

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.296/Ahd/2018  
Assessment Year: 2009-10**

Ghanshyam Madhusudan Soni, Hariom House, Opp. Sabar Sangh Petrol Pump, Opp. Harekrishna Motor Boding, Dhansura, District Arvalli, Gujarat. <b>[PAN – AUWPS 7976 F]</b>	Vs.	The Income Tax Officer, Ward – 1, Modasa, Dist. Arvalli.
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**ITA No.1717/Ahd/2019  
Assessment Year: 2011-12**

Ghanshyam Madhusudan Soni, 313, Galaxy Business Park, Opp. Torrent Substation, Near Nikol - Mathwada Cross Road, S.P. Ring Road, Nikol, Ahmedabad – 382 418. <b>[PAN – AUWPS 7976 F]</b>	Vs.	The Income Tax Officer, Ward – 3(3)(7), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri K.C. Thaker, AR	
Revenue by	Shri Urjit B. Shah, Sr. DR	
Date of Hearing	25.04.2024	
Date of Pronouncement	02.07.2024	

**ORDER**

These two appeals are filed by the assessee against two different orders dated 18.12.2017 passed by the CIT(A)-6, Ahmedabad & 27.09.2019 passed by the CIT(A)-3 Ahmedabad respectively for the Assessment Years 2009-10 & 2011-12 respectively.

2. The assessee has raised identical grounds in both these appeals. Firstly taking up the appeal filed by the assessee for the Assessment Year 2009-10 i.e.

ITA No.296/Ahd/2018 and hence grounds raised in this appeal are reproduced as under:-

- “1. *The Ld. CIT(A) has erred in law and on facts in holding that the AO was justified in making the addition of Rs.8,14,200/- and in upholding the said addition.*
2. *The Ld. CIT(A) has further erred in law and on facts in not dealing with the specific contentions raised before her and in recording incorrect finding that the case law cited in support of each contention was distinguished on facts.*
3. *On the facts and in the circumstances of the case and in law the learned CIT(A) ought not to have upheld the addition of Rs.8,14,200/- and ought to have deleted the same.*
4. *It is therefore prayed that the orders of the lower authorities may be set aside and the addition of Rs.8,14,200/- may be deleted.”*

3. The assessee has also raised the following additional grounds:-

- “1) *In the facts and circumstances of the case and in view of the specific bar provided u/s.153A/153C of the Act, the proceedings initiated u/s.147 of the Act are not valid in law.*
- 2) *The assessment made in pursuance of the invalid proceedings u/s.147 and illegal notice u/s.148 of the Act, is void ab initio and is therefore liable to be annulled.*
- 3) *It is therefore prayed that the proceedings u/s.147 of the Act may be quashed and the order of assessment u/s.143(3) r.w.s. 147 of the Act may be annulled.”*

4. The return of income for the Assessment Year 2009-10 was filed electronically by the assessee on 29.09.2009 declaring total income at Rs.3,40,560/-. The return of income was processed under Section 143(1) of the Income Tax Act, 1961 on 06.08.2010. In view of the information in respect of proceedings under Section 132A on 09.03.2015 in the case of Narayan Sai and Asaram Bapu received from the Office of the DDIT(Inv.), Unit-III, Surat vide letter dated 26.03.2015, it was observed by the Revenue that the Promissory Note was found towards the assessee Ghanshyam Madhusudhan Soni against cash loan of Rs.20,00,000/- on 03.08.2007. Considering the said facts, the case was reopened under Section 147 of the Act and consequently after recording the

