

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

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

**ITA Nos. 405 to 407/Rjt/2016  
Assessment Years: 2008-09 to 2010-11**

The Income Tax Officer, Ward-3(1)(1), Rajkot  (Appellant)	Vs	Shri Girishkumar Mohanlal Puruswani 245-Royal Complex, Dhebar Road, Rajkot  PAN: ADKPP3934F  (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.  
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 21-12-2022  
Date of pronouncement : 31-01-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

These three appeals are filed by the Revenue as against the three Appellate orders all dated 05.08.2016 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot arising out of the Re-assessment orders passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating

to the Assessment Years (A.Ys) 2008-09 to 2010-11. Since common disallowance/additions are involved and common grounds are raised by the Revenue, except the change in the figures of disallowances, thus all these three appeals are taken up for common disposal.

2. The brief facts of the case is that the assessee is an individual, engaged in Shroff business of discounting/issuing of negotiable instruments like drafts, cheques etc. under the name and style of M/s. Sanjay Enterprise. The assessee was earning commission of Rs. 50 per lakh for such transaction. The assessee has filed his Returns of Income for all the three assessment years, declaring income from Sanjay Enterprise whereas the Assessing Officer received information from ADIT (Inv)-1, Rajkot that the assessee had made high value of cash deposits and issued DD/Cheque in lieu of cash through his bank accounts to the extent of Rs. 10,73,29,000/- relating to the Assessment Year 2008-09. The above sum deposited by the assessee is required to be taxed as unexplained investment being not fully disclosed. Therefore the Assessing Officer was satisfied this is a fit case of an escaped income within the meaning of Section 147 of the Act and the assessee failed to disclose fully and truly all material facts necessary for the assessment as per explanation 2(b) of 147 of the Act. Hence issued a notice u/s. 148 of the Act.

2.2. In response, the assessee filed a letter to treat the original return filed u/s. 139(1) as the return in response to the notice issued u/s. 148 of the Act. The assessee raised various objections

as against the reopening of assessment namely the reopening is beyond 4 years period, then the Issuing Authority is Joint Commissioner and the Sanctioning Authority is Commissioner of Income Tax whereas in this case the notice was issued by Income Tax Officer. Therefore the entire reassessment itself is bad in law. The Assessing Officer has overruled the above objection filed by the assessee and satisfied with the explanation of cash deposits to the extent of Rs. 92,51,359/- and not satisfied with the balance cash deposit of Rs. 9,80,77,641/- is added as unexplained cash deposit of the assessee and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals). The Ld. CIT(A) after a very detailed hearing held that the validity of reopening of assessment was invalid in law. On merits, the cash deposit by the assessee for his Shroff business to be treated only as stock-in-trade of the assessee's business not as unexplained cash as determined by the A.O. Therefore the addition made by the Assessing Officer of Rs. 9,80,77,641/- is also deleted as follows:

*5.4. To summarize, the A.O. received the information about the appellant, a "Shroff of depositing cash in his bank accounts and thereafter issuing the cheque to its customers. The exact communication to A.O. is not there on record but it is apparent that after verification of 4-5 years, the ADIT had not indicated to the A.O. that these cash deposits or part thereof was "income" of the appellant who was well known as "Shroff, both to A.O. as well as the ADIT. It is also apparent that prior to issue of notice u/s.148, A.O. had not carried out any verification on his own after receiving the communication from the ADIT and that only on the basis of this communication the A.O. assumed that the cash deposits represent appellant's own income. The A.O. jumped to this conclusion forgetting the fact that ADIT, after prolonged verification of 4-5 years could not form any such (explicit) opinion.*

*5.5. There is definite distance between the stages of receiving the information and forming an opinion. This distance is bridged by making some primary verification and/or analyzing the information (received) and further information gathered (during such verification). Only after travelling this distance, A.O. forms an opinion about escapement of income. In present case, the available information (from*

