred losses.

3. The assesseees were working in concert to manipulate the share prices so as to earn income on sale of shares. Therefore, the income arising from the said transaction in F.Y. 2005-06 is required to be taxed as business income and not capital gains". In view of the above, I have reason to believe that the income has escaped assessment and therefore this proposal.

(RANJIT SAH)  
Income Tax Officer,  
Ward-7(2), Ahmedabad

5.1. The assessee counsel also taken us through the paper book wherein an approval u/s. 151 of the Act is given by the Joint Commissioner of Income Tax Range-7 for reopening the assessment which reads as follows:

"Please refer to your letter No. ITO.Ward-7(2)/Proposal/2011-12 dated 29.02.2012 on the above subject.

Your proposal for initiating proceeding u/s.147 have been approved in the following cases. Proforma approval in these cases is enclosed for necessary action.

Sr.No	Name	PAN	A.Y.
1	<b>Kantaben S Mehta</b>	<b>ABLPM3419K</b>	2005-06
2	<b>Ushaben P Mehta</b>	<b>ABOPM4406D</b>	2005-06
3	<b>Sonal D Mehta</b>	<b>ABOPM4404B</b>	2005-06
4	<b>Raksha S Mehta</b>	<b>ABOPM4405A</b>	2005-06
5	<b>Rachna Y Parikh</b>	<b>ABRPP6212B</b>	2005-06

Please ensure action accordingly.

(P.L. KUREEL)  
Joint Commissioner of Income tax,  
Range-7, Ahmedabad

5.2. The Ld. Counsel further submitted the assessment year involved herein is assessment year 2005-06, the notice u/s. 148 was issued in 2012 which is beyond four years and well within six years. The Sanctioning Authority u/s. 151 of the Act in case of reassessment proceedings after the expiry of four years from the end of the relevant assessment year is the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the assessing officer that is a fit case for issuance of such notice. In the present case, Income Tax Officer issued the reopening notice and Joint Commissioner of Income Tax Range-7 has sanctioned for issuance of this 148 notice, which is against Section 151 of the I.T. Act. Since Joint Commissioner is the competent authority to issue 148 notice within four years period only, if it is beyond four years period only, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner are the sanctioning authority as per Section 151 of the Act. Therefore the initiation of the 148 proceedings itself is bad in law and liable to be quashed.

5.3. The Ld. Counsel Mr. Bandish Soparkar further submitted that the reasons recorded by the assessing officer is also bad in law without application of mind. The body of reasons recorded for reopening clearly shows that the reasons are recorded discusses about the transactions having taken place in F.Y. 2005-06 which are believed to be suspicious. Moreover, specific instances of transactions in July and August 2005 are cited, which are relating to the assessment year 2006-07 not the present assessment year 2005-06. And thus the assessing officer concluded that the income

arising from the said transaction in F.Y. 2005-06 is required to be taxed as “business income” and not “capital gains”. Therefore, there is no reason to believe that any income has escaped for the A.Y. 2005-06 and the assessing officer has not recorded any escaped income for the assessment year 2005-06. Thus the reasons recorded are fundamentally, invalid and illegal. This reasons recorded by the A.O., for escaped assessment income is approved by the Joint Commissioner who has also not applied his mind while sanctioning the reopening and also what income has escaped for the assessment year 2005-06. Further the Joint Commissioner is not the competent authority under 151 of the Act for sanctioning the reopening of assessment since it is beyond 4 years period from the end of the assessment year. Thus the entire reopening of assessment itself is against the provisions of Section 147 and entire proceedings is liable to be quashed.

5.4. The alternative prayer of the assessee is that even if it is to be believed the assessing officer has recorded the reasons for A.Y. 2005-06, even then it is submitted that the foundation of such belief are the transactions relating to the Assessment Year 2006-07 for which proceedings u/s. 263 were initiated. That revision proceedings was assailed in appeal by the assessee before the Tribunal vide order dated 18.09.2017 in ITA No. 1921 to 1924/Ahd/2014 has allowed the appeal holding that the income was to be taxed as “capital gains” only and “not as business income”. Revenue was further in appeal before the Hon’ble High Court of Gujarat in Tax Appeal No. 226 of 2018, the same was dismissed by the Hon’ble High Court confirming that the sale of

shares is to be treated as “capital gains” and “not as business income”. It is therefore submitted that the very foundation of the reason to believe has been vitiated. The reasons recorded cannot have any legs to stand. Therefore the entire reassessment proceedings is liable to be quashed.

6. Per contra, the Id. D.Rs. appearing for the revenue could not dispute or substantiate the reasons recorded by the assessing officer and approved by Joint Commissioner of Income Tax but however relied upon the lower authorities order and pleaded that the reopening of assessment is good in law.

7. We have given a thoughtful consideration and perused the materials available on record including a Paper Book filed by the assessee. Section 151 of the Act reads as follows:

*“151. Sanction for issue of notice.—(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice:*

***Provided** that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*

7.1. Sub-section(1) of Section 151 deals with the cases of reopening of assessment within four years wherein the respective Joint Commissioner is the sanctioning authority for reopening of such assessment. The reopening of assessment after the expiry of four years period, the sanctioning authority are either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner only. In this case no doubt for the Assessment Year 2005-06 and reopening of notice was issued in 2012 which is beyond four years period but however Joint Commissioner of Income Tax, Range-7 by his letter dated 9.3.2012 sanctioned for the reopening proceedings, which is clearly against the provisions of Section 151 of the Act. Therefore, the entire reopening assessment itself is vitiated and against the provisions of Section 151 of the Act. Therefore the entire reopening of assessment vis-à-vis quashed. Though there is merits in the arguments of the assessee that the reasons recorded by the Assessing Officer is also not clear relating to which assessment year the income is said to be escaped or taxation. As we have quashed the entire assessment proceedings on the point of sanctioning authority u/s. 151 of the Act. We are not addressing the other aspects of the reopening of assessment. Furthermore this has attained finality by the Jurisdictional High Court in the assessee's own case for the A.Y. 2006-07 holding that the sale of shares to be treated as "Long Term Capital Gains only "and not as Business Income".

7.2. In the result, the appeals filed by the Assesseees are allowed consequently the Revenue appeals are dismissed.

8. ITA No. 2792/Ahd/2017 is penalty levied u/s. 271(1)(c) of the Act pursuant to the u/s. 147 order. As the main reopened assessment itself is quashed, the penalty order has no leg to stand. Therefore, this appeal is also dismissed.

Order pronounced in the open court on 13-07-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTGANT MEMBER True Copy**  
**Ahmedabad : Dated 13/07/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद