

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.1606/Ahd/2016
Assessment Year: 2009-10**

M/s. Akash Fabrics Pvt. Ltd., 38, Kanjinagar Huts, C/o. Famous Hair Style, Sujata Flat Road, Shahibaug, Ahmedabad – 380 004. [PAN – AABCA 6358 H]	Vs.	The Income Tax Officer Ward – 1(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Kishor Goyal, AR	
Revenue by	Shri Kamlesh Makwana, CIT-DR	
Date of Hearing	30.05.2024	
Date of Pronouncement	31.07.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 28.03.2016 passed by the CIT(A)-6, Ahmedabad for the Assessment Year 2009-10.

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

- “1. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition made by AO on account of alleged undisclosed income of Rs.8,00,00,000/-.
2. On the facts and circumstances of the case, Ld. CIT(A) erred in dismissing the ground no.4 relating to charging of interest u/s.234A, 234B and 234C of the Income Tax Act, 1961.
3. On the facts and circumstances of the case, the Ld. CIT(A) erred in dismissing the ground no.5, regarding the initiation of penalty proceeding u/s.271(1)(c) of the Income Tax Act, 1961.”

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

Additional/revised grounds of appeal dated 03.07.2019

- “1. Whether the AO was legally correct in taking charge over the case of the appellant without having any authority in accordance with s. 2(7A) r.w.s. 120 of the Act read with Art.12 r.w. Art.36 r.w. Art.77 r.w. Art.53 of the Constitution ?
2. Whether the impugned AO was legally correct in issuing the summons u/s.148 without following the due procedure of law as well as the procedures established under the Act?
3. Whether the impugned AO had erred in law in recording the frivolous and vague reasons for reopening the case? Also whether the approving authority had erred in law and in mechanically giving the sanction u/s. 151 without paying due allegiance to the due process of law, the settled principles of law, his own power under Chapter XX-E of the fundamental rights of the appellant?
4. Whether the impugned AO had erred in law in instituting second judicial trial for the same assessment year without having any subject matter or amount of dispute and in violation of various provisions of the law?
5. Whether the impugned AO had erred in law in issuing revenue notice u/s.142 of the Act the judicial proceeding and conducting the proceeding by contravening the provisions of the law as well as Art. 50, 20(3) of the Constitution?
6. In revision to the Ground No.1 of the original ground, this revised ground is hereby submitted

Whether the impugned AO had erred in law and in facts in passing the order by merging two different codes to make frivolous addition on offbeat grounds merely to substantiate his originally recorded reasons by overruling the approval of the Pr. CIT?
7. Whether the impugned AO was empowered to give direction to charge interest on the tax demand and to give direction to issue penalty notice? which shall not be less than a sum equal to the amount of tax and interest levied on the aggrieved and bereaved appellant u/s.35 and 35A of the CPC, 1908?
9. Whether the impugned AO and the Pr. CIT are liable to be subjected to appropriate suit/prosecution/removal from the office in accordance with s. 293 and 117 of the Act?”

Additional/revised grounds of appeal (Rectified) dated 27.01.2020

- “1. Whether the ITO was legally correct in taking charge over the case of the appellant in the absence of any contractual agreement with the state as well as without establishing his pecuniary jurisdiction?

2. *Whether the impugned ITO was legally correct in issuing the summons u/s.148 without following the due procedure of law as well as the procedures established under the Act?*
3. *Whether the impugned ITO had erred in law in recording frivolous and vague reasons for reopening the case? Also whether the Pr. CIT had erred in law and in facts in mechanically giving the sanction u/s.151 to the ITO in the absence of any contractual agreement with the state and without paying due allegiance to the due process of law, the settled principles of law, his own power under Chapter XX-E of the Act, and the fundamental rights of the appellants?*
4. *Whether the impugned ITO had erred in law in instituting second judicial trial for the same assessment year without having any subject matter or amount of dispute and in violation of various provisions of the law?*
5. *Whether the impugned ITO had erred in law in exercising executive power during the judicial proceeding and conducting the proceeding by contravening the rule of law as well as Art. 50, 20(3) of the Constitution?*
6. *In revision to the Ground No.1 of the original ground, this revised ground is hereby submitted:

Whether the impugned ITO had erred in law and in facts in passing the order by merging two different codes to make frivolous addition on offbeat grounds merely to substantiate his originally recorded reasons and by overruling the approval of Pr. CIT? Hence, the entire addition must be deleted in toto and the impugned order is liable to be set aside.*
7. *Whether the impugned ITO was empowered to give the direction to charge interest on the tax demand and to give direction to issue penalty notice?*
8. *On various legal as well as factual grounds whether the impugned ITO and the Pr. CIT are jointly/severally liable to pay the legal costs and adequate compensation, which shall not be less than a sum equal to the amount of tax and interest levied on the aggrieved and bereaved appellants, in accordance with s.35 and 35A of the CPC, 1908 and s.357, 357A and 357B of the Cr. PC, 1973 ?*
9. *Whether the impugned ITO and the Pr. CIT are able to be subjected to appropriate suit/prosecution/removal from the office in accordance with s.293 and 117 of the Act.”*

