

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

(through web-based video conferencing platform)

ITA No. 55/Rjt/2022

निर्धारणवर्ष/Assessment Year: 2011-12

Rajkot Trading Corporation, 13, Kailashpati Society, Dhebar Road (South), Rajkot -360002 PAN : AACFR 5966 L	Vs.	The Income-Tax Officer, Ward 3(1)(2), Rajkot
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri D.M. Rindani, AR
Revenue by :		Shri Ashish Kumar Pandey, Sr. DR

सुनवाई की तारीख/Date of Hearing : 20.09.2023
घोषणा की तारीख /Date of Pronouncement: 03.10.2023

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 15.12.2021 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2011-12.

2. Ground No.1 raised by the assessee challenges the validity of assessment framed in the present case under Section 147 of the Act. The said ground reads as under:-

"1. The ITO, Ward-3(1)(2), Rajkot erred in issuing notice u/s 148 of the Act in the light of reasons recorded and thus assessment framed u/s 143(3) of the Act is bad in law."

3. The contention of the Id. Counsel for the assessee before us was that the belief of escapement of income of the assessee was not that of the Assessing Officer but was a borrowed belief of the DCIT, Central Circle-1, Rajkot on the basis of whose information, to the effect that the assessee had taken accommodation entries during the year, the AO had formed belief of escapement of income of the assessee. His contention was that the Assessing Officer, without verifying the information and merely on the basis of the information supplied to him, formed a belief of escapement of income. That this borrowed belief was not sufficient for the Assessing Officer to assume jurisdiction to reopen the case of the assessee and frame assessment under Section 147 of the Act. In this regard, he pointed out that there were various decisions of the Hon'ble Courts, including the jurisdictional High Court, holding that for valid reopening of the assessment, the belief of escapement of income has to be that of the Assessing Officer and it cannot be based on borrowed belief.

4. Our attention was drawn to the reasons for reopening placed before us at page nos. 1 & 2 of the paper-book, which reads as under:-

"REASONS FOR REOPENING

1	<i>Name & address of the assessee</i>	<i>RAJKOT TRADING CORPORATION, 13, KAILASHPATI SOCIETY, RAJKOT 3600022</i>
2	<i>PAN</i>	<i>AACFR5966L</i>
3	<i>Status</i>	<i>FIRM</i>
4	<i>District/Circle/Range</i>	<i>ITO, Ward 3(1)(2), Rajkot</i>
5	<i>AY</i>	<i>2011-12</i>

1. *The assessee is engaged in the trading business. He has filed his return of income vide Ack. No.291237661250911 on 25-09-2011 declaring therein the*

total income at Rs. 3,67,849/. The same was processed u/s 143(1) without any modification.

2. This office was in receipt of the information from O/o the Dy. CIT, Central Circle -1, Rajkot vide letter No. DCIT/CCI/RJT/Angadiya/National Shroff/17-18 dated: 08.02.2018 that search action u/s 132 of the Act on 19.09.2014 was carried at the premises of M/s National shroff & Co who is engaged in the business of shroff/angadiya. In the course of search proceedings it is gathered that during the year the assessee has obtained cheque/DD in lieu of cash from M/s. National Shroff. The details of transactions made by the assessee with M/s. National shroff are as under:

S. No.	Nature of transaction	Value (in Rs.)
1	Cheque /DD issue in his favour	20,75,100

On perusal of the ROI it is seen that the assessee has shown gross sales worth Rs. 63,15,742/- during the year.

3. Looking to the amount of Cheque/DD's obtained by the assessee in lieu of cash, it can be derived that the assessee has understated the sales in his return of income filed In nutshell, there is no full & true disclosure of business receipt of the assessee.

4. In view of the above facts, I have reason to believe that there is escapement of income to the extent of Rs. 20,75,100/-.

5. The income chargeable to escaped assessment by reason of failure on the part of above named sore who failed to disclose fully and truly all material fact necessary for the above assessment year within the meaning.

6. In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded in Para 2, 3 & 4 above. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment has stipulated u/s 2(40) of the act was made and the ROI only processed u/s 143(1) of the Act.

In view of the above facts, this is a fit case for issue of notice u/s 148 of the IT Act, 1961. Necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax, Rajkot-3, Rajkot as per the provisions of section 151 of the Act."

