

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.154/AHD/2020
निर्धारणवर्ष/Asstt. Year: 2006-07

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| Seema Anilkumar Modani, Bungalow No. 4, Vrindavan Bungalows, 2, Opp. Madhuvan Farm, Thaltej-Shilaj Road, Ahmedabad-390059 PAN: ACIPM0760H | Vs. | Income Tax Officer, Ward-2(6), Vadodara |
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| (Applicant) | | (Respondent) |
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| Assessee by : | Shri Anil Kshatriya, A.R & Shri Alay Anil Kshatriya, A.R. |
| Revenue by : | Shri Rakesh Jha, Sr. D.R |

सुनवाईकीतारीख/**Date of Hearing** : **28/11/2022**
घोषणाकीतारीख/**Date of Pronouncement**: **21/12/2022**

आदेश/O R D E R

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)-5, Vadodara, dated 19/11/2019 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 2006-07.

2. The assessee has raised following grounds of appeal:

"1. The Ld. CIT(A)-5, Vadodara has erred in law and in facts in confirming the action of the Ld. A.O. in the issue of notice of reassessment u/s. 148 on 02.07.2010 ignoring the fact that the assessment for the year was completed u/s. 143(3) dated 29.12.2008

wherein the issue relating to the receipt of loan was duly examined. The reassessment made being in disregard of facts and in law is prayed to be set aside.

2. The Ld. CIT(A)-5, Vadodara has erred in law and in facts confirming the addition of an amount of Rs. 1,59,58,825/- being the amount of loan received from Shri Mahendra Dhurlabhji Desai holding that the genuineness, identity and creditworthiness of the lender is not established. The Ld. CIT(A) ought to have deleted the addition.

3. Your appellant craves liberty to add, alter, delete or substitute any of the grounds of appeal herein above contained."

3. The assessee has raised the additional ground of appeal:

"On the peculiar facts and circumstances of the case and in law, the Ld. Assessing Officer has erred in assuming jurisdiction without following the law laid down by the Hon'ble Courts and thereby further erred in passing the re-assessment order u/s.143(3) r.w.s. 147 of the I.T Act, 1961 dated 30.12.2011 which is bad in law, illegal and invalid."

4. The issue raised by the assessee in additional ground of appeal is that re-assessment order under Section 147 r.w.s. 143(3) of the Act was passed without having valid jurisdiction and without following the law laid down by the Hon'ble Courts.

5. The facts in brief are that the assessee is an individual and engaged in the business of manufacturing of quartz powder and also dealing into trading in shares & securities. The assessee for the year under consideration furnished return along with audit report declaring income at NIL. The return of the assessee was accepted in the assessment framed under Section 143(3) of the Act dated 29-12-2008. Subsequently, the notice under section 148 of the Act dated 02-07-2010 was issued for re-assessment for escapement of income on account of unexplained credit of Rs. 1,50,000/- equivalent to Rs. 1,59,58,825/- only.

6. The assessee vide letter dated 28-12-2011 objected the initiations of income escapement proceeding on reasoning that the issue of credit of impugned loan was verified in detail by the AO during the regular assessment proceeding under section 143(3) of the Act. After such detailed enquiry and verification, the AO accepted genuineness of impugned credit. Therefore, the reopening of assessment again to verify the same credit of loan will amount to review of own order which is not in the jurisdiction of the AO.

7. However, the AO without considering the objection of the AO framed the income escapement assessment under section 147 of the Act and assessed the income at Rs. 1,59,32,110/- only.

8. On appeal by the assessee, the Learned CIT(A) also upheld the validity of assessment under section 147 of the Act by observing as under:

"During regular assessment submitted copy of ledger accounts as Annexure-B. Copy of invoices in respect of capital work in progress made during the year as Annexure-C, copy of bank statement of the party as Annexure-A. Assessment order nowhere shows any satisfaction of the AO w.r.t. genuineness, identity and creditworthiness of the lender. Admittedly, reassessment was triggered after a fresh information from IRS, Singapore, was received by AO. Since the failure was on the appellant to disclose true and fair income in ITR, reassessment was very much valid in the eye of law. It can be very well observed that AR's submission nowhere disclosed the genuineness of transaction.

