

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

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

**ITA No. 33/Ahd/2023
Assessment Year 2013-14**

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| Narmada Concast Pvt. Limited Survey No. 159/160 Vill, Malpar, Gogha, Bhavnagar PAN: AAECN1728P (Appellant) | Vs | The DCIT, Central Circle-1(1), Ahmedabad (Respondent) |
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**Assessee Represented: Shri Parimalsinh B. Parmar &
Shri Kushal Fofaria, ARs.**

Revenue Represented: Ms. Saumya Pandey Jain, Sr.D.R.

Date of hearing : 02-11-2023

Date of pronouncement : 03-01-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the appellate order dated 16.12.2022 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the reassessment order 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 Year 2013-14.

2. The brief facts of the case is that the assessee is a Private Limited Company. The company was incorporated on 16-08-2012 and filed its Return of Income for the Assessment Year 2013-14 belatedly on 31.03.2015 declaring Nil income. There was a search and seizure action on 21-05-2018 in the case of Banka Group at Calcutta. Based on the statement recorded and materials gathered, it was found that Shri Mukesh Banka was the key person who looked after day to day financial affairs and accommodation entry business of Banka Group. It was found that M/s. Kotiratan Commosales Pvt. Ltd. (KCPL) is one of the entity which was providing accommodation entries in the form of unsecured loan which was controlled by Shri Mukesh Banka. As per Investigation Wing report the assessee company availed unsecured loan from M/s. KCPL a sum of Rs. 1,00,00,224/- during the Financial Year. Therefore a notice u/s. 148 of the I.T. Act was issued on 28.03.2021, calling upon the assessee to file its Return of Income within 30 days of receipt of the notice through ITBA. In response, the assessee filed Return of Income on 23.12.2021 declaring total income at Nil. Thereafter the assessee sought for reasons recorded for reopening the assessment, the A.O. furnished the reasons vide its letter dated 11.01.2022.

2.1. The assessee filed its objection that the reasons recorded for reopening are absolutely vague, scanty and non-specific and no escapement of income chargeable to tax emanates from the "reasons recorded" and therefore the reopening itself is unjustified. Further there were no details as to the nature of transaction, treatment of such transaction in the books of account, whether the

transaction affects the balance sheet or profit and loss account of the assessee. Further the reopening is merely based on borrowed satisfaction and there is no to reason believe/independent satisfaction by the Assessing Officer in reopening the above assessment. Further the assessee in its balance sheet under the head “long term borrowings” clearly shown the loans and advances from (i) related parties of Rs. 28,50,000/- and (ii) from other corporate bodies of Rs. 50,00,000/-. Thus there is no any new information available to the Assessing Officer for reopening the above assessment. The above objection was considered by the Assessing Officer but disposed of the same vide order dated 05.03.2022 stating that the assessee failed to file Return of Income in response to 148 notice within 30 days of receipt of the same. But whereas he filed the Return of Income nine months thereafter and the A.O. issued show cause notice dated 11.02.2022 on merit of the case. Therefore as per the direction given by the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (2003) 259 ITR 19 and Jurisdictional High Court in the case of Sahakari Khand Udyog Mandal Ltd. rejected the objections filed by the assessee. As the assessee failed to reply to the above show cause notice, the Assessing Officer treated the entire loan transaction as bogus unsecured loans and added Rs. 1,00,00,224/- as the income of the assessee and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before Commissioner of Income Tax (Appeals.). Before Ld. CIT(A) assessee filed detailed submissions both on the validity of reopening of the assessment and merits of the case. The Ld. CIT(A)

upheld that the reopening of assessment is good in law. However on merits of the case, as they were double entries of the loan transaction, thereby restricted the additions of Rs.50,00,000/- and deleted the addition of Rs. 50,00,224/-.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) has erred in dismissing the appellant's grounds of appeal challenging the validity of the assessment order passed by the Assessing Officer u/s. 147 of the Income Tax Act

1.1 in law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) ought to have appreciated that having regard to the following, the order passed u/s. 147 was bad in law:-

(a) The Assessing Officer had not passed an order disposing of the objections filed before him challenging the validity of the proceedings u/s 147 and thus, his action of passing the assessment order u/s. 147 was not valid.

