

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 804/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2013-14)

Shri Amrut Ichhabhai Patel C/o Ketan H. Shah, Advocate 512, Times Square-1, Opp. Ram Baug Bungalow, Thaltej Shilaj Road, Thaltej, Ahmedabad, Gujarat, 380059	बनाम/ Vs.	The Dy.CIT Circle - 3(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACNPP1706F		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Ketan Shah & Shri Aman Shah, A.Rs.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhendu Das, CIT. DR

Date of Hearing	19/09/2024
Date of Pronouncement	03/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 16.08.2023 for the Assessment Year 2013-14.

2. The brief facts of the case are that the return of income for A.Y. 2013-14 was filed on 29.03.2014 declaring total income of

Rs.2,33,07,440/-. The original assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 29.03.2016 at total income of Rs.3,69,07,440/-. Thereafter, proceeding u/s. 147 of the Act was initiated by the AO and the re-assessment was completed u/s.147 r.w.s. 144B of the Act on 20.09.2021 at total income of Rs.11,65,97,440/-. The AO had made addition of Rs.9,32,90,000/- on account of unexplained deposits in the bank account of the assessee u/s.68 of the Act.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us and has taken following grounds in this appeal:

- "1. The Lower authority has erred in initiating proceedings u/s 147 r.w.s. 148 and 151, it is prayed that in view of the facts and submission made, the proceeding is itself bad in law and void and liable to be quashed.*
- 2. The Lower Authority has erred in making addition and confirming the addition worth of Rs. 9,32,90,000/-. It is said that the assessee has discharged the onus as per the submissions made and evidence brought on record and therefore, it is prayed that the addition made is required to be deleted."*

5. Shri Ketan Shah, the Ld. AR appearing for the assessee submitted that the notice u/s.148 of the Act issued by the AO was without recording the reason. He explained that the notice u/s.148 of the Act was issued on 22.03.2020, whereas as per copy of reason provided to the assessee in the course of assessment proceeding, it transpired that the reason was recorded afterwards on 09.06.2020. He further submitted that the AO had not recorded any independent reason for escapement of income on the part of the assessee and that the reason was based on only change of opinion. He has drawn our attention to the reason as recorded by the AO, a copy of which has been brought on record and submitted that the reason was based on incorrect facts as there was no cash withdrawal or cash deposit in the bank account of the assessee. The Ld. AR has further submitted that in the course of original assessment, the details in respect of bank statement, in respect of which the case has been reopened, was brought on record and the entries appearing therein were duly explained. The AO had not brought on record any fact to substantiate that there was failure on the part of the assessee to disclose fully and truly all the material facts. Under the circumstances, the condition as stipulated in Proviso to Section 147 of the Act, was not fulfilled and, therefore, the reason as recorded by the AO was not proper. He further submitted that the AO was not correct in treating all the deposits appearing in the bank account as income of the assessee without considering the debit entries as appearing in the bank account.

6. Per contra, Shri Sudhendu Das, Ld. CIT.DR submitted that the AO had recorded the reason on the basis of specific information received from the Investigation Directorate. Further that the AO had applied his mind on the information as received and thereafter recorded his independent reason for escapement of income. He placed strong reliance on the order of the AO as well as the Ld. CIT(A).

7. We have carefully considered the rival submissions. The assessee has challenged the legality of proceedings u/s.147 of the Act. The objection of the assessee that the notice u/s.148 of the Act was issued without recording of reason by the AO is not found correct. From the approval u/s.151 of the Act, a copy of which has been brought on record, it is found that the AO had recorded his reason on 18.03.2020 which was recommended by Range Head on 19.03.2020 and the approval of the PCIT-3, Ahmedabad was also accorded on 19.03.2020. It is thus found from the copy of the approval that both the Range Head and the PCIT had perused the reason as recorded by the AO and, thereafter, given their recommendation and approval respectively. In view of this fact, the allegation of the assessee that the reason was recorded by the AO after the issue of notice u/s 148 of the Act, is not found correct.

8. As regarding the basis of the reason recorded by the AO, it is found that the AO had received an information from DDIT(Inv.), Mumbai, wherein it was reported that on perusal of

bank Account No.366203100002162 maintained with The Saraswat Co-op. Bank Ltd., it was found that the funds were credited through RTGS/NEFT/Transfer from various entities and debits were made through RTGS/NEFT/Transfer/cash withdrawals. It was further reported that the credits and debits were generally affected on the same date and were of the same amount and that the total credits during F.Y. 2012-13 was Rs.9,71,04,451/-. On the basis of this information, the AO had recorded the reason that the nature of such huge amount of credit transactions followed by cash withdrawals by the assessee, doesn't substantiate the genuineness of transactions and, therefore, the income to the tune of Rs.9,71,04,451/- had escaped assessment. Thus, the precise basis of reopening the case was that there were credits in the bank account of the assessee followed by immediate cash withdrawals. A copy of the bank statement of assessee with The Saraswat Co-op. Bank Ltd. has been brought on record and it is found therefrom that the credits in the bank accounts were not followed by any cash withdrawals. All the debit entries are found to be through RTGS/NEFT transfers and we do not find any cash withdrawals from the bank account. Thus, the very basis on which the reason for escapement of income was recorded by the AO in this case, is found to be incorrect.

9. It is further found that in the course of original assessment, the details regarding bank accounts held by the assessee were called for and the assessee had provided the details of this

particular bank account as well. In the reason, the AO has recorded that the bank statement in respect of Account No.366203100002162 maintained with The Saraswat Co-op. Bank Ltd. was not furnished by the assessee. However, nothing has been brought on record to establish that the AO had called for such details in the course of original assessment and the assessee had not furnished the same. As per Proviso to Section 147 of the Act, where the assessment u/s.143(3) of the Act was made, no reopening can be done after expiry of 4 years unless the income had escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts. In this case, the original assessment was completed u/s.143(3) of the Act and the reopening was done after 4 years. Therefore, the condition as stipulated in the proviso to Section 147 of the Act was squarely applicable. The AO had not mentioned or brought out in the reason as to how there was a failure on the part of the assessee to disclose fully and truly all material facts. In the absence of any such specific finding, the reason as recorded by the AO cannot be held to be in accordance with the provisions of the Act and cannot be upheld.

10. The reason for escapement of income as recorded by the AO in this case was huge credit entries in the bank account followed by their immediate cash withdrawal. As already mentioned earlier there was no cash withdrawal made by the assessee as evident from the copy of the bank statement brought on record. Further, a mere credit entry in the bank account doesn't establish that

there was any escapement of income. For that matter, the credit and debit entries are bound to appear in any bank account. The onus was on the AO to explain and establish as to how the credit entries had led to escapement of income. It was not the case that the bank account in which the credits were appearing, was undisclosed bank account of the assessee. Therefore, the basic ingredients that there was an escapement of income was also not satisfied in this case, in the reason as recorded by the AO.

11. In view of above facts, the reopening as done by the AO cannot be held as correct and proper, as the basic ingredients of escapement of income and the default on the part of the assessee to fully and truly disclose all material facts were not fulfilled in this case. Therefore, the proceeding as initiated u/s.147 of the Act in this case is quashed. The Ground No.1 as taken by the assessee is allowed.

12. Since, the legal ground taken by the assessee has been allowed, we do not deem it necessary to adjudicate the other ground taken by the assessee on the merits of the addition.

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

This Order pronounced on	03/10/2024
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 03 /10/2024
S. K. SINHA