Moreover, AR must not hide behind hyper technical ground on reopening of assessment u/s 147 of the Act. Thus, challenging notice u/s 148 of the Act, is devoid of merits. Ground No.1 is dismissed."

9. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

10. The learned AR before us filed a paper book running from pages 1 to 320 and contended that the reopening of the assessment has been made under section 147 of the Act based on the facts which were available during the original assessment proceedings. Thus, the reopening of the case is based on the change of opinion which is not tenable in the eyes of law.

11. The learned AR further contended that the approval granted by the Ld. Additional CIT under section 151 of the Act is not proper and without application of mind. As per the learned AR the approval has been given by the Id. Additional CIT for general scrutiny assessment whereas the proceedings have been initiated under income escaping proceedings.

12. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. The powers of assessment-reassessment are conferred on the Assessing Officer by the provisions of section 147/148 of the Act. But such power is subject to the certain conditions laid down under section 147/148/149/151 of the Act. One of the very first condition is that before issuing notice under section 148 of the Act for assessment proceeding under section 147 of the Act, the AO must have to form reason to believe that income has escaped assessment. Further, the AO after recording reason to believe and before the issuing notice under section 148 of the Act is required to get approval under section 151 of the Act from PCIT/CIT/JCI as the case may be. At this juncture it is pertinent to refer the provision of section 151 of the Act as applicable for the time being which reads as under:

"151. (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 148³⁴ [by an Assessing Officer, who is below the rank of Assistant Commissioner³⁵ [or Deputy Commissioner], unless the³⁶ [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 Chief 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 of³⁶ [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the³⁶ [Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]"

14. We note that the AO has after recording reason to believe sent a letter in specified format before additional commissioner for sanction of reopening as per the provision of section 151 of the Act which was approved by the ACIT by noting "yes". However, on perusal of such approval request letter, we find that such request was with regard to general scrutiny under section 143(3) of the Act and not under the income escapement proceeding under section 147/148 of the Act. The relevant heading for approval letter reads as under:

"Form for recording the reasons for taking the case in general scrutiny U/s. 143(3) of the Act and for obtaining the approval of the Addl. Commissioner of Income tax, Baroda."

15. Further, the learned Additional commissioner of range-2 of Baroda approved by noting "yes" is also general scrutiny. The relevant part of noting against which approval given reads as under:

"Whether the Addl. CIT/ Jt. CIT is satisfied on the reasons recorded by the ITO / AC / DC that it is a fit case for taking for general scrutiny."

16. Thus, from the above it is envisaged that there was no approval under section 151 of the Act for issuance of notice under section 148 of the Act for income escapement assessment. Therefore, the notice issued under section 148 of the Act, without having proper approval of higher authority, is invalid notice and jurisdiction assumed by the AO for making assessment on the basis of such notice under section 147 of the Act is invalid. Thus the jurisdiction assumed by the AO is not tenable in the eyes of law.

17. Before parting it is also pertinent to highlight that if certain authority was vested with power to approve the initiation of proceeding against the assessee in certain circumstances, therefore he/she is expected to verify the detail after application of mind in order to reach to the conclusion that such detail and information is fit enough for initiating of reassessment proceeding. The Hon'ble Supreme Court in the case of *Anirudh SinhjiKaran Sinhji Jadeja v. State of Gujarat* AIR 1959 SC 2390 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether. In the given case what is inferred is this that the learned Additional commissioner noted "yes" on approval letter without any verification and application of mind.

18. In view of the above, we hold that the initiation of proceedings under section 147/148 of the Act are not valid in the eyes of law and liable to be

quashed. Accordingly, we quash the same. Hence, the technical grounds of appeal of the assessee are hereby allowed.

19. Since, we have quashed the assessment under section 147 r.w.s. 143(3) of the Act and allowed the appeal of the assessee on technical ground, we restrain ourselves from giving finding on merit of the case. As such, the issues on merit become infructuous. Therefore, the grounds of appeal of the assessee on merit are hereby dismissed as infructuous.

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

Order pronounced in the Court on 21/12/2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 21/12/2022

Tanmay, Sr. PS

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आदेशकीप्रतिलिपिगेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR,
ITAT,
6. गार्डफाईल / Guard file.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad