

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.512/Ahd/2023
(Assessment Year: 2014-15)

Gandhinagar District Co. Op. Milk Producers Union Limited, K Road, GIDC Electronics Estate, Sector-25, Gandhinagar, Gujarat-382024	Vs.	Assistant Commissioner of Income Tax, Circle, Gandhinagar Gujarat-382011
[PAN No.AAAJG1061B]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Advocate & Shri Primalsinh B. Parmar, A.R.
Respondent by:	Dr. DArshi Suman Ratnam, CIT D.R. & Shri Sushil Kumar Katiar, Sr. D.R.

Date of Hearing	08.02.2024
Date of Pronouncement	08.03.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1052527901(1) vide order dated 02.05.2023 passed for Assessment Year 2014-15.

2. The assessee has taken the following grounds of appeal:-

“1. The learned AO has erred in law and on facts of the case in reopening the assessment under Section. 147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and in not permissible either in law or on facts.

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2. *The Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in disallowing deduction under Section. 80P(2)(d) of the Act amounting to Rs. 14,17,432/- in respect of interest earned from cooperative banks.*
3. *The Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in disallowing deduction under Section. 80P(2)(d) of the Act amounting to Rs. 26,16,750/- in respect of dividend earned from cooperative societies.*
4. *The Ld. CIT(A) has erred in law and on facts in confirming the disallowance of entire deduction under Section. 80P(2) of the Act of Rs. 40,84,182/-. The Ld. CIT(A) erred in not appreciating the bifurcation of deduction under Section. 80P of Rs. 40,84,182/- into Section 80P(2)(c) at Rs. 50,000/- and Section 80P(2)(d) at Rs. 40,34,182/-. The Ld. CIT(A) ought to have allowed the deduction to the extent of Rs. 50,000/- claimed under Section. 80P(2)(c).*
5. *The Ld. CIT(A) has erred in law and on facts in not adjudicating the issue of unexplained expenditure of Rs. 10,62,90,443/- despite detailed specific submissions made by the appellant on such issue before Ld. CIT(A).*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest under Section. 234A/B/C/D of the Act.*
8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty under Section. 270A, 271(1)(b) and 271(1)(c) of the Act.*
9. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. The brief facts of the case are that the assessee filed the original return of income on 26.09.2014 for the year under consideration declaring total income at Rs. 2,09,64,300/- after claiming deduction of Rs. 40,84,182/- under Section 80P of Chapter VIA of the Act. Subsequently, the case was selected for 'Complete Scrutiny' under CASS for the following reasons:

- i. Large specified domestic transactions (Form 3 CED)
- ii. Large income shown by large contractors and
- iii. Mismatch between income/receipt credited to Profit & Loss account considered under other heads of income and Income from heads of Income other sources (ITR).

4. The assessment was completed under Section 143(3) of the Act on 26.12.2016 accepting the returned income of Rs. 2,09,64,300/-. On perusal of the records, the AO was of the view that the income of the appellant has escaped assessment and the case was reopened under Section 147 of the Act after obtaining the necessary approvals from the competent authority. A notice under Section 148 of the Act was issued and served upon the appellant and in response to the notice, the appellant filed the return of income declaring the same income as in the original return of income filed under Section 139(1) of the Act. The re-assessment was completed holding that the interest and dividend income derived by the society does not come under the provisions of the Section 80P of the Act and thereby making additions to the returned income of the assessee were made by the Ld. Assessing Officer.

5. The assessee is in appeal before us and at the outset, has challenged the issuance of notice under Section 147 of the Act beyond the period of 4 years from the end of the relevant assessment year. Before us, the Ld. Counsel for the assessee submitted that the reasons for reopening were supplied to the assessee vide notice dated 15.11.2021 and broadly, the case has been reopened on the ground that at the original assessment stage case was referred to TPO vide letter dated 19.09.2016. TPO, vide letter dated

23.12.16 considered TP case as withdrawn. Assessment order under Section 143(3) was passed on 28.12.2016. On verification of available record, it was found that though assessee had made application under safe harbour rule, no order was issued. The system of safe harbour rules was not followed properly and one of the consequences was that the other issues of CASS could not be examined due to lack of time. Under such circumstances, AO was of the opinion that there is escapement of income chargeable to tax in the hands of the assessee.

