

**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.38/Ahd/2024
Assessment Year: 2018-19**

Shree Gautam Labdhi Con Corp LLP, 23, Sangam Park Society, Nr. Hirabaug Railway Crossing, Bh. PWD House, Ambawadi, Ahmedabad – 380 006. [PAN – ADMFS 9238 F]	Vs.	The Income Tax Officer, Ward – 1(1)(3), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Sunil Maloo, CA	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	04.06.2024	
Date of Pronouncement	08.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 19.12.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2018-19.

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

- “1. The Ld. CIT(A) grossly erred in law and facts in upholding the assessment under Section 147 without issuing of statutory notice under Section 143(2) of the Act.
2. The Ld. CIT(A) grossly erred in law and facts in upholding the addition n of Rs.62,50,000/- under Section 68 disregarding the documentary evidences placed on record by the appellant.”

3. The assessee filed its return of income for the Assessment Year (A.Y.) 2018-19 on 25.07.2018 declaring total income at Rs.45,664/-. The said return was processed under Section 143(1) of the Income Act, 1961. As per the information, the Assessing Officer observed that Vasant Darji Prop. Vijay Enterprise provided various accommodation entries in the form of loan/share premium/purchase etc. through 4 Vijay Enterprises, Vishal Impex, Chamunda Traders and M/s. Viral Overseas and the assessee has taken accommodation entry from Shri Vasant Darji & Others. The assessee took accommodation entry of Rs.17,66,600/- in the form of LTCG/STCG and the Assessing Officer observed that the same is non-genuine transaction which requires to be taxed in the hands of the assessee. The order under Section 148(d) of the Act was passed on 24.03.2022 and then notice under Section 148 of the Act was issued in 24.01.2022. To verify the issue, notice under Section 142(1) dated 23.09.2022 was issued to the assessee. The said notice also referred notice issued under Section 148 of the Act dated 24.03.2022 and notice issued under Section 142(1) dated 07.07.2022. The assessee furnished its reply on 07.10.2022 and in response to notice under Section 142(1), the assessee furnished its reply on 07.11.2022 alongwith documents. After taking cognisance of the assessee's reply and documents, the Assessing Officer made addition of Rs.12,94,507/- under the head of capital gains and also the addition of Rs.62,50,000/- under Section 68 of the Act in respect of unsecured loans.

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

5. The Ld. AR submitted that the Assessing Officer has passed Assessment Order under Section 147 of the Act dated 28.02.2023 without serving notice under Section 143(2) of the Act even through the assessee had duly filed return of income on 14.02.2023. In compliance of notice issued under Section 148 of the Act asking the assessee to file the return of income, the Ld. AR submitted that the requirement to issue notice under Section 148 is mandatory as per the Act and not a procedural one and non-issuance of the same and making assessment order is illegal and null. The Ld. AR relied upon the decision of Hon'ble Apex court in the case of ACIT vs Hotel Blue Moon, 321 ITR 362 (SC) and the decision of Hon'ble Delhi High Court in the case

of CIT vs. Pawan Gupta, 318 ITR 322 (Del). The Ld. AR, therefore, submitted that the Assessment Order was passed under Section 147 read with Section 144B of the Act. No notice under Section 143(2) of the Act has been issued by the Assessing Officer. This fact has been confirmed by the Assessing Officer in his order passed under Section 147 in response to the right to information application on behalf of the assessee citing no valid return was filed and verified by the assessee in response to the notice under Section 148 of the Act on 24.03.2022 within the time limit of 30 days allowed in the said notice. The Ld. AR submitted that the assessee filed its return of income on 14.12.2023 vide e-filing whereas the Assessment Order was passed on 28.02.2023. the Ld. AR relied upon the order of the Tribunal in the case of Mahesh P. Gandhi vs. ACIT (ITA Nos.1022 to 1025/Ahd/2018, Order dated 23.11.2022). The Ld. AR also relied upon the following decisions:

1. *Kamla Craft Pack Pvt. Ltd. vs. ITO, 2020 (3) TMI 107 - ITAT Ahmedabad – ITA No.810/Ahd/2018 (A.Y. 2008-09) order dated 20.01.2020*
2. *DCIT vs. M/s. Specific Ceramics Limited, 2021 (7) TMI 150 – ITAT, Ahmedabad ITA No.121/Ahd/2019 order dated 28.06.2021*
3. *Girishbhai Nanjibhai Solanki vs. ITO – ITAT Rajkot – ITA Nos.31 & 32/RJT/2020 – Order dated 01.03.2023*

6. The Ld. AR further submitted that Section 148 of the Act provides that before making assessment, reassessment, re-computation under Section 147 of the Act, the Assessing Officer shall serve notice on the assessee requiring him to furnish return of income or the income of any other person in respect of which he is assessable. The Ld. AR also relied upon the Circular No.1/2023 issued by the CBDT.

7. As regards to ground no.2 relating to addition of Rs.62,50,000/- under Section 68 of the Act, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) has not taken into account documentary evidence produced by the assessee before both the Authorities.

8. The Ld. DR submitted that the CIT(A) in paragraph no.7.1 categorically dealt ground no.1. The Ld. DR submitted that the assessee has not filed valid return in response to the notice under Section 148 of the Act issued on 24.03.2024. In fact, the

return which was filed by the assessee are filed just few days prior to the assessment under Section 147 of the Act was completed i.e. on 14.02.2023. The assessee's contention that the assessee filed Income Tax return in response to notice under Section 148 of the Act but the same was not valid return as per the Assessing officer and, therefore, there is no need of notice under Section 143(2) of the Act. The Ld. DR submitted that no violation of Rule was made by the Assessing Officer while passing the Assessment Order under Section 147 of the Act. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). As regards merit of the case, the Ld. DR relied upon the Assessment Order as no evidences filed before the Assessing Officer and no explanation was given in respect of documents filed before the Assessing Officer by the assessee.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in the present case the return of income for A.Y. 2018-19 was originally filed under Section 143 of the Act on 25.07.2018. After the case was reopened under Section 147 of the Act, notice under Section 148 was issued on 24.03.2022 and notice under Section 142(1) of the Act was issued on 07.07.2022 and the second notice issued under Section 142(1) dated 31.10.2022. From the perusal of records uptill date of issuance of Section 142(1) of the Act dated 31.10.2022 where the assessee has filed his reply on 07.11.2022 alongwith documents but the assessee has not filed return of income. In fact, the assessee chose to file return of income on 14.02.2023 as submitted in assessee's written submission but the same cannot be treated as return in respect of response to the notice under Section 148 of the Act as the assessee has filed the original return of income as mentioned in the return of income acknowledgement dated 14.02.2023. Thus, the CIT(A) has rightly dismissed this ground with the precise observation. Hence ground no.1 is dismissed.

10. As regards the contention of the assessee that Section 143(2) notice is a mandatory notice. In fact, the decision relied by the assessee itself categorically state in case of Hotel Blue Moon (supra) that Section 143(2) of the Act in respect of an assessment is to be completed under Section 143(3) read with Section 158BC of the Act, the same cannot be a procedural in nature, if the notice is not issued and, therefore, requirement of notice under Section 143(2) of the Act cannot be dispensed

but in the present case's scenario the assessment is reopened and the notice under Section 148 of the Act was rightly issued to the assessee for which the assessee has responded and, therefore, the statutory notice i.e. Section 148 notice has been issued and the plea to again issue notice under Section 143(2) of the Act is not justifiable when the notice itself has been issued under Section 148 of the Act and the other respective statutory notices under Section 142(1) of the Act was also subsequently issued for which the assessee has responded. Thus, the extension of ground no.1 in this context also is dismissed.

11. As regards to the merits of the case is concerned, from the perusal of documents, it appears that certain documents which were submitted before the Assessing Officer as well as before the CIT(A) was not taken into account either by the Assessing Officer or by the CIT(A). Hence, it will be appropriate to remand back this issue on merit to the file of the Assessing Officer for proper adjudication and verification after taking cognisance of the evidences/documents filed by the assessee. The Assessing Officer will adjudicate the issue as per the Income Tax Statute. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ground no.2 is partly allowed for statistical purpose.

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

Order pronounced in the open Court on this 8th August, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th August, 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*