(b) The re-assessment proceedings u/s 147 were initiated merely on the basis of report received from DDIT, Kolkatta without application of his own mind before issue of notice u/s. 148. This can be appreciated from the fact that he had considered the cash credit of Rs 1,00,00,000/- which includes duplication to the extent of Rs. 50,00,000/-

(c) The appellant was having its office at Bhavnagar and was being assessed at Bhavnagar. No notice for centralization of case providing an opportunity u/s. 127 (1) and 127 (2) was provided, even the order u/s. 127 was not received by the appellant. In the circumstances, the jurisdiction assumed by the Assessing Officer at Ahmedabad for initiating proceedings u/s. 148 was not valid

(d) The notice u/s. 148 was issued based on the material and facts gathered by DDIT, Kolkatta in the course of search at Banka Group and in such circumstances, the action could not be taken u/s.148, but could be u/s. 153C of the Act.

1.2 Having regard to the facts and circumstances of the appellant's case, the Hon'ble ITAT may please hold the assessment order u/s. 147 to be invalid.

2. In law and in the facts and circumstances of the appellant's case, the Ld CIT (A) has erred in upholding the addition u's. 68 made by the Assessing Officer to the extent of Rs. 50,00,000/-

2.1. Having regard to the facts and circumstances of the appellant's case, the Ld CIT (A) ought to have appreciated, in the present case that there was no justification for making addition u/s. 68 for the following reasons-

(a) The identity of the creditor was established in the facts of the case in as much as name and address of the creditor and PAN was available.

(b) The genuineness of transaction is established in as much as the amount was received by banking channel and the details of the bank account of the creditor, their cheque number by which the amount was received was available.

(c) The fact that the amount was received by banking channel established that the creditor has source for giving loan to the appellant and the appellant could not have details of such source.

(d) This was the first year of incorporation of the appellant and in the circumstances, the appellant could not have generated any unaccounted funds which would result into source of loan received from the creditor.

(e) Having regard to the facts and circumstances of the appellant's case, the Hon'ble ITAT may be pleased to delete the addition confirmed by the CIT (A) as above

3. The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise.

5. Ld. Counsel Shri Parimalsinh B. Parmar appearing for the assessee submitted before us a brief written submissions both on reopening of assessment and merits of the case and also two Paper Books containing various submissions filed before the Lower Authorities and the Ld. CIT(A). Ld. Counsel also filed a compilation of case laws in support of its arguments. Thus Ld. Counsel pleaded the reasons recorded by the Assessing Officer are absolutely vague, scanty and non-specific. The Assessing Officer merely relied upon investigation report of Banka Group supplied by the Investigation Wing of the Income Tax Department. There is no independent application of mind by the A.O. and no reason to believe was

recorded by the Assessing Officer before initiating the reassessment proceedings. Thus it is to be held that the reopening of assessment is merely on the basis of “borrowed satisfaction” which is not justified under the law. On merits of the case, the A.O. failed to consider that the above loan was repaid by the assessee in the Assessment Year 2018-19 that too before the date of search in the case of Banka Group. The very same Assessing Officer has accepted the repayment of loan in A.Y. 2018-19 while framing assessment. Thus no addition is to be made in the present Assessment Year 2013-14 on account of cash credit and relied upon Jurisdictional High Court Judgment in the case of CIT vs Ayachi Chandrashekhar Narsangji (2014) 221 Taxmann.146 and PCIT vs Ambe Tradecorp (P.) Ltd. (2022) 145 taxmann.com 27. Thus Ld. Counsel pleaded that the entire reassessment itself is baseless and against the provisions of law and therefore the same is liable to be quashed and allow the assessee appeal.

6. Per contra, Ld. Sr. D.R. Ms. Saumya Pandey Jain appearing for the Revenue supported the order passed by the Lower Authorities and submitted that the company KCPL has shown total income of Rs. 1162/- in the Assessment Year 2013-14 whereas loan given to the assessee was Rs.50,00,000/- through banking channel. Thus the assessee failed to prove creditworthiness of the creditor and genuineness of loan transaction as envisaged u/s. 68 of the Act. Similarly, the assessee has not filed the original return within the due date prescribed u/s. 139(1) of the Act and also filed the Return of Income nine months after the issuance of 148 notice. Therefore the assessee’s objection of reopening of assessment was clearly

dismissed by the Ld. A.O. following Supreme Court Judgment in the case of GKN Driveshafts (India) Ltd. and Jurisdictional High Court in the case of Sahakari Khand Udyog Mandal Ltd. Therefore the reopening of assessment is correct in law and pleaded to dismiss the assessee appeal.

7. We have given our thoughtful consideration and perused the materials available on record. To adjudicate the Jurisdictional issue of reopening of assessment, it is necessary to reproduce the “reasons recorded” by the Assessing Officer which is running to three pages as follows:

1. Brief Details of the Assessee:

In this case no return filed by the assessee for the A.Y.2013-14. In the instant case, no regular assessment proceeding u/s143(3)/ 147 of the Act was completed.

2. Brief details of the information collected / received by the A.O.

A search & seizure/survey action in the case of Banka Group was conducted on 21/05/2018. Based on the findings gathered and subsequently brought on records, it was found that Sh. Mukesh Banka was the key person/controlling person who look after day to day financial affairs and accommodation entry business of Banka Group.

During the course of post search verification of seized/ impounded materials, various paper/ shell companies controlled and managed by Sh. Mukesh Banka were identified. All these companies were categorically acted by Sh. Mukesh Banka as paper/ shell companies controlled and managed by him for the purpose of providing accommodation entries in the nature of bogus unsecured loans or in other forms. Following the lead as obtained from the statements of Sh. Mukesh Banka and the materials seized during the course of search operation, the bank accounts of the paper/ shell companies, controlled and managed by Sh. Mukesh Banka was requisitioned from respective banks and analysed. On verification of the bank accounts of paper /shell companies of Banka Group, various beneficiaries have been identified who have obtained accommodation entry in the nature of bogus unsecured loan or in other forms, from the paper / shell companies of Banka Group.

3. Analysis of the information collected/received:

The above information has been analysed personally by the undersigned. In this case, while analyzing the above information, I have reason to conclude that the assessee had entered into High Value financial transactions of Rs. 1,00,00,224/- facilitating bogus accommodation entries provided during the year, as reported in the investigation report of Banka group. Thus, the modus operandi in information analysed by the undersigned prima facie proved existence of 'live like' in respect of the information received in this case with regard to assessee's involvement in bogus accommodation entries and escapement of income for the year under consideration.

4. Enquiries made by the AO as sequel to information collected/received:

The financial analysis of such paper/ shell companies of Banka Group from which such beneficiaries have been identified, has been carried out to ascertain their financial creditworthiness. This led to revelation of various noticeable points like (1) No profit accumulation in the company(s) across various financial years (ii) No actual business done by the company(s) being zero tum over reported in various financial year (iii) Most of the companies have shown income under the head Other Income which shows that these companies have no Actual Business activities and only getting interest income under the head other income for providing bogus unsecured loan to different beneficiaries (iv) the admission of Sh. Mukesh Banka Vide his statement recorded u/s. 31/132(4) of the Act, on 30/05/2018 and 19/07/2018 that these companies are paper/ shell companies, controlled and managed by Sh. Mukesh Banka. (v) The directors of these companies are dummy directors of Sh. Mukesh Banka as per the statement of Sh. Mukesh Banka recorded u/s. 132(4) of the Act on 19/07/2018 (vi) These companies were found to be non-existent as per enquiry made by Inspector of Income-tax.

Further, during the course of analysis and examination of the bank statements of paper/ shell companies of Banka Group, the entire scheme of arrangement regarding the withdrawal of cash from various bank accounts of paper/ shell companies of Sh. Mukesh Banka was clearly established and substantiated. These findings got further authenticated from the statements of Sh. Mukesh Banka regarding the pattern of cash withdrawals from his various companies. Huge withdrawal of cash from the bank accounts of paper/ shell companies of Banka Group clearly established the fact that withdrawal of unaccounted cash was one of the main features of modus operandi of Banka Group.

5. Findings of AO:

The above information has been analysed personally by the undersigned. In this case, while analyzing the above information, I have reason to

conclude that the assessee had entered into High Value financial transactions of Rs. 1,00,00,224/- facilitating bogus accommodation entries provided during the year, as reported in the investigation report of Banka group. Thus, the modus operandi in information analysed by the undersigned prima facie proved existence of 'live like in respect of the information received in this case with regard to assessee's involvement in bogus accommodation entries and escapement of income for the year under consideration.

The assessee is identified as beneficiaries and details of the transactions is hereunder:

| ACCT -Name of Mukesh Banka Company | ACCT_NUM | BAN K | TRAN_DTAE | TRANSACTION AMOUNT | BENEFICIARY NAME | BENEFICIARY PAN | BENEFICIARY ACC NO. | IFSC |
|------------------------------------|----------------|----------|------------|--------------------|-------------------------|-----------------|---------------------|----------------------------------|
| KOTIRATAN COMMSALES PVT LTD | 01900210012406 | UCO BANK | 22-02-2013 | 2000056 | NARMADA CONCAST PVT LTD | AAECN1728P | 032401601000292 | CORPORATI ON BANK (CORPO 000324) |
| KOTIRATAN COMMSALES PVT LTD | 01900210012406 | UCO BANK | 22-02-2013 | 2000056 | NARMADA CONCAST PVT LTD | AAECN1728P | 03240160100029 | CORPORATI ON BANK (CORPO 000324) |
| KOTIRATAN COMMSALES PVT LTD | 01900210012406 | UCO BANK | 22-02-2013 | 3000056 | NARMADA CONCAST PVT LTD | AAECN1728P | 03240160100029 | CORPORATI ON BANK (CORPO 000324) |
| KOTIRATAN COMMSALES PVT LTD | 01900210012406 | UCO BANK | 22-02-2013 | 3000056 | NARMADA CONCAST PVT LTD | AAECN1728P | 03240160100029 | CORPORATI ON BANK (CORPO 000324) |
| Total | | | | 10000224 | | | | |

Hence, the amount Rs 1,00,00,224/- as discussed in para 4 above exceeds the maximum amount which is not chargeable to tax and has escaped assessment within the meaning of section 147 of the Act.

6. Basis of forming reason to believe and details of escapement of income:

In this case, no return of income was filed for the year under consideration accordingly, in this case, no assessment was made. On the basis of the details mentioned in para no. 4, I have reason to believe that the amount of Rs. 1,00,00,224/- has escaped assessment within the meaning of section 147 of the Act and is a fit case for issuing notice u/s. 148 of the Act.

7. Escapement of income chargeable to tax in relation to any asset (including financial interest in any entity) located outside India.:
No such details as per record of this office.

8. Applicability of the provisions of section 147/151 to the facts of the case:

In the instant case, no return of income was filed for the year under consideration accordingly, in this case, no assessment was made and the only requirement to initiate proceeding u/s 147 of the Act is the reason to believe which has been recorded in above para 6.

It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case more than four years have lapsed form the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 is being obtained separately from the Pr. Commissioner of Income Tax as per the provisions of section 151 of the Act.”