6. Before us, the first ground raised by the Ld. Counsel for the “Reasons for Reopening” do not specify either the “Specific issues” for which case is sought to be reopened and nor the “amount of alleged escapement of income chargeable to tax”. Therefore, the reasons recorded for reopening the case are “vague”, “scanty” and “non-specific”. It was submitted before us that it is well settled legal proposition that that reopening based on “vague”, “scanty” and “non-specific” reasons is not justified. Reliance was placed the case of **Paresh Babubhai Bhalani vs. ITO 156 taxmann.com 517 (Guj)** and **Surani Steel Tubes Ltd. vs. ITO 136 taxman.com 139 (Guj)** in support of the above proposition.

7. Secondly, the Ld. Counsel for the assessee argued before us that the AO has not quantified ‘amount of escapement of income chargeable to tax’: As per Clause (b) of sub-Section (1) of Section 149 of the Act, no notice under Section 148 shall be issued for an assessment year if four years, but not more than six years, have elapsed from the end of relevant assessment year unless income chargeable to tax which has escaped assessment amounts to or is likely to amount to **one lakh rupees or more for that**

year. It is well settled that it is mandatory for AO to state, in the reasons recorded for reopening, that the income escaping assessment **is Rs. 1,00,000/- or more to bring it within the ambit of Section 149(2) (b)**. If such material aspect for invoking the extended period of limitation under Section 149(2)(b) is not forthcoming from reasons for reopening, reopening is not justified. Reliance was placed on the case of **Mahesh Kumar Gupta vs. CIT 363 ITR 300 (Allahabad)** and **Novo Nordisk India P. Ltd. - (2018) 95 taxmann.com 225 (Kar.)** in support of the above proposition. In this case, amount of income escaping assessment has not at all been quantified in reasons for reopening. Hence, reopening is not justified for this reason as well.

8. The third argument of the Ld. Counsel for the assessee before us is that reopening is beyond a period of four years from the end of relevant Assessment Year but there is no failure on the part of the assessee as to full and true disclosure. The case of the assessee was originally selected for scrutiny and assessment was framed under Section 143(3) of the Act. The case has been reopened vide notice under Section 148 of the Act dated 27.03.2021 i.e. beyond a period of four years from the end relevant Asst. Year. All necessary details were placed on record at the original assessment stage. In absence of any failure on the part of the assessee as to full and true disclosure, reopening beyond a period of four years from the end of the relevant Assessment Year is not justified especially when assessment has been originally framed under Section 143(3) of the Act. The Ld. Counsel for the assessee submitted that it is well settled that the issue of “reopening” is with respect to “jurisdiction” can be raised at any stage. Reliance is

placed on “**P. V. Doshi vs. CIT - (1978) 113 ITR 22 (Guj)** in support of the above contention.

9. On going through the reasons for reopening of assessment, we observe that there is no specific allegation that there is any non-disclosure on part of the assessee during the course of assessment proceedings. In the recent case of **PCIT v. DSC Ltd. 153 taxmann.com 535 (Delhi)**, the High Court held that where assessment was ought to be reopened in case of assessee on ground that a search conducted at DSC Group of Companies revealed bogus purchases made by assessee through unexplained sources, since reasons recorded by AO did not make specific allegations of failure to disclose all material facts by assessee, jurisdictional ingredients for reopening assessment provided in first proviso to Section 147 were absent, both in form and substance and, thus, proceedings were bad in law. In the case of **Dhirendra Hansraj Singh 94 taxmann.com 372 (Gujarat)**, the High Court held that where after expiry of four years from end of relevant year, Assessing Officer sought to reopen assessment on ground that deduction under Section 80-IB(11A) was wrongly claimed as assessee was engaged in manufacturing and processing of fruit juices and did not derive profits from processing, preservation and packaging of fruits, since there was no failure on part of assessee to disclose fully and truly any material facts which were necessary for assessment, in view of proviso to Section 147, impugned reassessment proceedings deserved to be set aside. Further, we also agree with the contention of the Ld. Counsel for the assessee that the reasons for reopening also do not specify the amount of income having escaped assessment, so as to extend the period of limitation beyond four

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years from the end of the relevant assessment year. For the above reasons and keeping in light the facts of the instant case, where nothing has been brought on record to show that there was failure on part of the assessee to fully and truly disclose all material facts during the course of original assessment proceedings, we are of the considered view that initiation of reassessment proceedings are liable to be stuck down.

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

This Order pronounced in Open Court on	08/03/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 08/03/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/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 प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad