

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.582/SRT/2023 (AY 2007-08)

(Hearing in Physical Court)

Chirag Mishrimal Hirani 301, Divyadarshan Apartments, B/h Umra Police Station, Surat-395001 PAN : AMUPS 4678 Q	Vs	Deputy Commissioner of Income-tax, Circle-1(3), Surat, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	24.08.2023
सुनवाई की तारीख/Date of hearing	21.12.2023
उद्घोषणा की तारीख/Date of pronouncement	26.12.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as 'NFAC/Ld. PCIT'] dated 10.08.2023 for assessment year 2007-08 in confirming the addition for bogus purchases. The Assessing Officer passed assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2015. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the

action of Assessing Office in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of assessing officer in making addition of Rs.70,10,470/- as bogus purchase.

3. It is therefore prayed that above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Brief facts of the case are that assessee runs a proprietary concern namely Suchi Gems and engaged in the business of manufacturing and trading bullions, precious stones, studded jewellery and gold and diamond ornaments. The assessee filed its return of income for assessment year 2007-08 on 31.10.2007 declaring total income at Rs.19,58,800/-. The case was selected for scrutiny. During assessment, the Assessing Officer examined the purchases shown from various parties including Vitrag Jewels of Rs.70,10,470/-. The Assessing Officer made addition of Rs.90,40,927/- out of aggregated purchases from nine parties. The case of assessee was again reopened under section 147 of the Act and notice under section 148 issued on 29.03.2014 was served upon the assessee. The case of assessee was re-opened on the basis of information that M/s Vitrag Jewels is managed by Shri Rajendra Jain, who was engaged in providing accommodation entry. The Assessing Officer after serving statutory notice under section 143(2) r.w.s. 142(1) of the Act

proceeded for re-assessment. The Assessing Officer, on the basis of information received from Investigation Wing, New Delhi as well as Mumbai issued show cause to substantiate the purchases shown from Vitrag Jewels. The Assessing Officer passed assessment order on 31.03.2015 by making addition of entire aggregate of purchases shown from M/s Vitrag Jewels on the basis of modus operandi of entry provider.

3. Aggrieved by the addition made in the assessment order, the assessee filed appeal before Ld.CIT(A). The case of assessee migrated to NFAC. Before NFAC/Ld.CIT(A) the assessee challenged the validity of re-opening under section 147 and issuance of notice under section 148 thereto as well as addition on merit. The assessee also challenged the action of Assessing Officer in not *“not serving the assessment order and demand notice in time”*. Before NFAC/Ld.CIT(A) the assessee filed detailed written submission as recorded on pages 2 to 4 of impugned order. In the submission, the assessee submitted that he was engaged in the business of trading and manufacturing of bullion, precious stones, studded jewellery, gold and diamond ornaments, as a proprietary concern Suchi Gems. The assessment was completed by ACIT/Assessing Office, Surat on 30.12.2009 under section 143(3) by making addition of Rs.90,40,927/- on account of alleged unverifiable purchases from two parties. The assessee again submitted that he has filed conformation, copy of ledger and bank statement to substantiate

such purchases. The Assessing Office issued notice under section 133(6), which was duly complied by the sellers of goods / materials to assessee. The assessee also submitted that against addition made in the original assessment order dated 30.12.2009, the assessee filed appeal before jurisdictional CIT(A), Surat, who was decided in favour of assessee vide order dated 17.12.2010. Against the decision of Ld. CIT(A), the Department filed appeal before Tribunal and the appeal of Department in ITA No.1004/AHD/2011 was decided in favour of assessee also vide order dated 06.06.2014. The case of assessee was again re-opened under section 147. The assessee objected against re-opening. Objection of assessee was not accepted and fresh re-assessment was passed on 31.03.2015, which was posted to assessee only on 01.04.2015. The assessee also submitted that purchases from Vitrag Jewels which was genuine.

