

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.709/Ahd/2023**  
**Asstt.Year :2011-12**

Ashokkumar Manmal Bhanasali 508-B, GIDC Indl Estate Mehmadabad Road Vatva, Ahmedabad. PAN : ABXPB 1343 H	Vs	ACIT, Cir.3(2) Ahmedabad.
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(Applicant)	(Responent)
Assesseeby :	Shri Kishan Mehta, AR
Revenue by :	Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/01/2024  
घोषणा की तारीख /Date of Pronouncement: 24/01/2024

**आदेश/O R D E R**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as ld.CIT(A)] under section 250(6)of the Income Tax Act, 1961 dated 20.6.2018 pertaining to Asst.Year 2011-12.

2. The grounds raised by the assessee are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1993, and is blend of descriptive and argumentative in nature. A perusal of the grounds reveals that the only grievance raised by the assessee is against the order passed under section 147 of the Act being without jurisdiction and bad in law. The same is figured out in ground no.3 which reads as under:

*“That on facts and in law the AO has no reason to believe that income chargeable to tax has escaped assessment u/s.147 of the IT Act and therefore assuming of jurisdiction and issuance of notice 148 of the IT Act is without jurisdiction and bad in law.”*

3. The facts relating to the present appeal are that the assessment was reopened under section 147 of the Act on the basis of the information available with the AO that the assessee had made donation to Chennai based trust in cash amounting to Rs.10 lakhs, which information was obtained during survey in the case of M/s.Kalavati Finance Ltd. This amount was accordingly treated as unexplained expenditure incurred by the assessee and added to the income of the assessee. The assessee has challenged the order of the Id.CIT(A) confirming the above addition, raising both legal grounds as well as grounds relating to the merits of the case, which was reflected in ground no.3 and reproduced hereinabove.

4. Copy of the reasons for reopening of the case of assessment under section 147 of the Act were produced before us which reads as under:

**Subject: Re-assessment proceeding u/s 148 of the Income-tax Act ,1961-Regarding**

The change in incumbent is hereby brought to your notice u/s 129 of the Income-tax Act, 1961 vide this letter.

Your case was reopened for AY 2011-12 and a notice u/s 148 was issued on date 30.03.2018. In response to the notice, you have asked on date 01.05.2018 for considering the original return of income filed on 31.03.2012 to be the return of income. You are hereby provided with the reasons for reopening of the assessment u/s 147 of the Income-tax Act, 1961. You are also requested to file objection if any after the receipt of this letter failing which it will be presumed that you have no objections in this regard and the undersigned will be free to complete the assessment proceedings as per the provisions of Income-tax Act, 1961.

**REASONS FOR REOPENING OF THE ASSESSMENT IN CASE OF SHRI ASHOKKUMAR MANMAL SANGHVI FOR A.Y.2011-12 U/S 147 OF THE IT ACT,1961**

The assessee by name **SHRI ASHOKKUMAR MANMAL SANGHVI** had filed his return of income for A.Y.2011-12 on 31-03-2012 declaring total income of Rs.6,88,036/-. The assessee is having income from business & Profession, Short Term Capital Gain and income from other sources.

2. Subsequently, the information received from Investigation wing vide letter No. DCIT (Inv)/Unit-1(2)/passing info/KFL-SVB/2017-18 dated 21-03-2018 mentioning that a survey was carried out in the case of M/s Kalavati Finance Ltd on 17-11-2016. Shri Deepchand Bafna and Ahook P. Bafna are the directors of the company.

3. During the course of Survey proceedings, some incriminating documents regarding the **cash transaction** entered by Ashokji Manmalji Bhansali, was found from the premises of Kalavati Finance Ltd. On verification of the same, it appears that **Ashokji Manmalji Bhansali had paid donation of Rs. 10,00,000/- during F.Y 2010-11 to the Chennai based trust viz. Shri. Jindutt- Kusalsuri Khartar Gachha Pedhi. The information is also passed to the AO of the trust viz. Shri. Jindutt-Kushalsuri Khartar Gachha Pedhi, Chennai for necessary action.**

4. As the assessee has made donation in cash of Rs.10,00,000/- out of books of account, the amount of **Rs.10,00,000/-** has escaped assessment in the hand of the assessee for the year under consideration.

5. In view of the facts mentioned above, I have reason to believe that the Amount of **Rs.10,00,000/-** which required to be taxed, has escaped assessment in the **assessment year 2011-12** in question. By the reason of failure on the part of the assessee to not disclose fully and truly all material facts in return of income necessary for assessment, hence, I am satisfied that this is a fit case for reopening u/s.147 of the Income Tax Act, 1961.

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 IT Act was made. Accordingly, In this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded 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 as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) 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 from the end of assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of IT Act, 1961.

5. Referring to the same, the ld.counsel for the assessee contended that the only information in the possession of the AO was that of the assessee having made donation of Rs.10 lakhs in cash to Chennai based trust vis. Shri Jindutt-Kusalsuri Khartar Gachha Pedi; that merely on this information, the AO formed the belief that the payment in cash was made out of the books of account of the assessee, and therefore, the income to this extent has escaped assessment. He stated that there is no live nexus between the information in the possession of the AO and formation of belief of escapement of income, and therefore, reopening resorted to was beyond the jurisdiction of the AO. The ld.DR however stated that there was sufficient information in the possession of the AO for formation of belief of escapement of income.

6. Having heard both the parties, and having gone through the reasons for reopening the case of the assessee for the impugned

year, copy of which was placed before me, and which is reproduced above, I am in complete agreement with the ld.counsel for the assessee that there was no nexus between the information in the possession of the AO and the formation of belief of escapement of income. As is evident from the bare reading of the reasons, the information in the possession of the AO was that the assessee had paid Rs.10 lakhs in cash to a trust in Chennai. Thereafter in para-4 of the reasons the AO arrives at a conclusion that this donation in cash was out of the books of the assessee. There is no mention of the AO having referred to the books of the assessee, and arriving at this conclusion. It is not clear as to how the AO arrives at this conclusion. There is, I agree no live link between the information in the possession of the AO and the formation of belief of escapement of income. I, therefore agree with the Ld.Counsel for the assessee that the AO had no basis for believing the escapement of income to the tune of Rs.10 lakhs so as to assume a valid jurisdiction under section 147 of the Act to reopen the case of the assessee. The order, as a consequence, passed under section 147 of the Act, I hold, is not valid, and therefore is set aside.

7. In the result, the appeal of the assessee is allowed in above terms.

**Order pronounced in the Court on 24<sup>th</sup> January, 2024 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 24/01/2024

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