reasons, a notice under Section 148 of the Act was issued on 31.03.2016 which was served upon the assessee on 31.03.2016. The assessee did not file any return of income in response to notice under Section 148 of the Act. Thereafter, notice under Section 142(1) of the Act was issued on 06.06.2016 and served upon the assessee thereby the assessee was required to furnish the details as per notice issued under Section 148 of the Act. The assessee did not attend the proceedings and not filed any details. The Assessing Officer observed that an intimation in respect of proceedings under Section 132A was issued on 09.03.2015 in the case of Narayan Sai and Asaram Bapu has been received from DDIT (Inv.) and the Promissory Note was found towards the assessee Ghanshyam against the cash loan of Rs.20,00,000/- on 03.08.2007. However, on verification of computation of total income for Assessment Year 2009-10, it is noticed that the assessee has not mentioned any such transaction. The Assessing Officer further observed that the Promissory Note dated 03.08.2007 towards the assessee against cash loan of Rs.20,00,000/- seized by Surat Police in the case of Narayan Sai and Asaram Bapu is the Promissory Note for Rs.20,00,000/- received by the assessee Ghanshyam on 03.08.2007 and this transaction is per se reflected in the individual ledger named Madhusudan, Modasa. On verification of the Financial Year-wise bifurcation of the ledger for the period after 01.04.2008, it was observed that during the F.Y. 2008-09 the assessee made repayment of principal amount of Rs.6,00,000/- and also paid interest of Rs.2,14,000/-. Since the assessee has not furnished books of account but on verification of the details available for A.Y. 2009-10 it was found that the payment in respect of some of Rs.8,14,000/- was not accounted for in the books of account for the A.Y. 2009-10. Therefore, a show cause notice dated 27.10.2016 was issued to the assessee. In response to the show cause notice, the assessee filed details thereby stating that the assessee neither has taken any loan nor made any repayment and in fact submitted that he do not have any ledger account with anybody in respect of such loan transaction. The Assessing Officer observed that the assessee could not furnish any corroborative evidence in support of his contention and, therefore, made addition of Rs.8,14,200/- on account of expenses incurred out of undisclosed source.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The assessee has taken additional ground in respect of the specific bar provided under Section 153A/153C of the Act and hence, the Ld. AR submitted that the proceedings initiated under Section 147 of the Act are not valid in law. The Ld. AR further submitted that the assessment made in pursuance of the invalid proceedings under Section 147 of the Act and illegal notice under Section 148 of the Act is void ab initio and, therefore, liable to be annulled. The Ld. AR further submitted that the Assessing Officer in reason for reopening the assessment, referred to the alleged incriminating documents, being a Promissory Note and individual ledger account in the name of Madhusudan Modasa found during the search in the case of Narayan Sai and Asaram Bapu and requisitioned under Section 132A of the Act. The Ld. AR submitted that the specific provisions enacted in Chapter-XIV under the title Assessment in case of search or requisition, being Sections 153A, 153B, 153C & 153D were attracted. The provisions of Section 153A were also applicable to the searched person whereas the provisions of Section 153C applied to the person other than the searched person. Both these Sections i.e. Section 153A & Section 153C, provided that Sections 139, 147, 148, 149, 151 & 153 would have no application in the assessment of search and requisition case. The Ld. AR submitted that provisions of Section 153C of the Act were applicable in the assessee's case, being the other person to whom, according to the Assessing Officer, documents found during the search in case of Narayan Sai and Asaram Bapu pertained or the information contained therein related to. The Assessing Officer was, therefore, not justified in resorting to Section 147 of the Act which is specifically barred from applicability by the special provisions enacted for search and requisition cases. The Ld. AR relied upon the decision of Sanjay Singhal (HUF) vs. DCIT (2020) 207 TTJ 853 (Chandigarh Tribunal), ITO vs. Vikram Sujitkumar Bhatia, 453 ITR 417 (SC).