ADIT) tells the A.O. that the appellant, a Shroff by trade; had deposited huge cash in his bank accounts. It is but natural to presume that such deposits were made in due course of business, i.e. after receiving the cash from customers for issuing them cheques/DD for earning commission income. The ADIT's report to A.O. was apparently not contradicting this primary and logical presumption. In such circumstances, A.O., without conducting any independent verification, was not justified in forming the reason to believe that cash deposits represent undisclosed income of the appellant. The decision of the Hon'ble ITAT 'C' Bench Ahmedabad in the case of ITO s. Dineshchand Shantilal Shah (HUF) (2013) 34 taxmann.com 187 (Ahmedabad Trib.) is very pertinent as it explains that cash deposits and subsequent issue of cheque to the customers being routine business activities of the assessee cannot be treated as loans/deposits/similar unexplained income in the hands of the assessee, unless A.O./ADIT had some evidences to suggest that these cash deposits represent assessee's own money and they came back to assessee in cash from customers/clients (who received cheques of equivalent amount). No such evidence of appellant deceiving cash back was available to the A.O. nor to the ADIT, nor have they make any such allegation. It is correct that huge cash deposits were bound to raise suspicion of the ADIT as well as the A.O. but appellant being in the peculiar business of "Shroff, it was incumbent upon them to conduct initial verification to find out whether cash so deposited were actually the money of the customers/clients or of the appellant and in case adverse inference could be drawn; A.O. was within his full right to issue notice u/s. 148. In fact ADIT had been conducting such verifications and he had full list of the persons who gave cash and to whom the cheques were issued, but even after conducting detailed verification exercise, he could not lay hand on a tangible material to show that the cash so deposited belonged to the appellant or flew back to the appellant.

5.6 As discussed, there was no doubt that the appellant is carrying the business of discounting the post dated cheques and issue of DD against the cash received from the customers. This business falls under the category of "Money Lending" as contemplated in Mumbai Money Lending Act 1946. This business can be run only by the persons who fulfil the conditions laid down in the said Act and hold licence issued under rule 9 of the relevant Act. The licence under the Act is issued for a calendar year and is to be renewed every year. The appellant was issued such licence under No. 135/2006 (Renew) for the period 01.01.2006 to 31.12.2006 which was subsequently renewed from time to time. Copies of such licences are forming part of the paper book. The ADIT, (Inv)-I, Rajkot vide summon u/s 131(1) dated 19.04.2010 has called for copy of Returns of Income for last three years, balance sheet, capital account and bank accounts. The appellant attended personally and furnished the various details as called for on 20.04.2010, 29.04.2010, and on 19.05.2010. All these are apparent from record forming part of the paper book. Thereafter, again notice was issued by ADIT on 05.07.2010. The appellant attended before ADIT and furnished details called for on 02.08.2010 and 05.08.2010. Thereafter the ADIT deputed his Inspector on 30.08.2010 for collecting certain details for the period 01.04.2006 to 30.08.2010. The same were also furnished. Again, after a gap of few months, the ADIT once again issued summon on 19.11.2010 calling copy of cash book for AY 2008-09 to 2010-11, details of cash deposited with the names of the persons bank account number etc. The same were furnished on 06.04.2011. Therefore, the entire information was furnished as and when called for. Thereafter, the ADIT after a gap of four years once again issued a summon u/s 131(1 A) on 01.08.2014 calling similar information for the above period. The same were furnished on 08.08.2014 which also included commission income account for the period 01.04.2007 to

31.03.2011. Again summons were issued on 25.02.2015 and 19.05.2015 wherein the details of persons who obtained cheques/DD from the appellant was called for. The appellant furnished the same. The ADIT had conducted the verification exercise in detail and there is nothing to suggest that any adverse inference was drawn by him and communicated to the A.O. The A.O., after receiving the communication from ADIT, would have been aware of the entire proceeding of the verification having been conducted by the ADIT. He would have also been aware that ADIT was not in possession of any adverse inference. It is apparent from the reasons recorded in the assessment order. In his wisdom, he decided to conduct further investigation for verification of such cash deposits and he issued notice u/s. 148 for such verification. Thus it is apparent, both from the explicit mentioning in the assessment order as well as from the course of events as detailed above that proceeding u/s. 147 was started to complete the verification of the transactions. But now it is established judicial pronouncement that proceeding u/s.147/148 cannot be resorted for verification of facts. Ld. AR had drawn my attention to the relevant decisions of Hon'ble Bombay High Court in the case of Nivi Trading Ltd. vs. UOI (2015) 375 ITR 308 (Bom) and Hon'ble Gujarat High CW in the case of J. V. Agarwal vs. ITO (2013) 257 CTR 112 (Gujarat) to consolidate his argument that desire to verify the cash deposits cannot be reason to reopen the assessment.