5. Referring to the above reasons he pointed out that the Assessing Officer had received information from the DCIT, Central Circle-1, Rajkot that M/s. National Shroff & Co. had entered into transactions with the assessee giving him cheque/DD of Rs.20,75,100/- during the year and this National Shroff & Co. was found to be engaged in the business of Shroff/angadiya which was revealed during search action conducted on him under Section 132 of the Act. That, based on this information, the Assessing Officer formed a belief that the amounts received from the National Shroff & Co. represented unaccounted sales of the assessee and accordingly he recorded his reasons for reopening the case of the assessee.

6. The Id. Counsel for the assessee pointed out that nowhere in the reason it comes out that the Assessing Officer had attempted verifying the information received by him either from the records of the assessee or in any other manner. There is nothing, he pointed out, recorded in the reasons showing that the Assessing Officer in any way tried to verify whether the books of the assessee actually revealed receipt of this amount from M/s. National Shroff & Co. and in what manner - as loan or any other form of credit. To substantiate his argument that the Assessing Officer carried out no investigation to verify this information prior to recording the reasons for formation of belief of escapement of income, he drew our attention to paragraph no.4 of the assessment order pointing out there from that the verification exercise relating to this information was carried out by the Assessing Officer only post recording of the reasons by him. He pointed out that while the reasons were recorded on 23.03.2018, as noted in paragraph no.1 of the assessment order, the Assessing Officer had issued notice to M/s. National Shroff & Co. calling for information regarding the details of

payment made to the assessee under Section 133(6) of the Act only on 25.09.2018, i.e. six months after recording of the reasons by the Assessing Officer for reopening the case of the assessee and it was only on 28.09.2018 that he had received information from the proprietor of M/s. National Shroff & Co. that it had given 46 payments to the assessee on various dates by way of cheque or draft, amounting in all to Rs.26,71,300/-.

7. Our attention was drawn to the contents of paragraph no.4 of the assessment order as under:-

"4. As mentioned above the Department has information from Dy.CIT Central Circle-1, Rajkot vide letter No.DCIT/CC1/Rjt/Angadia/National Shroff/17-18 dated 08.02.2018 that search action u/s 132 of the Income tax Act 1961 on 19.09.2014 was carried out the premises of M/s. National Shroff & Co engaged in the business of shroff/angadiya. In the search proceedings it was noted that during the year the assessee firm has obtained cheques/DD in lieu of cash amounting to Rs. 20,75,100/- from M/s. National Shroff. Accordingly notice calling for information u/s 133(6) was issued to Shri Anirudhsinh J Solanki, Proprietor of National Shroff & Co., on 25.09.2018 and the information was furnished as called for vide letter dt. 28.09.2018 from Shri. Anirudhsinj J Solanki. On verification of the information it was found on various dates assessee firm has obtained cheques/DD in lieu of cash amounting to Rs.26,71,300/- from National Shroff which is tabularize below. Copy of this information is provided to the AR of the assessee Shri I.K. Desai vide note sheet entry dated 05.12.2018.

Sr. No.	Date of transaction	Amount
1	12.06.2010	100000
2	02.08.2010	98000
3	03.08.2010	90000
4	09.08.2010	47000
5	09.08.2010	45000
6	14.08.2010	49000
7	18.08.2010	49000
8	26.08.2010	49000
9	30.08.2010	49000
10	16.09.2010	135000
11	27.09.2010	45000

12	28.09.2010	48000
13	23.10.2010	48000
14	25.10.2010	49000
15	27.10.2010	25000
16	27.10.2010	25000
17	03.11.2010	140000
18	08.11.2010	49000
19	10.11.2010	49000
20	23.11.2010	213000
21	27.11.2010	40000
22	02.12.2010	40000
23	09.12.2012	45000
24	09.12.2012	40000
25	09.12.2012	21000
26	13.12.2010	65000
27	14.12.2010	40000
28	16.12.2010	45000
29	21.12.2010	40000
30	22.12.2010	99000
31	24.12.2010	45000
32	31.12.2010	35000
33	01.01.2011	91800
34	04.01.2011	144000
35	05.01.2011	80000
36	15.01.2011	49000
37	17.01.2011	45000
38	18.01.2011	40000
39	27.01.2011	49000
40	28.01.2011	40000
41	04.02.2011	80000
42	05.02.2011	45000
43	08.02.2011	30000
44	03.03.2011	49000
45	03.03.2011	20000
46	10.03.2011	86500
	<i>Total</i>	26,71,300/-