4. The assessee company did not file return of income under Section 139 of the Income Tax Act, 1961. The case was reopened under Section 147 of the Act by recoding reasons and notice under Section 148 of the Act was issued on 16.08.2012. which was duly served to the assessee. Notice under Section 142(1) of the Act was also issued on 16.08.2012. Thereafter, notice under Section 143(2) and 142(1) of the

Act calling certain details were issued on 06.03.2013 which were returned unserved by the Postal Authorities. In response to notice under Section 148 of the Act, the assessee filed return of income on 06.03.2013 showing total loss of Rs.1,78,185/- including capital loss of Rs.60,959/-. Due to change incumbent notices issued under Section 143(2) and 142(1) of the Act (along with Questionnaire dated 26.07.2013) issued on 07.01.2014 which was served by affixture. In response to the said notices, the assessee did not attend the proceedings and not filed any details during the year under consideration. The assessee company is engaged in the business of trading in cloth, shares and securities and real estate during the year. The assessee has not filed return of income under Section 139 of the Act as stated in his reply dated 30.01.2014 but enclosed copy of audited financial accounts. But the Assessing Officer observed that the assessee has not furnished the audited financial accounts during the course of assessment proceedings. On verification of the profit & Loss accounts shown in return of income filed in response to notice under Section 148 of the Act, the assessee company has shown receipt of Rs.8,00,00,000/- as any other income which is received from Aryavrat Developers Pvt. Ltd. on the basis of Arbitration Award dated 15.04.2008 which was not offered for taxation. Therefore, show cause notice under Section 142(1) of the Act was issued on 21.01.2014 which was served by affixture. In respect of the show cause notice, the Ld. AR of the assessee attended the proceedings and filed the details. The Assessing Officer observed that information received from Additional CIT Range-I, Ahmedabad that during the assessment in the case of M/s. Aryavrat Developers Pvt. Ltd. for A.Y. 2009-10, the assessee company developed a scheme under the name of "Aryans Corporate Park" on the land belonging to one Kesari Nandan (Thaltej) Co-op. Housing Society Limited. M/s. Aryavrat Developers Pvt. Ltd. claimed that assessee disputed between Akash Fabrics Pvt. Ltd. and Kesari Nandan (Thaltej) Co-op. Housing Society. The Assessing Officer further observed that the assessee has shown purchase of Rs.9,96,23,900/- and expenses of Rs.1,87,030/- without giving any supporting evidences in respect of the said purchase and expenses. Thus, the Assessing Officer held that the assessee deliberately shown this purchase and expenses to substantiate the receipt of Rs.8,00,00,000/- being Arbitrary Award. After taking cognisance of assessee's details, and the Balance Sheet, the Assessing Officer held that the assessee has sold the shares related to Aryavrat Developers Pvt. Ltd. deliberately at a lower rate to create

the loss and so the receipt from Aryavrat Developers Pvt. Ltd. could be adjusted against the loss on sale of shares and also the assessee has tried to avoid the tax. The assessee purchased cloths from Hanuman Enterprise of Rs.2,16,39,900/- which was sold at Rs.1,16,00,000/- to the three parties for which the assessee failed to furnish the details alongwith supporting evidences. Thus, the assessee has created huge loss of sale of shares and cloths but diluted the income from receipt of Rs.8,00,00,000/- from Aryavrat Developers Pvt. Ltd. Therefore, this being the undisclosed income, the Assessing Officer made addition of Rs.8,00,00,000/-.

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. At the time of hearing the Id. AR submitted that the additional grounds filed on 27.01.2020 and 03.07.2019 may be taken up first as these are legal grounds and it challenges the proceedings under Section 148 itself as well as the notices issued by the Revenue along with the challenge towards the jurisdiction of the Assessing Officer. The Ld. AR submitted the 36 pages written submissions dated 30.05.2024 as per the directions given by the Bench at the time of concluding the hearing of the appeal. The assessee at the time of hearing also filed/submitted petition requisitioning the following documents from the respondent. The documents are as under :-

- “1. *Copy of the Order passed underneath S.2(7A) rws 120 rws 124 rws 127 of the Act following the Art.77 rw Art.299 rw Art.300 of the Constitution of India.*
2. *Copy of the proceeding initiating underneath s.2(35) of the Act.*
3. *Copy of the Order passed underneath s.129 of the Act and copy of the minutes of hearing following code 124 of the Act following Art.77 rw Art. 299 rw Art.300 of the Constitution of India.*
4. *Copy of the order/notification related to the Asst. Year 2009-10 passed underneath s 120 of the Act.*
5. *Copy of the minutes of the proceeding initiated under code 147 and 143 of the Act.*
6. *Copy of the minutes of the First Appellate Forum (Order Sheet) Commissioner of Income Tax (Appeal-6), Ahmedabad vide Appeal No.*

6/193/2013-14 filed on 28/03/2014 and order pronounced on 28/03/2016 beyond the statutory period without having reasons on records.”