5.7 The provisions of Section 147 requires that the assessing officer should have reason to believe that income has escaped the assessment and then only, he can issue notice u/s. 148 of the Act. On careful consideration, I agree with the contention of the appellant that the intention to verify the genuineness of the transaction is not the belief of escapement as envisaged u/s. 147 of the Act. The A.O. has recorded reasons as to verify whether the transaction of cash deposits by appellant results into escapement of income or whether it represent income hitherto undisclosed. However the law requires that the A.O. should have a primary belief that such amount is the income escaped. This requirement is clearly absent in the reasons recorded. I am therefore inclined to accept the contention of the appellant that the mandate of Section 147 i.e. reason to believe that income has escaped is absent and therefore, the proceedings u/s. 147 are unsustainable in law. The situation in the appellant's case is covered by the Gujarat High Court judgment in case of Bakulbhai Ramanlal Patel (56 DTK 212) relied upon by the appellant. In this case, the A.O. recorded reasons that source of certain items required verification/investigation. On writ petition filed by the assessee, the Hon'ble Gujarat High Court held that the reassessment cannot be resorted to for verification as to whether any income has in fact escaped the assessment. The Hon'ble High Court also held that in such a case, the reasons recorded do not reflect the requisite belief that income has escaped the assessment and the basic requirement of Section 147 is not fulfilled and therefore, the proceedings u/s. 147 were quashed. In another judgment of Inductotherm India Pvt. Ltd. (356 ITR 481), the Hon'ble Gujarat High Court once again held that the power of reassessment cannot be exercised for the purpose of verification. The relevant observation of the Hon'ble High Court in this judgment is reproduced hereunder:

(Quote) "18. Reverting to the facts of the present case, we notice that in two out of four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he need to verify the claims. In the second ground, he had recorded that admissibility of the bad debts written off required to be verified. In the fourth ground also, he had recorded that admissibility of royalty claim was I required to be verified. We are in agreement with the contention of the counsel for I the petitioner that for mere verification of the claim, power for reopening of assessment could not

*be exercised. The Assessing Officer in guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment. " (Unquote) .*

5.8 The Ahmedabad IT AT has also taken the same view in case of Sonal Arpit Doshi (decision dated 21.10.2015 in ITA No. 366/Ahd/2015) and quashed the reassessment initiated with the identical reasons showing intention of verification in following words:

*(Quote) "4. From the above, it is evident that the Assessing Officer has simply reopened the assessment for the purpose of verification of the certain transactions. In our opinion, when the Revenue wanted to verify the correctness of certain transactions, the proper course is to issue the notice u/s 143(2) within time. If the Revenue failed to issue notice u/s 143(2), it cannot resort to section 148 for the purpose of verification of certain transactions. Notice u/s 148 can be issued only when the Assessing officer records his satisfaction with regard to escapement of income. In the reasons recorded, there is no mention of the escapement of income; therefore, in our opinion, reopening of assessment is not valid and the same is quashed and consequentially, the assessment order passed in pursuance to such notice is also quashed. " (Unquote)*

5.9 In following decisions, the reassessment was held to be invalid where reasons recorded stated that certain claim/transaction required verification. These decisions are also applicable to the case of the appellant in view of similarity of reasons recorded.

- > Gujarat High Court in case of Shankarlal Nagji & CO. - 322 ITR 90
- > Bombay High Court in case of Nivi Trading Ltd. - 375 ITR 308
- > Ahmedabad ITAT in case of Shakun Polymers Ltd. - decision dated 06.06.2016 in ITA No. 756/Ahd/2013
- > Mumbai ITAT decision in case of Jayesh P. Damani (HUF) & Others - decision dated 27.04.2012 in ITA No. 47-50/Mum/2012

5.10 The intention of verification only describes a suspicion prevailing in the mind of the A.O. that a particular claim/transaction may result in escapement of income if it is verified. However, under the provisions of Section 147, such suspicion is not capable of conferring jurisdiction upon the A.O. The Hon'ble Supreme Court in case of Lakhmani Mewal Das (103 ITR 437) and Indian Oil Corporation (159 ITR 956) has held that the 'reason to believe' is different from 'reason to suspect' and it is the former which is required for assuming valid jurisdiction u/s. 147. It is a trite law that mere a suspicion which requires further verification cannot be the basis for reopening.