Learned Counsel for the assessee contended that it is evident from the same that as on the date of recording of the satisfaction of belief of escapement of income, i.e. on 23.03.2018, the Assessing Officer had only the

bare information of M/s. National Shroff & Co. having given the assessee the amounts by cheque/draft, totaling in all to Rs.26,71,300/-. That he did not even have the details of these amounts received by the assessee from M/s. National Shroff & Co., which was obtained by him later, i.e. after six months in September, 2018, and even thereafter the Assessing Officer had not tried to verify this information from the records of the assessee or by conducting any inquiry from the assessee as to whether or not any amounts had been received from M/s. National Shroff & Co. and if so, in what manner.

8. Learned Counsel for the assessee contended that it is amply clear from the above that the belief of the Assessing Officer of assessee's income having escaped assessment was a borrowed belief and, therefore, the jurisdiction assumed to frame assessment under Section 147 of the Act was not valid.

9. Ld. DR, though vehemently argued that the Assessing Officer had assumed valid jurisdiction under Section 147 of the Act, but he was unable to controvert the facts pointed out by the learned Counsel for the assessee from the assessment order itself as above that the details of the information with the Assessing Officer were obtained post recording of the reasons and even after that no exercise had been conducted by the Assessing Officer to verify the said information from the records or books of assessee or from the assessee in any manner so as to form his own belief of escapement of income.

10. In view of the above facts brought to our notice, it is a fact emanating from records before us that as on the date of recording of reasons by the Assessing Officer of the income of the assessee having escaped assessment, the only information with the Assessing Officer was that obtained from the

DCIT, Central Circle-1, Rajkot, that the assessee had obtained accommodation entry from an alleged angadiya/Shroff M/s. National Shroff & Co., amounting in all to Rs.20,75,100/-. That except for this, there was no other information with the Assessing Officer and based on this information, he formed a belief that this amount represented unaccounted sales of the assessee and income to this extent had been escaped assessment. It has been demonstrated before us that even the details of the amount received by the assessee from M/s. National Shroff & Co. was obtained by the Assessing Officer post the recording of the reasons from M/s. National Shroff & Co. and even after obtaining the same, the Assessing Officer had made no attempt to verify whether these amounts had actually been received by the assessee and in what manner.

11. In view of the same, we completely agree with the Id. Counsel for the assessee that the Assessing Officer's belief of escapement of income was not his own belief but a borrowed belief. The Assessing Officer, except for the information in his possession that certain amounts had been received by way of accommodation entry from M/s. National Shroff & Co., was not even aware at the time of recording /forming his belief of escapement of income, whether the said amount had actually been received by the assessee and in what manner. Therefore, his belief of escapement of income merely rested on the information that he obtained from the DCIT, Central Circle-1, Rajkot that the assessee had received an amount of Rs.20,75,100/- by way of accommodation entry. Courts have unanimously held that for assuming jurisdiction to frame assessment under Section 147 of the Act, the belief of escapement of income has to be of the Assessing Officer himself and it cannot be based on a borrowed belief.

- i) Sri Dinakar Suvarna Vs. DCIT [Karnataka High Court] ((2022) 143 taxmann.com 362 (Karnataka))
- ii) Smt. Samanthapudl Lavanya Vs. ACIT, Vijaywada [ITAT Visakhapatnam Bench] ((2021) 127 taxmann.com 188 (Visakhapatnam-Trib.))
- iii) ITO Vs. Arun Kumar Kapoor (ITAT Amritsar Bench) ((2011) 16 taxmann.com 373 (Amritsar))
- iv) Ramballbh Gupta Vs. ACIT, Indore (High Court of Madhya Pradesh) ((2005) 149 taxmann.com 451 (MP))

12. In view of the above, we have no hesitation in holding that the jurisdiction assumed in the present case by the Assessing Officer to frame assessment under Section 147 of the Act is without valid jurisdiction. The assessment accordingly framed is held to be invalid and is thus quashed. Ground of appeal No.1 raised by the assessee is accordingly allowed.

13. Since we have quashed the assessment framed under Section 147 of the Act, the other grounds raised by the assessee on merits need no adjudication being mere academic in nature. In view of the above, the appeal of the assessee is allowed in above terms.

14. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 03/10/2023 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 03/10/2023

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Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Rajkot,
6. गार्ड फाइल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Rajkot