4. The Ld.CIT(A) after considering the submission of assessee upheld the validity of reopening under section 147 by taking view that re-opening is based on information received in connection with the impugned transaction from DDIT Wing. On the objection that assessment order is back dated and was served on 01.04.2015, the Ld.CIT(A) held that assessee has not given evidence to such facts. On the objection that purchases of assessee are genuine, the Ld CIT(A) by refereeing the statement of Shri Rajendra Jain, who had stated that he was controlling Vitrag Jewels for proving entry, rejected the submissions of assessee. On the basis of such

observation, Ld.CIT(A) upheld the action of Assessing Officer. Further aggrieved the assessee has filed present appeal before the Tribunal

5. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior-Departmental Representative (Ld. Sr-DR) for the Revenue. The Ld.AR for the assessee submits that assessee has challenged the validity of re-opening as well as validity of issuance of notice under section 148 of the Act. The Ld. AR of the assessee submits that case of assessee was re-opened on the basis of information of DDIT, Investigation Wing, Mumbai. The Assessing Officer recorded reasons before issuance of notice under section 148. The notice under section 148 was not issued by a Competent Officer. The notice under section 148 issued on 29.03.2014 by ITO Wd-33(2), New Delhi, copy of such notice is filed at page-57 of paper book. The notice under section 148 does not contain date and PAN even does not contain the information whether notice under section 148 was issued after the necessary "satisfaction" or approval of competent authority. The assessment of assessee for assessment year 2007-08 was re-reopened vide impugned notice issued on 29.03.2014. Admittedly, it was issued after four years from the end of relevant assessment year and no approval of competent officer was obtained as required under section 151(2) of Income Tax Act. The notice under section 148 was issued by officer, who was not having jurisdiction over the Assessing officer and no other notice under

section 148 was issued by a competent Assessing Officer. The assessee requested to provide for reasons recorded. The reasons recorded was provided to assessee along with letter dated 17.08.2014, copy of reasons recorded is filed at page-42 of paper book. The reasons recorded are contradictory in itself. In para-1, the reasons indicate that information was received from DDIT (Investigation) Mumbai and in para-3 which disclosed that information was from DDIT (Investigation). Admittedly, there is no reference in the reasons recorded that any satisfaction / approval or sanction was obtained by Assessing Officer nor it is referred in the assessment order. It does not contain any reference as to who recorded such reasons.

6. The ld AR for the assessee further submits that there is no order under section 127 for transfer of assessee's case from non-jurisdictional officer to jurisdictional Assessing Officer at Surat. Admittedly, no show cause notice for change of jurisdiction of assessing officer was served or issued to the assessee. Before changing jurisdiction notice to the assessee is compulsory. The Ld. AR of the assessee by referring the assessment order passed originally on 30.12.2009 under section 143(3) submits that in the assessment order, the issue of alleged disputed / impugned purchase was examined. The Assessing Office made full investigation of fact and made certain addition on account of unverifiable

purchases, re-opening on the same case is nothing but a change of opinion, which is not permissible under law.

7. On merits of the case, the Ld. AR of the assessee submits that assessee substantiated said purchases from M/s Vitrag Jewels as well as other parties. The Assessing Officer in the original assessment made certain addition, which on appeal before Ld.CIT(A) was deleted in *toto* and the order of Ld.CIT(A) was upheld by co-ordinate Benches of Ahmedabad ITA No.1004/AHD/2011. The Ld. AR for the assessee further submits that even during the re-assessment proceeding, the assessee furnished complete details of the purchases which made from M/s Vitrag Jewels. The assessee furnished contra conformation. invoices and bank statement showing such payment made to said parties. The Assessing Officer has not discarded such evidence. The Assessing Officer issued notice under section 133(6) to M/s Vitrag Jewels, which was duly replied by them and furnished required details also. The proprietary M/s Vitrag Jewels also given his affidavit to substantiate the fact that his statement was obtained by Investigation Wing under duress, which was retracted by assessee. The Assessing Officer has not disputed the sales of assessee that no sale is possible in absence of purchase. The assessee has shown sufficient income in its trading activities. The Assessing Officer disallowed 100% purchase which was confirmed by Ld.CIT(A). Before NFAC/Ld.CIT(A) the assessee filed detailed written submission. On the written submission of assessee,

a remand report was called for. In the remand report, the Assessing Officer accepted that assessment order dated 31.03.2015 was despatched on 01.04.2015 at 1.34 hours through RMS post office, Surat Railway Station. The Assessing Officer also accepted the fact that about issuance of notice under section 148 by ITO Ward-33(2) New Delhi on 29.03.2014, copy of such remand report is filed at pages no.63 to 67 of the paper book. The ld AR for the assessee submits that the reopening under section 147 as well as issuance of notice under section 148 is invalid and action of assessing officer is void-ab initio.

8. On the other hand, Ld. Sr -DR for the Revenue supported the order of lower authorities. The Ld. Sr DR for the revenue submits that so far as sufficiency of reasons are concerned, at the time of reopening, Assessing Officer is required to consider the information whether the income chargeable to tax has escape assessment or not. In the present case, information was received from DIT(Inv), Mumbai as well as DIT(Inv.) New Delhi about the accommodation entries provided by Rajendra Jain group. As the alleged material / jewellery / goods were purchased by assessee in Delhi branch, the information was received from Delhi office as well. The Assessing Officer (Delhi office) issued notice under section 148. The service of notice is not otherwise in dispute. During re-assessment, assessee was provided full opportunities to contest the case. As the information was specific with regard to purchase shown by assessee

from M/s Vitrag Jewels, which was managed by Rajendra Jain and his group. The Investigation Wing made full-fledged investigation and it was proved that said group was indulging of providing accommodation entry without actual delivery of goods. Once the assessee participated and contested the assessment, so the assessee now has no right to raised technical issue as per section 292BB of the Act. So far as additions of the merit is concerned, the assessee is beneficiary of accommodation entry, therefore, the lower authorities were justified in making the addition of such bogus purchases.

9. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We find that there is no dispute that initially the assessment under section 143(3) was completed on 30.12.2009 for assessment year 2007-08. In the assessment order, Assessing Officer identified the issue of unverifiable purchases including from disputed sellers *i.e.*, M/s Vitrag Jewels, for exact same amount of Rs.70,10,470/-. The Assessing Officer made addition of unverifiable purchase to the extent of Rs.90,40,927/-. Such addition was deleted by Ld.CIT(A). On further appeal, the order of Ld.CIT(A) was upheld by co-ordinate Benches of Ahmedabad ITAT No.1004/AHD/2011. We further find that Assessing Officer again reopened the case of assessee. As per reasons recorded, the Assessing Officer received information from DDIT(Inv.) Mumbai as well as DDIT(Inv), Unit-VI, Jhandewalan, New Delhi. On receipt of information, the Assessing Officer made his belief

that income of assessee as “escaped assessment” as recorded above. Before us, Ld. AR of the assessee vehemently argued that admittedly case of assessee was re-opened after expiry of four years from the end of relevant assessment year 2011-12 and there is no assertion of the Assessing Officer in the reasons recorded that there was any failure on the part of assessee to disclose any fully and truly necessary for assessment. We find merit in the submission of Ld. AR of the assessee that all the material relating to assessment was available with the Assessing Officer in the original assessment completed under section 143(3) of the Act. Moreover, the Assessing Officer has *nowhere* recorded that he obtained any sanction/ approval from Joint-Commissioner of Income-tax as mandated under section 151(2). We further find merit in the submission of Ld. AR of the assessee that jurisdictional Assessing Officer in case of assessee lies with Assessing Officer at Surat. However, notice under section 148 was issued by Assessing Officer, *i.e.*, ITO Ward-33(2), New Delhi. Thus, the reopening is not only suffering by “satisfaction” from proper approval by competent person as well as the notice under section 148 was not issued by a competent jurisdictional Assessing Officer. Therefore, the reopening as well as issuance of notice under section 148 is bad-in-law. Since the re-opening under section 147 and issuance of notice under section 148 is bad-in-law, subsequent action initiated thereto have become *ab initio*.

10. Considering the fact that we have held the validity of re-opening and issuance of notice under section 148 had invalid, therefore, subsequent action has become *ab initio* and the ground of assessee succeeds on primary contention raised by Ld.AR of the assessee, therefore, adjudication on merit of the additions have become academic in nature. This ground of assessee is treated as allowed.

11. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 26/12/2023.

Sd/- (Dr ARJUN LAL SAINI) [लेखा सदस्य/ ACCOUNTANT MEMBR]	Sd/- (PAWAN SINGH) [न्यायिक सदस्य JUDICIAL MEMBER]
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Surat, Dated: 26/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. PCIT
4. DR
5. Guard File

By order

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Sr.P.S./Assistant Registrar, ITAT, Surat