5.11 It is also a settled position of law that validity of the reassessment should be judged only from the reasons as recorded by the A.O. and the reassessment cannot be justified on the basis of any other contention or material which does not form part of the reasons recorded. In this context, it will be relevant to refer to the Bombay High Court judgment in case of Hindustan Lever Ltd. (268 ITR 332) wherein the Hon'ble Court held as under:

*(Quote) "The reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for him to put his opinion on record in black and*

*white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestations of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. " (Unquote)*

5.12. In yet another judgment, the Hon'ble Bombay High Court in case of Prashant S. Joshi (324 ITR 154) held as under:

*(Quote) "Section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 163, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The first proviso to section 147 has no application to the facts of the instant case. The basic postulate, which underlines section 147, is the formation of the belief by the Assessing Officer that any income chargeable to tax has escaped assessment for any assessment year. The Assessing Officer must have reason to believe that such is the case before he proceeds to issue a notice under section 147. The reasons, which are recorded by the Assessing Officer for reopening an assessment, are the only /reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power, for it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well-settled that the question as to whether there was reason to believe, within the meaning of section 147 that income had escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that ensures against an arbitrary exercise of power under section 148. "*

5.13. Reason in the phrase "reason to believe" would mean cause or justification. At the stage of forming "reason to believe", there should be "cause" or "justification" in material available with the A.O. which could prompt a normal, reasonable person to form a belief that income had escaped assessment [Rajesh Jhaveri 291 ITR 500 (SC)]. In the present case, the material available is only instances of a "shroff depositing cash in his bank accounts before issuing cheque/DD to his customers/clients. Can a normal, reasonable person form a belief in these circumstances that this activity involves unaccounted income of the appellant which had escaped assessment? Definitely, more verification is required to find out further tangible material to form such belief. And this is why ADIT had conducted a prolonged investigation and that is why A.O. admits in the assessment order that verification was the prime reason for reopening the assessment. I fully agree with the Ld. AR that the notice issued u/s. 147 with the purpose of verifying the affairs further is legally invalid. Reliance is placed on the Hon'ble Jurisdictional High Court's decisions in the cases of Bakulbhai Ramanlal Patel vs. ITO 56 DTR 0212, Inductotherm (India) Pvt. Ltd. vs. DCIT 356 ITR 0481 and Shankerlal Nagji & Co. vs. ITO 322 ITR 0090. Reliance is also placed on

*decision of the Hon'ble ITAT, Ahmedabad in the case of ACIT vs. Shakun Polymers Ltd. in ITA No.756/Ahd/2013. I therefore rule that notice u/s. 147/148 is invalid and bad in law. Thus, Ground No.2 is allowed.*

3.1. On merits of the case, the Ld. CIT(A) deleted the additions as follows:

*6.4 The A.O. had observed that appellant had valid license as "Sahukar" only on 28/3/2011 and thus it had no relevance with current financial year. A.O. apparently had failed to see that this document was only "renew" of the earlier license. It had been pointed out by the Ld. AR that license was originally renewed vide No. 13 5/2006 which was renewed every year thereafter (page 25 & 26 of paper book). Thus fact that appellant is in the business of providing cheques after receiving cash as a License-owned Sahukar is not disputed though the A.O. had pointed out that he had been granted license for the activity of Sahukar only since 2011. The appellant had successfully doused this doubt by stating that the license was renewed way back in 2006 and every year thereafter it is renewed and thus there is unanimity that the appellant is in the business of providing cheques/DDs to its customers for a commission. There is no dispute that the appellant is involved in the business of providing cheques/DD to its customers on commission basis on receiving the corresponding amount in cheque. The amount so received (for issuance of cheque) during the relevant assessment year is Rs.11,79,80,000/-, list of such customers had made available to ADIT (Inv) as well as the Assessing Officer. These ' submissions were made in lieu of the investigation carried out in 2010 wherein enquiries had seemingly been made from the customers after obtaining list of such persons from the appellant. The A.O. had also agreed with the appellant's submission and had accepted the explanation in respect of Rs.43,01,152/- after stating that appellant had submitted PAN and postal address in respect of such deposits. Thereafter he had not accepted the appellant's explanation in respect of balance Rs.11,36,78,848/- because appellant failed to produce PAN or postal address of customers involved. In my opinion, appellant might have failed to fulfil KYC norms but it does not mean that at his entire turnover should be treated as undisclosed/unexplained income.*