7. After going through the additional grounds filed by the Ld. AR of the assessee dated 03.07.2019 & 27.01.2020, it appears that the assessee is challenging the constitutional validity of Section 2(7A) read with Section 120 alongwith Article 12 read with Article 36 read with Article 77 read with Article 53 of the Constitution of India which cannot be entertained by the Appellate Tribunal as the validity cannot be challenged before the Income Tax Appellate Tribunal as per the Income Tax Statute being the specific provisions of the Act. Besides this, any challenge to the validity of the Section can be done only when the writ jurisdiction is available and the writ jurisdiction is conferred upon the Hon'ble High Court as per the Constitution of India. Thus, these grounds filed on 03.07.2019 are dismissed herewith.

8. As regards to additional grounds filed on 27.01.2020 thereby stating that whether the ITO was legally correct in taking charge over the case of the assessee in the absence of any contractual agreement with the state as well as without establishing his pecuniary jurisdiction? The very norm of Section 127 of the Act confers jurisdictional powers to the respective Assessing Officers in any cases which has been prescribed from time to time by the CBDT Circulars and notifications. In the present case, the Ld. AR could not make out anything related to the jurisdiction which was not conferred upon as per the guidelines given in the CBDT Circulars, as well as, as per the provisions of Section 127 of the Act in consonance with Section 147 read with Section 143(3) of the Act. In the present case, the assessee has not at all filed return of income under Section 139 of the Act and, therefore, the Assessing Officer has rightly reopened the case under Section 147 of the Act after recoding the reasons and issuance of notice under Section 148 of the Act which was not challenged/ objected at any point of time by the assessee during the assessment proceedings or during the appellate proceedings before the CIT(A). Thus, the sum and substance of overall 10 additional grounds filed on 27.01.2020 is revolving around the contraventions of the Rule of law and under Article 50 & 20(3) of the Constitution as well as the provisions as quoted in additional grounds 8 regarding CPC and Cr.PC which will not be applicable in the present appellate proceedings before the Income Tax Appellate Tribunal. Hence, all these grounds are dismissed.

9. Now coming to the petition for requisition related to the documents mentioned, from the perusal of the records and from the Assessment Order itself it can be seen that how the invocation of reopening under Section 147 of the Act has been dealt with by the Revenue Department and in consonance with the provisions of Income Tax Statute. The Assessing Officer who was validly having the jurisdiction has passed the appropriate order. Thus, this petition for requisition submitted on 30.05.2024 is rejected.

10. At the time of hearing, we have continuously on several occasions asked the Id. AR to make submissions on the merits of the case of the assessee but the Ld. AR categorically refused to argue on merit. This attitude of the Ld. AR alleging the Authorities in personal capacity in additional grounds as well as while submitting before us and not placing the case on merit of the assessee is an uncalled act of professionalism which will affect the assessee's case and, therefore, we are taking up the merit as well.

11. The Ld. DR relied upon the Assessment Order and the Order of the CIT(A). The Ld. DR submitted that the assessee has filed certain documents which was not filed before the Assessing Officer as well as the CIT(A).

12. After going through the Assessment Order, it has been seen that the assessee has filed return of income in response to notice under Section 148 of the Act thereby declaring loss of Rs.1,78,185/- including capital loss of Rs.60,959/- which was simply observed by the Assessing Officer as not acceptable. From the perusal of the records especially that of the Assessment Order, it can be seen that the assessee in his Balance Sheet has categorically mentioned the loan and advances as well as the share capital authorised reserves and surplus including unsecured loans and also has given details about purchase and selling of these shares which has incurred the loss to the assessee. As regards the Arbitration Award for Rs.8,00,00,000/-, the same appears to be not taken into account in the Profit & Loss Account as well as the Balance Sheet of the assessee as per the observations of the Assessing Officer. While going through the order of the CIT(A), the CIT(A) has categorically mentioned that the assessee has not filed any details of the explanation in support of the sale and

purchase of the shares and cloths to substantiate the genuineness of the transactions. In fact, the Assessing Officer on page no.11 of the Assessment Order observed that the loss created by the assessee on sale of shares and cloth is not acceptable but makes addition of receipt of Rs.8 Crores from Aryavrat Developers Pvt. Ltd. and again makes addition in respect of Arbitration Award. The assessee before us has filed confirmation of accounts of all the parties mentioned in the Assessment Order and after going through the same it appears that the same needs verification. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer for proper adjudication after verifying the evidences filed by the assessee before us. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

13. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 31st July, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st July, 2024

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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