

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.204/Ahd/2019
Assessment Year: 2015-16**

Sanjivkumar Balkrishna Trivedi, vs. Income Tax Officer,
C/o. Shreeji Beauty Care, Ward – 7(1)(5), Ahmedabad.
Opp. Shantinagar Society,
Kalikund, Dholka,
Ahmedabad.
[PAN – AGKPT 6559 M]
(Appellant) (Respondent)

Assessee by : Shri Kishor Goyal, AR
Respondent by : Shri Mukesh Sharma, Sr. DR

Date of hearing : 14.11.2022
Date of pronouncement : 25.11.2022

ORDER

This appeal is filed by the Assessee against the order dated 14.11.2018 passed by the CIT(A)-7, Ahmedabad for the Assessment Year 2015-16.

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

“Whether the AO was legally correct in law to pass a premature order u/s.143(1) within 3 months and without having examined the facts of the case ?

Whether the AO and the CIT(A) were legally correct in law for not initiating any revenue proceeding before initiating the judicial proceedings ?

Whether the AO and the CIT(A) were legally correct in law in initiating judicial proceeding without having any reason and merely on the basis of change in opinion without additional ground, on the direction of the decision support system i.e. CASS and without the sine qua non application of own mind ?

Whether the AO and the CIT(A) were legally correct in law in issuing the revenue notice u/s.142(1) without having any authority under the Act as well as under the law.

Whether the so succeed AO was legally correct in law in mechanically accepting the illegal case from the preceding incumbent of the office ?

Whether the so succeeded AO and the CITA) were legally correct in law in not conducting proper inquiry into the matter ?

Whether the AO was legally correct in law in issuing the illegal show cause notice without having any authority under the Act as well as under the law ?

Whether the AO and the CIT(A) were legally correct in law and in facts in making the addition of Rs.16,56,000/- without exercising the relevant proviso and by illegally subjecting exempt capital receipts u/s.56(2)(vii) to charge of tax merely on the basis of assumptions, presumption, conjecture and surmises ?

On the facts of this case and in law, all the notices as well as the assessment proceeding is invalid and illegal and accordingly the assessment is void ab initio and is liable to be set aside as well as total addition amounting to Rs.1,56,000/- to the returned income is liable to be deleted ?

Whether the AO was legally empowered to give direction to the revenue officer to initiate the penalty proceedings u/s.274 rws 271(1)(c) of the Act on the disputed re-assessed income ?

Whether the AO was legally empowered to give direction to the revenue officer to charge the interest on the disputed re-assessed income of the Act ?

On the facts of this case and in law, there is the violation of various articles of the Constitution i.e. 21, 19, 20, 13 & 14 of the Constitution of India.”

3. As per Form No.36, the statement of facts given by the assessee are as follows:-

“The Appellant being a resident individual earning income from employment and other sources i.e. interest income, had duly filed his Return of Income on 15.08.2015 therein disclosing a total income amounting to Rs.2,84,028 and had duly paid tax thereon amounting to Rs.1,445. As per second proviso to the subsection (1) of the section 143 the AO was accorded enough time to conduct inquiry proceeding and gather all necessary facts and documents relating to the income of the assessee i.e. upto 31.03.2017. The AO, after considering all the facts of the case as he considered fit, found no discrepancy with the furnished true total income and passed the order u/s.143(1) on 24.11.2015 i.e. within three months.

Thereafter, to the surprise of the Appellant, a notice u/s.143(2) of the act is issued on 28.07.2016 without conducting the necessary inquiry proceeding by the AO and without even disclosing any reason for initiating a judicial proceeding against the Appellant. Then the AO remained unresponsive to the case for over 6 months and on 20.02.2017 the AO issued illegal notice u/s. 142(1) to the Appellant and thereby illegally misusing his powers to call for information. Thereafter the incumbent of the office of ITO Ward 7(1)(5) was changed and the so succeeded officer mechanically accepted the false and cooked up case of the Appellant without giving an opportunity of being heard to the Appellant and accordingly issued illegal notice u/s. 142(1) r.w.s. 129 of the Act on 27/06/2017.

The AO illegally kept calling for information about the matters which were already accepted while passing order u/s.143(1) of the Act. The Appellant was being subjected to harassment and unjustifiable judicial proceeding for the same subject matter which was decreed on earlier and thus violating the Doctrine of Res Judicata.

Thereafter, the AO issued illegal show cause notice u/s.142(1) of the act to the Appellant and therein proposing to make illegal additions to the true total income of the Appellant without having any conclusive evidences on hand to substantiate his proposed illegal addition. The AO, with his soaring mala fide impulsion, also threatened the Appellant to levy penalty u/s..271(1)(b) if the Act and trying to build undue pressure on the Appellant and causing him extreme mental distress. The Appellant was victimised to the excruciating encounters with the department just for the cause of his suspicion arising on the verification of bank account only.

In para 3.5 of the assessment order the unscrupulous AO grossly denied the Appellant's contentions and no subjective denial was made against facts which were elaborately explained and submitted by the Appellant. The unscrupulous AO then made illegal addition of Rs.16,56,000 wide assessment order dated 08.12.2017 in complete disregard to the settled procedures and principles of the law as well as the Act.

Being aggrieved by the order, illegal notice and illegal proceeding by the AO the Appellant filed an appeal before the Commissioner of Income Tax (Appeals)-7, but in vain, the CIT(A)-7 upheld the illegal addition. In the appellate order passed by the CIT(A)-7 on 14.11.2018 many discrepancies are observed and are illustrated below:

In para 6 of the appellate order, the CIT(A)-7 has himself expressed that the Appellant had received gifts from close relatives but alleged that the Appellant had net received from such persons without having any adverse finding against the Appellant's claim. Both the AO and the CIT(A)-7 choreographed a flimsy case and on the basis of mere suspicion, conjecture and assumption made the addition.

In para 6 of the appellate order, the contention of the GT(A)-7 regarding the character of the depositor as to why he retained volumes of cash with him is untenable and ridiculous as he cannot interfere in the cash management of any person.

In para 6 of the appellate order, the CIT(A)-7 wrongly interpreted section 68 of the Act. The section says that only where the assessee offers no explanation or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer can make such credits assessable to tax. In this case the Appellant had given his best explanation elaborately about the source of the cash deposits, however both the AO as well as the CIT(A)-7 willfully rejected Appellant's explanation with their soaring mala fide impulsion in order to cause prejudice to the Appellant.

*The CIT(A)-7, with his mala fide impulsion, willfully misinterpreted the act and various judgements of respectable Judicial Courts of India and incorrectly relied on judgement on sec. 69 of the act, in complete ignorance of the fact that the addition was made u/s 68 of the act. The CIT(A)-7 miserably failed to understand the essence of various judgements he had stated in para 6.4 and 6.5 of the appellate order. In the case of **CIT v. P. MOHANAKALA (2007) 291 ITR 278**, the Hon'ble Supreme Court has given that the application of mind on the part of the AO is sine qua non for forming, an opinion. The CIT(A)-7 as well as the AO had willfully not applied their own mind for forming opinion as to whether the explanation provided by the Appellant was satisfactory, true and unequivocal. But both of them prejudicially rejected the Appellant's explanation just to harass the Appellant.*

Being aggrieved by the illegal assessment order, illegal notices, illegal show cause notice, illegal proceeding by the AO and passing of an illegal appellate order by the CIT(A)-7, the appellant had preferred this appeal on the various grounds as set out in the Grounds of Appeal after reserving the right to add, alter, amend or delete any ground of appeal.”

4. The Ld. AR during the hearing filed revised grounds of appeal which are as under :-

Revised Grounds of Appeal

Assessment year: 2015-16

Appeal No. ITA/204/AHD/2019

- 1. Whether the taxman being a public servant is legally empowered to overrule the Constitution, its divine organs, legislature act established by law, and Oath taken by them at the time of joining the civil forces can derogate with jus gentium ?*

2. *Whether alleged public servants by impersonating themselves as a legal person have legally empowered them to have any prerogative legal right to defend their illegal act or misdeed and failed to save the fundamental, legal, and constitutional rights of the citizen following jus gentium at the cost of the public exchequer?*
3. *According to the settled proposition of the law nemo est supra lapas, whether the state authority can empower to retain ^.4,890 by overruling the order of the state legal person without having prior sanctioning from the jurisdictional legal person appointed by the state?*
4. *Whether an occult, cabbalistic and clandestine authority is legally empowered to give illegal direction to a taxman to initiate a trial for an occult, cabbalistic and clandestine unilateral lis?*
5. *Whether a non-jurisdictional taxman by overruling the power controlling and supervisory authority can impersonate himself as a legal person to initiating a unilateral trial for some occult, cabbalistic and clandestine lis ?*
6. *Else, whether the non-jurisdictional legal sanctioning taxman, can empower to accord and award sanction based upon occult, cabbalistic and clandestine Us without taking its legitimate cognizance while granting legal sanction to institute a trial to a non-jurisdictional legal person upon the appellant?*
7. *Whether the alleged synthetic legal person, can accelerate a unilateral occult, cabbalistic and clandestine trial by overruling the settled proposition of law Judex non-potwat esse testis in propria causa and Non refert quid notum sit judici si notum non sit in forma judicii and doctrine of estoppel for the respective documents and intimidate appellant to do some acts contrary to/us gentium by the act done at the color office?*
8. *Whether the alleged synthetic legal person can elevate another taxman amidst of alleged trial as his successive legal person to accelerate a successive occult, cabbalistic and clandestine trial?*
9. *Following the proposition of law Assignatus utitur jure auctoris, whether the alleged successive legal person is empowered to accelerate the alleged trial based upon occult, cabbalistic, and clandestine Us and under the invisible direction issued malice and threatening call to put the appellant under Zugzwang condition?*
10. *Contrary to the settled proposition of law Quando aliquid prohibeture, fieri, prohibeture ex director per obliquum and Nemo debet esse judex In propria causa, whether both the alleged synthetic legal persons are empowered to accelerate unilateral trial and unilateral call based upon occult, cabbalistic and clandestine lis ?*

11. *Contrary to the settled proposition of law Quando aliquid prohibetur, fieri, prohibetur ex directo et per obliquum and Nemo debet esse iudex in propria causa, whether the alleged synthetic legal persons are empowered to compel and call the various private, secret, and confidential data from persons not having part of occult, cabbalistic and clandestine lis?*
12. *Following the proposition of law Judex non-reddat plus quam quod petens ipse requirit and Judicium a non suo iudice datum nullius est momenti, whether the successive alleged legal person can pass a unilateral order i.e. Corpus delicti by adding a random hypothetical amount of Rs.16,56,000 based upon some elusive, false, and frivolous charges based upon scrap evidence to award a mesne profit or wrongful gain of Rs.5,56,367 in favor of occult and clandestine person?*
13. *Following the settled principle of law judex non-reddat plus quam quod petens ipse requirit, whether the alleged successive legal person can issue a demand call for the demand of Rs.5,56,367 by rejecting the right of the original claim of the appellant over Rs.4,529 like mesne profit/wrongful gain in favor of a clandestine and occult person without having any cause based upon an unconstitutional, non-jurisdictional, non-judicious, non-appealable, unipolar order.?*
14. *Following the settled principle of law judex non-reddat plus quam quod petens ipse requirit, whether a successive alleged legal person can institute unauthorized and unilateral criminal It's based upon an unconstitutional, non-jurisdictional, non-judicious, non-appealable order?*
15. *Following the settled principle of law Lex neminem cogit ad vana seu impossibilia, whether a successive alleged legal person can direct the appellant to file an appeal against unilateral unconstitutional, non-jurisdictional, non-judicious, non-appealable order based upon a unilateral trial and aforethought lis?*
16. *Following the proposition of law judex non potest esse testis in propria causa and iudicis est jus dicere, non dare, whether the alleged concurrent first appellate authority can accelerate unilateral appellate trial without confining his concurrent appellate jurisdiction based upon unconstitutional, non-jurisdictional, non-judicious, non-appealable order in favor of occult and clandestine person?*
17. *Following the proposition of law judex non potest esse testis in propria causa and iudicis est jus dicere, non dare, whether alleged appellate authority can accelerate unilateral appellate trial by arbitrarily giving a prerogative right to the alleged legal persons; an occult and clandestine person to remain absentee from the appellate trial without taking cognizable reasons on record?*

18. *Whether the alleged legal person and occult and clandestine person, have a prerogative right to remain absentee and evading the appellate trial without the leave of the adjudicating authority or to get an unscrupulous future gain based upon his alleged unilateral order and non-enforceable demand call in favor of occult and clandestine beneficiary at the cost and valuable time of the public exchequer and tax administrators?*
19. *Following the settled proposition of law *Judida officium suum excedenti non partetur*, whether the first appellate authority can pass an unconstitutional, non-jurisdictional, unilateral, and hypothetical appellate order embossed with a new hypothesis added to the original order passed by the alleged legal persons while dismissed the alleged non-jurisdictional appeal by illegally providing them a rescue passage for some future consequential and sequential benefits?*
20. *Contrary to the settled proposition of law *nemo est supra lapas*, whether the alleged legal person under an unscrupulous influence of occult and clandestine persons, has a prerogative legal right, to execute a pre-mature, hypothetical, and unilateral call for cryptic non-enforceable demand call at the cost of the life, liberty, dignity, and freedom of the appellant?*
21. *Following the settled principle of law *jure acquum est neminem cum alterius deterimento et injuria fieri tocupletioem* and *Ut pendent nihil innovetur*, whether the State authority can illegally retain Rs.3,54,115 by siphoning of right and claims of the appellant pending before it at the behest of the occult and clandestine persons without claiming and acquiring any judicial right amidst the alleged trial?*
22. *Whether alleged occult non-juridicus lis, trial, order, demand call like mesne profit/ wrongful gain; appellate trial and order, institute of criminal Us in favor of occult, clandestine and cabbalistic person for some ulterior motive and the pre-mature rights acquire and hold amidst of the judicial administration system contrary to the act is ultra vires and according to that all alleged orders, appellate order, trial, and consequence demand call, and penalty proceedings are ultra vires and liable to be quashed in limine?*
23. *Following the settled principle of law *qui approbot non reprobate*, whether the false, fake, vexatious, and elusive random amount of Rs.16,56,000 at the behest of notified scrapped documents or information added to the notified and accredited income by an ultra vires criminal act, derogating the constitution of India and established law is sustainable in law?*
24. *Following the settled principle of law *Bonus judex secundum aequum et bonum judicat, eteuitatem stricto juri praefert*, whether the alleged legal person directly or indirectly involved underneath *jus gentium*, are*

conjointly liable for civil and criminal for their ultra vires act following the civil and criminal code established by the law?

25. *Following the settled principle of law Bonus judex secundum aequum et bonum judicat, et euitatem stricto juri praefert and Quifadt per alium facit per se, whether the alleged state authorities are liable for department inquiry and legitimate consequential action against the alleged authorities following the rules and protocol established underneath the Central Civil Service (Conduct) Rule, 1964 in alignment with other rules and protocol?*
26. *Following the settled rule of law and equity Bonus judex secundum aequum et bonum judicat, et euitatem stricto juri praefert and Qui facit per alium facit perse, the alleged public servant and other associate persons are conjointly liable to compensate for cost of entire litigation to the appellant as well as whether the appellant is eligible to file a criminal defamation suit of atleast Rs. 1 Crore against the alleged public servants for their colorable acts or misdeeds forwarded from the public office towards his damages like putting a stigma of tax evader on his forehead, destroying his social and family fabrics, liberty, dignity, financial losses, litigation cost, mental trauma, creating restriction in his religious belief by executing ultra vires acts and misdeeds at the cost and time of state, or else, the alleged public servants are conjointly personal liable towards the appellant's damages?*
27. *Whether the alleged public servants are conjointly liable for stern disciplinary action within the relevant provision of the act and rules promulgated by State for better administration and adjudication or are they eligible to get a shield at the cost and time of public exchequer for perfidiously showing towards the constitution of India and its divine organs, showing non-allegiance towards the and due procedure; scandalize, disobey and degrade the Indian judicial administration system?"*

5. The Ld. AR submitted that there was a change of Assessing Officer after issuing notice under Section 142(1) read with Section 129 of the Income Tax Act, 1961. The Ld. AR submitted that this is illegal and not proper as the said Assessing Officer does not have any jurisdiction and the change in the incumbent was not informed to the assessee. Thus, the Ld. AR submitted that the assessment order is null and void. The Ld. AR further submitted on the addition that the unexplained cash income in respect of cash deposit was not part of bank account and without any reasons the same cannot be added to the income of the assessee. The Ld. AR submitted that all the evidences were produced before the authorities and, therefore, the Assessing Officer should have taken cognisance of the same.

6. The Ld. DR submitted that the change in the incumbent of the Assessing Officer is as per the law and the jurisdiction was properly envisaged with ITO Ward-7(1)(5). The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. The Ld. AR of the assessee has mostly harping on the issue that the Department should have informed the change in the Assessing Officer and because the same was not informed, the assessment is not justified. But after perusal of the assessment records which was produced during the hearing and the same was inspected by the Ld. AR Shri Kishore Goyal, CA on 19.04.2022 as recorded in the said assessment records. It can be seen that the assessee has filed return of income on 15.08.2015 with Assessing Officer, Ward 7(1)(5), Ahmedabad, PAN No. of the assessee is AGKPT6559M and the notice which was issued by the respective ITO was also that of Ward 7(1)(5). Merely change in the Assessing Officer of the similar rank cannot be stated as not having jurisdiction for conducting assessment proceedings as well as passing assessment order. Therefore, all the contentions taken by the assessee which were incorporated in the original grounds of appeal as well in the revised grounds of appeal as well as the submissions before us does not stand at all in the eyes of law. Hence, all the contentions of the Ld. AR are rejected.

8. As regards the merits of the case, there is no specific ground except ground no.12 of the revised grounds and ground nos. (Column Nos.7, 8 & 9) are placed/contested before us. From the perusal of the records it can be seen that the assessee has not given the details related to cash deposit of Rs.7,00,000/- and gift received from assessee's wife as well as failed to prove genuineness of the other cash gifts amounting to Rs.16,56,000/-. From the perusal of the records, the assessee has only given the bank details of the assessee and from the same the amount of Rs.16,56,000/- was not traced out from whom cash gifts were received. The alternate ground before the CIT(A) is that though the cash deposit is of Rs.37,67,500/- but net cash deposit is only Rs.9,40,950/- and the Assessing Officer ought to have applied peak credit theory for making addition. Thus, the CIT(A) has rightly observed that the assessee failed to establish the source of cash gift with any supporting evidences/documents before the Assessing Officer as well as before the CIT(A) and,

therefore, the addition made is just and proper. In fact, the documents produced during the assessment proceedings are also not reflecting the source of cash deposits whether the gifts are genuine or not. At the time of hearing, the Id. AR has also not produced any additional evidence to that extent and also not demonstrated from whom the gifts were received and whether the gifts are genuine or not. Therefore, on merits the assessee's case does not stand and, therefore, ground no.nil to the extent of merits in Column Nos.7, 8 & 9 stand dismissed. As regards to ground no.12 and 13 in the revised grounds related to merits are also dismissed. Other grounds mentioned in original Form No.36 and in the revised grounds both are alleging the authorities in personal capacity which is uncalled act of the professional who is guiding his respective client i.e. assessee. Despite giving several opportunities to the Ld. AR, the Ld. AR was adamant to concise the grounds of appeal on the jurisdiction point as well as on merit point. The observation made hereinabove related to the jurisdiction point and merits should be taken into account as entirely deciding the appeal on merit as well as law. Appeal of the assessee is dismissed.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 25th day of November, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 25th day of November, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*