*6.5 His business itself demands that customers will provide cash which will be converted into banking instruments for a fees by the appellant. The cash received from the customers will be deposited into his bank accounts by the appellant in order to achieve sufficient balance before issuing the cheque/DDs to the customers. This modus operandi had been accepted by all, the appellant, the DDIT (Inv) who investigated the case very thoroughly for a long time as well as by the A.O. Here the cash received by the appellant (to be deposited in the bank) amounts to turnover of the business of the appellant. I agree with Ld. AR that this sum which had been treated as stock-in-trade by the appellant is not available to be treated as an unexplained cash deposit. The amount of bank deposited is not remaining*

with the appellant nor is it ploughed back in his business for next business/trade cycle; it is going out of the business sphere of the appellant to the possession of the customers. This is not the case that appellant is bringing out his undisclosed (untaxed) money to be used in his business in the guise of loan capital. It cannot be expected from a businessman to bring out his undisclosed income from hiding to dish out the same to an outsider. In my opinion, there is no ground for the bank deposits to be treated as unexplained cash deposit. Cash deposited had gone out of the business apparatus of the appellant in the form of cheques issued to the customers in lieu of the commission/fees @ Rs.50/- per Lac only. In such circumstance, I am in full agreement with the Ld. AR that adding the entire amount of Rs.1 1,36,78,848/- as unexplained cash deposit in the hands of the appellant merely on account of non-maintenance of proper details like having PAN & Postal Address of the customers etc. is totally unjustified. In my opinion, once the appellant had established credence of his business activities as a "Shroff and when the entire list of persons to whom cheques were issued, the onus had shifted on the Assessing Officer to establish that such exercise of issuing cheques to customers was fake and bogus and appellant was receiving back the amount in cash. I had taken note of the case laws relied upon by the Ld. AR in respect of "Sahukar/Shroff Business. In the result, the addition of Rs. 11,36,78,848/- is not sustainable on merit also. Accordingly, Ground No.3 & 4 are also allowed.

4. Aggrieved against the Appellate order, the Revenue is in appeal before us raising the following Grounds of Appeal:

(i) The ld. CIT(A) has erred in law and facts in holding that the notice issued u/s 148 of the Act as invalid and bad in law on the incorrect observation that verification was the prime reason for re-opening of assessment, whereas it was not so, as seen from the notice u/s 148. Thus the order of the CIT(A) is perverse.

(ii) The ld. CIT(A) has erred in law and facts in holding that the notice issued u/s 148 of the Act as invalid and bad in law, even though the AO had sufficient information in his possession to form a well-reasoned belief.

(iii) Without prejudice to the above, the ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 11,36,78,848/- holding that the entire list of persons to whom cheques were issued is submitted, the onus shifts to the AO, while in para 6.5 of its order the CIT(A) himself observed that there was non maintenance of proper details like having PAN and postal address of the customer etc.

(iv) On the facts of the case and in law, the Ld. C.I.T.(A) ought to have upheld the assessment order of the A.O.

(v) It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.

5. Ld. CIT-DR Shri Shramdeep Sinha appearing for the Revenue vehemently argued that the Ld. CIT(A) erred in holding that the reassessment is bad in law on the incorrect observation that “verification” was the prime reason for reopening of assessment. On merits of the case also, the ld. CIT(A) erred in deleting the addition of Rs. 9,80,77,641/- holding that the entire list of persons to whom cheques were issued was submitted by the assessee. Thus the onus shifted to the A.O. while making addition. However the Ld. CIT(A) in Para 6.5 of his order observed that there was non maintenance of proper details like PAN, Postal Address of the Customers, etc. Thus pleaded that the entire reassessment order is correct in law and set aside the order passed by the Ld. CIT(A) and restore that of the Assessing Officer.

