

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And**

**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1886/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2011-2012

Rekhaben Indravadan Chokshi, 204, Anmol Apartment, Mahalaxmi Society, B/h. Unnati School, Paldi, Ahmedabad.  <b>PAN: AAQPC9768D</b>	Vs.	I.T.O, Ward-5(3)(2), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri Rakesh Jha, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **29/07/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **05/08/2022**

**आदेश/ORDER**

**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 (Appeal)-5, Ahmedabad, dated 08/11/2019 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:

*1.1 The order passed u/s 250 on 08.11.2019 for AA. 2011-12 by CIT(A)-5, A'bad, upholding the addition of Rs.12.60 lacs as alleged on money payments to GSS Reality LLP as undisclosed income of the appellant is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering rully and properly the explanations furnished and the evidence produced by the appellant. The Ld. CIT(A) has passed a non-speaking order and confirmed the addition on preemption.*

*1.3 The Ld. CIT(A) has grievously erred in law and or on facts in making impugned addition of Rs.12.60 lacs without furnishing the material relied upon, reasons recorded, statement of concerned parties, seized excel sheets etc. as well as the opportunity to cross examine the concerned parties so that the assessment was liable to be quashed.*

*2.1 The Ld. CIT(A) has grievously erred in law and or on facts in confirming the validity of proceedings u./s 147 for AY 2012-13, though the conditions precedent were not fulfilled.*

*2.2 The Ld. CIT(A) has grievously erred in law and or on facts in not appreciating that the proceedings initiated u/s147 were illegal and unlawful.*

*3.1 The Ld. CIT(A) has grievously erred in law and or on facts in upholding that the appellant had made cash payments aggregating to R.12.60 lacs to GSS Reality LLP towards purchase of property in the scheme and thereby confirming the addition of Rs.12.60 lacs as unexplained investments*

*3.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) has grievously erred in upholding that the appellant had made cash payments aggregating to Rs. 12.60 lacs to GSS Reality LLP towards purchase of property in the scheme and thereby confirming the addition of Rs.12.60 lacs as unexplained investments.*

3. The assessee in ground No. 1 and 2 has challenged the validity of the assessment proceedings initiated u/s 147 of the Act.

4. The Ld. AR at the outset submitted that the proceedings u/s 147 of the Act were initiated to verify the genuineness of the cash payment made by the assessee for Rs. 25,20,000/- to M/s Safal Estate which was not disclosed in the income tax return. According to the Ld. AR the proceedings u/s 147 of the Act cannot be initiated to verify the genuineness of the transaction. As per the Ld. AR there was no reason to believe formed by the AO to hold that the income of the assessee has escaped assessment based on tangible materials.

5. On the contrary, the Ld. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both parties and perused the materials available on record. The initiation of the proceedings u/s 147 of the Act were initiated after recording the reason to believe which are reproduced as under:

*As per information received from DCIT, central Circle-1(4), Ahmedabad vide letter dated 25/04/2017, the assessee has paid payment in cash amounting to Rs.25,20,000/- to M/s.Safal Estate, Group case of HN Safal during the search proceedings.*

*The assessee has filed her return of income for A.Y. 2011-12. The cash deposit of Rs.25,20,000/- made by her during the financial year 2010-11 is unexplained/undisclosed. To verify the genuineness, the further investigation is needful in the case.*

*In view of the above facts, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the IT Act for A.Y. 2011-12 by an amount exceeding Rs.1 lakh as the assessee has failed to disclose fully and truly all material facts necessary for her assessment. Therefore this is a fit case for issue of Notice u/s.148 of the IT Act for A.Y. 2011-12.*

6.1 From the above reason, we note that the proceedings were initiated to verify the genuineness of cash payment made by the assessee for Rs.25,20,000/- only. The Hon'ble Gujarat High Court in the case of PCIT V/s Manzil Dineshkumar Shah (2018) reported in 406 ITR 326 held the reopening invalid if it is initiated for the purpose of verification. The relevant extract of the order is reproduced as under:

**9.** *If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.*

**10.** *Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'it needs deep verification'.*

**11.** *Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it.*

6.2 There is no ambiguity to the fact that the proceedings were initiated u/s 147 of the Act to verify the genuineness of the cash payment as discussed above and based on this reasoning the AO has derived his satisfaction to form a reason to believe that income chargeable to tax has escaped assessment within the provision of section 147 of the Act. Since, the proceedings were initiated to verify the genuineness of cash payment, to our understanding the reopening of the assessment is bad in law.

6.3 In view of the above judgment of Hon'ble Gujarat High Court as discussed above, accordingly, we quash the assessment framed u/s 147 of the Act. Hence, the ground of appeal of the assessee is allowed.

7. As we have decided the technical issue in favour of the assessee, we refrain our-self from adjudicating the issue raised by the assessee on merit. As such the issue raised by the assessee based on merit becomes infructuous. According, we dismiss the same.

8. In the result, the appeal filed by the assessee is **partly allowed**.

**Order pronounced in the Court on 05/08/2022 at Ahmedabad.**

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

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

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
05/08/2022