

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1743/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2010-2011

Shri Tehmul B. Sethana, 304, Aakansha Building, Navrangpura, Ahmedabad-380009. PAN: AMDPS6538G	Vs.	D.C.I.T. Central Circle-2(1) Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Mahesh Chhajed, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **29/09/2022**
घोषणा की तारीख /**Date of Pronouncement**: **07/12/2022**

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 (Appeals)-12, Ahmedabad dated 30/09/2019 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 2010-2011.

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

1. *The order passed by the Ld.CIT(A) is against the law, equity and in violation of natural justice.*
2. *The re-opening of assessment by the Ld.AO is bad and illegal as it is based on borrowed satisfaction and on incorrect facts.*
3. *The Ld.CIT(A) has erred in law and on facts in upholding validity of proceedings in absence of valid sanction U/s151 of the Act by the Pr.CIT.*
4. *The Ld.CIT(A) has erred in law and on facts in upholding addition of Rs.47,40,000/- for withdrawal of cash from bank account.*
5. *the appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

3. The assessee in ground No. 1 to 3 has challenged the validity of the assessment framed under section 147 read with section 143(3) of the Act on the reasoning that there was no valid approval obtained from the JCIT under the provisions of section 151 of the Act.

4. The facts in brief are that the assessee in the present case is an individual and engaged in the profession of chartered accountancy. The learned AR before us filed a paper book running pages from 1 to 101 and contended that the AO has recorded the reasons for initiating the proceedings under section 147 of the Act dated 30th September 2017 whereas the approval was obtained from the Id. JCIT under the provisions of section 151 of the Act dated 28 September 2017. As per the learned AR the approval was obtained from the learned JCIT by the AO without recording the reason to believe for initiating the proceedings under section 147 of the Act. As such, the learned JCIT has accorded the approval in mechanical matter without verifying the reasons recorded for the escapement of income. Thus it was prayed by the learned AR that the assessment is invalid in the eyes of law and therefore the same should be quashed.

5. On the other hand, the learned DR could not controvert the argument of the learned AR for the assessee but submitted that there is a possibility of typographical

error in writing the date by the learned JCIT while granting the approval under the provisions of section 151 of the Act.

6. We have heard the rival contentions of both the parties and perused the materials available on record. It is mandatory to obtain the approval under the provisions of section 151 of the Act from the JCIT for initiating the proceedings under section 147 of the Act which will commence only after recording the reason to believe for the escapement of income. For initiating proceeding under section 147, the AO based on the fresh tangible material available before him requires to record the reasons to believe that income has escaped assessment. Thereafter, the AO before issuing notice under section 148 of the Act for initiation of reopening of the assessment is required to take approval from the higher authority being JCIT/CIT under section 151 of the Act. The learned JCIT/CIT is expected to verify the reason recorded and material available before granting the approval whether such reason recorded is fit for reopening or not. However in the case on hand, we note that the reasons for initiating the proceedings under section 147 of the Act were recorded after obtaining the approval from the JCIT. In other words, the approval from the JCIT was obtained dated 28 September 2017 whereas the reasons were recorded on 30 September 2017. Thus, it becomes evident that the approval has been granted by the Id. JCIT without verifying the reasons recorded by the AO for initiating the proceedings under section 147 of the Act which is contrary to the provisions of law. Hence, we hold that the notice under section 148 of the Act was issued without having valid approval and jurisdiction. Therefore the assessment framed under section 147 r.w.s. 143(3) of the Act in the present facts is not sustainable. Therefore we quashed the same. Hence, the assessee succeeds on the technical ground raised by him.

6.1 As the assessee succeeds on the technical ground raised by him, we do not find any reason to give independent finding on the grounds raised on merit by him

in the memo of appeal. As such, the grounds of appeal raised on merit by the assessee becomes infructuous and therefore we dismiss the same.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 07/12/2022 at Ahmedabad.

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

Ahmedabad; Dated **(True Copy)**
07/12/2022
Manish