6. Per contra, Ld. A.R. Mr. Mehul Ranpura appearing for the Assessee submitted before us a Paper Book which contains various details namely the 148 notice and copy of the Licence issued to the assessee for Money Lending business under Mumbai Money Lending Act, 1946 in prescribed Form No. 3. The assessee also submitted before us summary of the notice issued by the Investigation Wing at different intervals from 19.04.2010 to 19.05.2015 is as follows:

<i>Notice Date</i>	<i>Hearing Date</i>	<i>Details Provided</i>
19.04.2010	20.04.2010	Balance sheet, Profit & Loss account, Capital A/c and Bank Details
20.04.2010	27.04.2010	Cash book and ledgers of some parties
27.04.2010		Month wise summary of income and address of the parties whose ledgers have been submitted
05.07.2010	06.07.2010	Cash book & Bank book and clarification of some specific transaction

06.07.2010	-	Clarification of some specific transaction
30.08.2010	-	Details of (i) Dinesh Sorthiya & (ii) Key West Developers
19.11.2010	25.11.2010	Total cash deposit in bank accounts
01.08.2014	08.08.2014	Commission ledger & other details
25.02.2015	27.02.2015	Other details
19.05.2015	27.05.2015	Other details

6.1. The Ld. A.R. further taken us through the reasons recorded by the Assessing Officer for reopening of assessment which is reproduced at page no. 6 of the CIT(A)'s order as follows:

*REASONS FOR RE-OPENING OF ASSESSMENT U/S 147 OF THE IT ACT*

*In this case, information is received from the ADIT (Inv)-I, Rajkot that the above named assessee has made high value transactions of cash deposits and issued DD/Cheque in lieu of cash through his bank accounts owned by him. During the FY 2007-08 the assessee has deposited cash of Rs.10,73,29,000/- in the accounts of M/s Sanjay Enterprise.*

*2. The assessee has filed his return of income for AY 2008-09 on 11.07.2008. The fund of Rs. 10,73,29,000/- introduced by the assessee is required to be taxed as unexplained investment being not fully disclosed. I am therefore satisfied that this is a fit case of an escaped income within the meaning of section 147 of the Act to collect revenue from the assessee.*

*3. In view of the above facts, I have reasons to believe that the income chargeable to tax has escaped assessment to the extent of Rs.10,73,29,000/- for the AY 2008-09. The above income chargeable to tax has escaped the assessment by reasons of the failure on the part of the above named assessee who failed to disclose fully and truly all material fact necessary for the assessment for the above AY within the meaning of explanation 2 (b) of the I.T. Act, 1961.*

*Issue Notice u/s 148 of the I. T. Act accordingly.*

6.2. For the above reasons, the Assessing Officer has recorded the assessee had made high value transaction of cash deposits and issued DD/Cheques in lieu of cash through his bank accounts. Thus the Assessing Officer himself well known that the cash

deposited in the bank accounts are transformed into DD/Cheques. Hence the same cannot be treated as the unexplained income of the assessee. The Ld. CIT(A) after considering the Money Lenders Licence issued by the Registering Authorities from time to time accepted cash deposits as the business transactions/stock in trade and deleted the additions. Therefore the same does not require any interference and Revenue appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. As Seen from the detailed appellate order passed by the Ld. CIT(A), the mandate of Section 147 namely 'reason to believe' that income has escaped assessment is absent in the reasons recorded by the Assessing Officer namely "high value cash deposited and issued cash/cheque in lieu of cash in his bank account". Therefore the proceedings initiated by the Assessing Officer by issuing 148 notice is unsustainable in law. We have no hesitation in confirming the detailed order passed by the ld. CIT(A) which is already reproduced at Para 3 of this order. Therefore we concur with CIT(A) that the notice issued u/s. 148 is invalid and bad in law.