7. The Ld. DR submitted that search in the case of Narayan Sai was carried out on 09.03.2015 i.e. before Section 153C was amended (w.e.f. 01.06.2015). Section 153 was amended before the amendment of Section 153C it was possible to invoke Section 153C only if material found belong to third person. In the case

of Narayan Sai, documents found belonged to Narain Sai only and not by the assessee. Therefore, it was not possible to invoke Section 153C of the Act in the case of the assessee. Documents found contained some information about assessee which was intimated to the Assessing Officer of the assessee and accordingly assessment was reopened by issuing notice under Section 148 of the Act. The Hon'ble Delhi High Court in the case of Pepsico India (2014) 50 taxmann.com 299 held that material cannot be said to be belonging to third person if some copy of document related to the assessee was found in search. Because of this decision, Section 153C was amended w.e.f. 01.06.2015. Since search was carried out before the date of amended provision phrase belongs to was applicable. Since material found did not belong to the assessee, it was not possible to issue notice under Section 153C of the Act. In the case of the assessee, since information in respect of assessee on the basis of material found was received by the Assessing Officer of the assessee, assessment was reopened by issuing notice under Section 148 of the Act. The Ld. DR further submitted that the decision of Hon'ble Supreme Court in the case of Sujitkumar Bhatia (supra) held that amendment in Section 153C was retrospective by that time the appeal was decided by the CIT(A) and, therefore, the decision of Hon'ble Supreme Court was not applicable till first appeal was decided. The Ld. DR submitted that as per the position available at the time of issuance of notice under Section 148 of the Act was fully justified.

8. Heard both the parties and perused all the relevant material available on record. The additional ground taken by the assessee that the Assessing Officer should have been given invocation of Section 153C in assessee's case in light of the decision of Hon'ble Supreme Court in the case of ITO vs. Vikram Sujitkumar Bhatia (supra), it appears that the Assessment Order was passed on 30.11.2016 and the appeal of the assessee was decided by the CIT(A) vide order dated 18.12.2017 but the decision of Hon'ble Supreme Court is that of 06.04.2023. Assuming that Section 153C of the Act should have been invoked in the present assessee's case, the Assessing Officer of the assessee received requisition report and on the basis of that the Assessing Officer reopened the case of the assessee as per Section 147 of the Act which was applicable when the notice under Section 148 was issued on 31.03.2016. The contention of the Ld. AR that provisions of

Section 153C of the Act are applicable in the assessee's case being other person to whom according to the Assessing Officer documents found during the search in case of Narayan Sai and Asaram Bapu pertaining to or information contained therein related to, appears correct preposition of law as the Assessing Officer was very well aware about Section 153C of the Act while issuing the notice under Section 148 of the Act which was in the year of 2016 i.e. after the amendment i.e. 01.06.2015. The decision of the Hon'ble Supreme Court though is subsequent to the order passed by the CIT(A), ultimately it is the provisions of Section contemplated and which incorporated in the Act which was in the year 2015 which is much prior to the decision of the CIT(A). Thus, the additional ground taken by the assessee is allowed.

9. As regards to merit of the case, though the additional ground being legal ground decided in favour of the assessee, it appears that the comments related to the merits of the case is also important as in the present case the documents found cannot be held as incriminating documents as the name contemplated in the said document is that of Madhusudan Modasa and Ghanshyam Madhusudhan Soni which never give any clear picture about who has given the money to the other person i.e. Vanibhai. Thus, there is no signature of the assessee and in fact the details filed by the assessee during the assessment proceedings clearly set out that the assessee did not have any transaction and do not have related ledger in respect of repayment of loan. Thus, the material found by the Assessing Officer in case of search operation of Narayan Sai and Asaram Bapu cannot be stated to be that of the assessee and in fact the document does not have value as incriminating material in assessee's case. These aspects were totally ignored by the Assessing Officer on merit also.

10. In the result, appeal of the assessee being ITA No.296/Ahd/2018 for Assessment Year 2009-10 is allowed.

11. As regards to ITA No.1717/Ahd/2019 for Assessment Year 2011-12, the same is identical as stated by the Ld. AR and Ld. DR. Therefore, the observations made in Assessment Year 2009-10 in ITA No.296/Ahd/2018 is

applicable for Assessment Year 2011-12 as well. Thus, ITA No.1717/Ahd/2019 for Assessment Year 2011-12 is allowed.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on this 2<sup>nd</sup> July, 2024.

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 2<sup>nd</sup> July, 2024**

***PBN/\****

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*