7.1. On perusal of the above “reasons recorded” by the Assessing Officer makes it very clear that the he had reason to conclude that the assessee had entered into high value financial transactions of Rs. 1,00,00,224/- facilitating bogus accommodation entries during the year as reported in the investigation report of Banka Group. Thus the Assessing Officer though he recorded reason to conclude but accepted the report of the Investigation Wing of the Department in the case of Banka Group. The Assessing Officer has failed to verify the transaction recorded by the Investigation Wing which are double entries made for the same transactions of Rs. 20,00,056/- and Rs. 30,00,056/-. Though the A.O. records the unsecured loan of Rs. 50,00,000/- received by the assessee from M/s. KCPL, however upheld the double entry addition of Rs. 1,00,00,224/ as

the undisclosed income of the assessee. The Ld. A.O. failed to consider the repayment of above loan by the assessee during the assessment year 2018-19 which was not disputed, while framing the assessment order for the assessment year 2018-19 by the very same Assessing Officer. Thus in our considered view, the Ld. A.O. has simply accepted the information given by DGIT which is reproduced in the reasons recorded, he has not formulated "his own reason to belief" that any income chargeable to tax has escaped assessment. The Ld. A.O. ought to have seen the double entry of the loan transactions with bank entry details and then formulated "his own reason to belief" but simply followed the information given by DGIT, which is nothing but "borrowed satisfaction" and is against the provision of Section 147 of the Act. Therefore the same is liable to be quashed.

7.2. The above view of ours are supported by the Hon'ble Jurisdictional High Court Judgment in the case of Bharatkumar Nihalchand Shah vs ITO in SCA No. 5353 of 2022 vide judgment dated 07.03.2023 held as follows:

"...6.6 On the basis of the propositions laid down in different decisions by the supreme court above referred and others, the following legal principles on the point in issue may be enlisted,

(i) "Reasons" are of paramount importance. "Reasons" are heartbeat of every conclusion. It introduces clarity in any order. Without the reasons, the order is lifeless.

(ii) The concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of procedural law.

(iii) It is only clarity of thoughts that leads to proper reasoning, which becomes a foundation of a just and fair decision.

(iv) *Insistence for recording of reasons is intended to subserve the wider principle that justice must not only be done but it must also seem to have been done. The reasons are requirement for ensuring judicial accountability.*

(v) *Reasons reflect candidness on part of decision maker. The decision making process becomes transparent by virtue of reasons. In absence,, it is impossible to know whether the person deciding the issue is faithful to the doctrine of precedent or to the principles of incrementalism.*

(vi) *Reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or “rubber-stamp reasons” cannot be equated with a valid decision-making process.*

(vii) *Reasons also facilitate the process of judicial review by superior courts.*

7. In light of the above discussion highlighting the indispensability of reasons in the order passed by any authority administrative, quasi judicial or judicial, when it comes to exercise of powers under sections 147 and 148 of the Income Tax Act, 1961, there has to be a greater thrust for necessity of recording reasons. The entire exercise of reopening hinges on the reasons recorded by the Assessing Officer. It is the ‘reasons’ which weigh with him.

7.1 When the concluded assessment is to be revisited with by the Assessing Officer, recording of reasons for exercise of such powers has to be viewed as vested rights for the assessee. While exercising powers under the Act to reopen the assessment, the Assessing Officer would harbour reasons to believe that on particular set of facts, the income had escaped assessment and tax was not paid in relation to the year under consideration.

7.2 All the reasons which hold good in the eye of and with the Assessing Officer must be made known to the assessee. Assessee has right to refute the reasons for reassessment by filing objections. Unless the Assessing Officer appropriately delineates and communicates the reasons for reassessment, right of the assessee to file objections would remain an eye-wash.