7.1. Similarly on merits of the case also, the Revenue could not able to establish it is an unexplained cash deposited by the assessee, inspite of enquiries made by Investigation Wing for more than 5 years. Similarly the Assessing Officer failed to establish that the issuing of cheques to customers was fake or bogus and the assessee was receiving back the amount in cash. Thus the

Assessing Officer failed to prove that the assessee is not in the business of “Sahukar/Shroff” as well as the cash deposited in the bank account neither remains with the assessee nor is it ploughed back in his business or in any kind of assets.

7.2. On identical issue of Shroff business, the Co-ordinate Bench of this Tribunal in the case of Anirudh J. Solanki in ITA No. 454/Rjt/2018 held as follows:

*“6.2. .... The Co-ordinate Bench of the Tribunal dated 04.02.2022 in ITA No. 193/Rjt/2016 on identical facts and dismissed the revenue’s appeal as follows:*

*6. We have gone through the relevant records and impugned order. The question before us is whether cash depositing in aggregate amount of Rs.5,88,43,806/- made in his A/c. No.015305002632 belongs to the Ceramic Industries/Tiles Manufacturing Companies of Morbi who are the clients of Shaileshbhai Marvania or not. In this case, assessee is working as a shroff and as per CIT(A) it is not a disputed fact. The shroff acts as a channel between two parties. It is apparent from the bank account in question that the cash were deposited and withdrawn from time to time. During the proceedings, the assessee recorded his statement and categorically explained the nature of transaction that he is getting a commission at Rs.0.25 paise on transaction of Rs. one lakh. In our considered opinion, in such a case, all deposits in the bank account cannot be treated as income of the assessee. During the assessment proceedings, the learned AO came to know that assessee is working as shroff which means commission agent. After going through the bank statement, it was revealed that cash deposited and withdrawals were made regularly during the year under consideration. We do not find any ambiguity in the order passed by the learned CIT(A) and he has rightly directed the learned AO to compute the commission income @ 0.25 paise per lakh deposited in the bank account.*

*6.3. Further the Ld. Counsel drawn our attention to the Jurisdictional High Court Judgment in the case of Shree Sidhnath Enterprise vs. ACIT reported in [2016] 71 taxmann.com 55 wherein Hon’ble High Court held as follows:*

*14. It may be noted that in the affidavit-in-reply filed by the respondent, it is the case of the respondent that the petitioner is engaged in the business of cheque discounting and shroff. The firm charges commission for cheque discounting facility provided to its*

customers. The firm receives cash from the beneficiary and gives cheque in lieu thereof. The cheque is drawn in favour of the beneficiary. For arranging this transaction, the firm charges commission. Reference has been made in the reply to instances where the petitioner has received cash from parties and has issued cheques in lieu thereof which were deposited by such parties in its account and the cheques were cleared at Rajkot. Based on this, the Assessing Officer had stated that she had reason to believe that income chargeable to tax has escaped assessment on account of the failure on the part of the petitioner to disclose fully and truly all material facts. Thus, while it is the case of the respondent that it is the business of the petitioner to accept cash and issue cheques in lieu thereof, it is also the case of the respondent on the basis of the instances cited in the affidavit, that the cash deposits received by the petitioner are in the nature of undisclosed income, despite it being the specific case of the respondent that the petitioner had issued cheques in lieu of cash received by it which had been encashed by the concerned party by depositing the same in its bank account. It may be noted that it is not the case of the respondent that the beneficiary after encashing such amount had returned the same to the petitioner nor has any material been unearthed in this regard. Insofar as the petitioner is considered, as stated in the affidavit-in-reply, it is its business to receive cash and issue cheques in lieu thereof for which it charges commission. Under the circumstances, in the absence of any material to show that the cash in respect of which the cheque had been issued travelled back to the petitioner, one fails to understand as to how such amount may be said to be the undisclosed income of the petitioner. Under the circumstances, on the facts as recorded in the reasons as well as in the affidavit-in-reply, in the opinion of this court, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment.