7.3 Whether the reassessment powers are adverted to on objective basis, whether the element of assessment of income is noticed from the facts and whether formation of opinion by the Assessing Officer is based on some relevant facts or not, could be judged provided the reasons are properly recorded and the details are given with regard to reopening of assessment that the reasons to believe with the Assessing Officer must be reflected in recording of such reasons to be communicated to the assessee.

7.4 The cryptic way of recording of reasons like found in the instant case, would render the exercise of powers vitiated. With such vague reasons the respondent could be said to have failed to demonstrate that there was any escapement of income chargeable to tax. He could demonstrate such element, if he gives reasons for the same.

8. In the aforesaid view, notice issued to the petitioner under section 148 of the Act in respect of the Assessment Year 2015-2016 is liable to be set aside on the aforesaid ground alone.”

7.3. Similarly in the case of Surani Steel Tubes Ltd. vs Ito (2022) 156 taxmann.com 139, the Hon’ble Gujarat High Court held as follows:

“.....10. This Court has also taken into consideration the affidavit-in-reply filed by the Income-tax Officer, Ward -1, Gandhinagar. On appreciation of contents of the same, we could note that the entire base for reopening assessment is on the premise that there was "information" supplied by the Investigation Wing and the Assessing Officer has made cursorily reference to high value transaction of Rs.26,42,027/- as well as also referred to accommodation entry entered upon by the petitioner Company by way of bogus sales/purchases/ fictitious loans etc. Thus, it appears that the reasons for reopening of the assessment in the case of petitioner Company for annual assessment year 2014-15/2015-16 by the Assessing Officer is based on the borrowed satisfaction and the Assessing Officer has not applied his independent mind to arrive at the conclusion that there was failure on the part of the assessee to disclose fully and truly all material facts. In fact, the Assessing Officer is under obligation to arrive at such conclusion that the assessee has failed to disclose all material facts and has to form independent opinion resulting into "reason to believe with regard to escapement of income chargeable to tax in case of the petitioner. During the course of hearing, learned Senior Advocate for the Department has tried to improvise by referring to the original file of the Department to emphasize that there is tangible material on record to show that the petitioner Company has made purchase transaction of Rs.26,42,027/- and has availed accommodation entry by way of bogus sales/purchases/fictitious loans etc. with Disman Group of Company. In our opinion, in absence of specific details as regards particulars of nature of transaction basic details of information, clarity with regard to name of person with whom such transaction has been entered into, goes to the very root of the matter. The sole object of providing reasons for reopening of the assessment is to prima facie supply the relevant material to the assessee to meet with his case and at the same time, it reflects the basic ingredients of "reason to believe" for Assessing Officer to assume the jurisdiction under sections 147 and 148 of the Income-tax Act. At the same time, such non-recording of specific details lead us to belief that without proper application of mind, the Assessing Officer has solely and mechanically relying upon the information received from Investigation Wing, has issued impugned

notice. Thus we are not convinced with the manner in which satisfaction is arrived at by the respondent, as recorded in the reasons supplied to the petitioner Company, for assuming jurisdiction to reopen the assessment of relevant A.Y. 2014-15/2015-16.

11. In our opinion, the condition precedent for resorting to the reopening of assessment under sections 147 of the Act are not satisfied in the present case. In overall view of the matter, we are not convinced with regard to the satisfaction arrived at by the respondent Assessing Officer to make out the case for reopening of assessment under section 147 of the Act for relevant A.Y. 2014-15/2015-16.”

7.4. Further the Jurisdictional High Court in the case of Harikishan Sunderlal Virmani vs DCIT reported in (2017) 88 taxmann.com 548 held that the reopening of assessment not to be done on borrowed satisfaction by observing as follows:

“On the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, the Assessing Officers required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source there cannot be any reassessment for the verification. The Assessing Officer reopened assessment beyond four years on the basis of information/data supplied by the office of the Principal Director of Income Tax (Investigation) that there appeared to be a deliberate change in the client code of assessee with the broker.

Held that from the reasons recorded, it appeared that the impugned reopening proceedings were so the borrowed satisfaction. No independent opinion was formed. Even in the reasons recorded, there was no allegation that there was any failure on the part of the assessee in not disclosing truly and fully material facts necessary for assessment. Under the circumstances, the assumption of the jurisdiction to reopen the assessment beyond the period of four years in exercise of powers under section 147 was bad in law.”

7.5. Further the Jurisdictional High court in the case of Varshaben Sanatbhai Patgel vs ITO reported in (2015) 64 taxmann.com 179 held that in the absence of any details available on record, Assessing Officer could not initiate assessment proceedings merely

on the basis of information supplied by DGIT (Inv.) that assessee had made certain bogus purchases and, to said extent, income had escaped assessment observing as follows:

“.....13. On a plain reading of the reasons recorded, what emerges is that the Assessing Officer, on verification of the details available on record, has noticed that there were bogus purchases. However, there is no assertion as regards on the basis of which material on record he has come to such conclusion. A perusal of the order rejecting the objections raised by the petitioner, shows that the reopening is based, not upon the material on record, but on the basis of material received from an external source viz., the DGIT (Inv.), Mumbai, pursuant to inquiries made by him (the DGIT). Therefore, the material on the basis of which the Assessing Officer seeks to assume jurisdiction under section 147 of the Act, is the information received from an external source viz., from the DGIT and not the material on record as reflected in the reasons recorded. Under the circumstances, on the basis of the material on record, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment, inasmuch as, the formation of belief of the Assessing Officer is not based upon the details available on record, but on the material made available by the DGIT (Inv.), Mumbai which is an external source. Under the circumstances, it cannot be said that the requirements of section 147 of the Act are satisfied, inasmuch as, the belief of the Assessing Officer is not based upon the material on record, but on some other material from an external source which does not find reference in the reasons. As is clear on a plain reading of the reasons recorded, except for the assertion that there were bogus purchases, the Assessing Officer has not referred to any material on the basis of which he proceeded to invoke the provisions of section 147 of the Act. The assertion made by the Assessing Officer is a bare one, without any reference to the material on the basis of which he made such assertion.

.....

16. In the aforesaid premises, the formation of belief that income has escaped assessment not being based upon record, it is evident that the substratum for reopening the assessment is not laid in the reasons recorded but on material extraneous thereto. Under the circumstances, the basic requirement for assumption of jurisdiction under section 147 of the Act for reopening the assessment is not satisfied in the present case. The impugned notice under section 148 of the Act, therefore, cannot be sustained.

17. For the foregoing reasons, the petitions succeed and are, accordingly, allowed. The impugned notices all dated 26th March, 2014 issued under section 148 of the Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs in each of the petitions.”

8. Ld. Sr. D.R. relied upon Jurisdictional High Court Judgment in the case of Pavan Kishanchand Tulsiani vs Union of India reported in (2023) 146 taxmann.com 396 wherein admittedly the MoU as well as Sauda-Chitthi seized by the department, wherein unaccounted cash has been paid for purchase of two lands. Considering the facts of the above case, the Hon'ble High Court upheld the reopening of assessment is good in law, whereas in the present case the Assessing Officer has not formulated his own opinion and reason to believe that income has escaped assessment, but simply followed the DGIT information and reopened the assessment which is clearly distinguishable to the facts of the present case.

9. Thus we have no hesitation in holding that the reopening of assessment itself is bad in law for having not recorded independent "reason to believe" that income has escaped assessment. Therefore the entire reopening of assessment is liable to be quashed. Even on merits of the case, the Assessing Officer failed to consider the repayment of above loan to M/s. KCPL during the A.Y. 2018-19. Thus we have no hesitation in quashing the reassessment order passed by the Assessing Officer.

10. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 03-01-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 03/01/2024

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,
अहमदाबाद