6.4. The Ld. Counsel further drawn our attention to the decision of the Co-ordinate Bench of this Tribunal in the case of Sidhnath Enterprise in ITA No. 374/Rjt/2017 dated 29.06.2022 wherein held as follows:

7. We have gone through the order of the ld. CIT(A) and find no infirmity in the same. The ld. CIT(A) has deleted the addition on account of cash deposits of Rs. 224.53,23,993/-. In the back account of the assessee. Noting that identical issue had come up before the Hon'ble Gujarat High Court in the case of the assessee itself in a writ petition filed by the assessee against reopening of the case for A.Y. 2008-09 and the Hon'ble High Court had noted the fact that the assessee being in the business of Shroff, the cash deposits related to its business and did not represent any unaccounted income of the assessee. Ld. CIT(A), we find also took note of the fact that reopening resorted by the A.O. for the impugned year also subsequent to passing of the assessment order was

*dropped by him taking note of the decision of the Hon'ble Gujarat High Court.*

*8. Moreover even Assessment Year 2006-07, the ITAT found no merit in the reopening resorted to in that year also for an identical reason following the decision of the Hon'ble Gujarat High Court in the case of the assessee. Therefore, it is clear that the issue of cash deposits in the bank account of the assessee has been examined exhaustively at various levels and no merit has been found in the contention of the revenue that it represented by any undisclosed income of the assessee. Noting the fact that the assessee into business of Shroff and earned only commission on the mandatory transactions carried out by it, the cash deposits representing money belonging to his customers.*

*9. In view of the above, we see no reason to interfere in the order of the Ld. CIT(A) deleting the addition made of cash deposits amounting to Rs. 224.53,23,993/-. The grounds of the appeal raised by the revenue is dismissed.*

*8. We have given our thoughtful consideration and perused the materials available on record. It is seen from the Co-ordinate Bench Judgment in the case of Samir Kamruddin Makhani, the Co-ordinate Bench held that even though the assessee is doing the activity of Shroff without obtaining any license from Competent Authority but what is mandated under the provisions of the Income Tax Act is to tax income of the assessee, whether it was from legal or illegal source. Therefore the principles for determining the income will remain the same even the source of income is illegal in nature as held by the Hon'ble High Court of Madras in the case of CIT vs. K. Thangamani. Thus the Co-ordinate Bench held that after considering the facts in totality it was held that the assessee was acting as money transfer agent on behalf of the parties engaged in ceramic manufactures. Accordingly allowed the assessee's appeal and dismissed the Revenue's appeal.*

*8.1. It is further seen in assessee own case in ITA No. 193/Rjt/2016 relating to the Assessment Year 2006-07, the Co-ordinate Bench of this Tribunal dismissed the Revenue appeal by holding "during the assessment proceedings, the assessee recorded his statement and categorically explained the nature of transaction that he is getting commission at Rs. 0.25 paise on transaction of Rs. 1 lakh. Therefore the cash deposit in the bank account cannot be treated as the income of the assessee. It was further observed that cash deposits and withdrawals were made regularly during the year under consideration. Therefore the Co-ordinate Bench of this Tribunal held that no ambiguity in the order passed by the Ld. CIT(A) and he has rightly directed the Assessing Officer to compute the commission income at 0.25 per lakh deposited in the bank account of the assessee.*

8.2. It is appropriate to follow the ruling of the Jurisdictional High Court in the case of Shree Sidhnath Enterprise (cited supra), it is the business to receive cash and issue cheques in lieu thereof for which the assessee charges commission amount. In the absence of any material to show that the cash in respect of which the cheque had been issued travelled back to the assessee, one fails to understand as to how such amount may be said to be the undisclosed income of the assessee and the Assessing Officer could not have charged the same as escaped assessment under the provisions of Income Tax Act.

7.3. Thus the grounds raised by the Revenue are devoid of merits and the same is hereby rejected.

8. In the result, the appeal filed by the Revenue is hereby dismissed.

**ITA Nos. 406 & 407/RJT/2016 (for Assessment Years 2009-10 & 2010-11)**

9. Since identical issues involved in the above appeals which has already been dealt by us in ITA No. 405/RJT/2016 for the Assessment Year 2008-09 and in the absence of any changed circumstances, the ratio of the same judgment shall apply mutatis mutandis. Hence these two appeals filed by the Revenue are hereby dismissed.

Order pronounced in the open court on 31-01-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 31/01/2023**

**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,  
राजकोट