

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

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

I.T.A. No. 1685/Ahd/2024
(Assessment Year: 2019-20)

Saloj Dudh Utpadak Sahakari Mandali Ltd. (Cooperative Society-AOP), Saloj Dudh Utpadak, Sahakari Mandali Ltd., Saloj Pavi Jetpur, Chotaudepur, Vadodara-391160	Vs.	Income Tax Officer, Ward-3(1)(4), Vadodara
[PAN No.AAHAS3437K]		
(Appellant)	..	(Respondent)

Assessee by :	Shri D. K. Parikh, A.R.
Revenue by :	Shri Prateek Sharma, Sr. DR

Date of Hearing	04.02.2025
Date of Pronouncement	23.04.2025

ORDER

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi dated 20.07.2024 passed under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2019-20.

2. The brief facts relating to the case are that re-assessment proceedings in terms of the provisions of Sections 147 and 148 of the Act were initiated on the assessee by the AO noticing that the assessee was a non-filer of return of income and there were huge cash withdrawals from his bank account amounting to Rs. 1,13,20,000/-. Accordingly, in terms of the provisions of the Act stipulated in this regard, the assessee was first confronted with this information in the

possession of the AO as per Section 148A(b) of the Act and after considering the response of the assessee to the same, the AO decided that it was a fit case for initiating re-assessment proceedings on the assessee since he found on the basis of information in his possession that income to the tune of Rs. 1.13 crore had escaped assessment. Accordingly, notice under Section 148 of the Act was issued to the assessee and thereafter, assessment framed under Section 147 of the Act . In the order passed u/s 147 of the Act no addition was made on account of the information in the possession of the AO of huge withdrawals in cash from the bank account of the assessee but deduction claimed by the assessee in terms of the provisions of Section 80P of the Act amounting to Rs. 8,89,901/- was denied.

3. Aggrieved by the same the matter was carried out in appeal before the Ld. CIT(A), who rejected all the grounds raised by the assessee upholding the order of the AO.

4. Aggrieved by the same the assessee has come up in appeal before us raising the following grounds:

- “1. *The Ld. Commissioner of Income Tax (Appeals) - NATIONAL FACELESS APPEAL CENTRE [NFAC] grievously erred both in law and on facts in upholding the legality of reassessment order passed u/s 147 R.W.S 144B of the IT Act which is without jurisdiction and also illegal and bad in law as there is no escapement of any income as per alleged information u/s 148 of the Act. It be so held now and order passed by lower authorities be quashed/cancelled.*
2. *Without prejudice to the above ground, the ld. Commissioner of Income Tax (Appeals)/ NFAC further also erred in law and on facts in not quashing the order dated 28.02.2024 passed by ld. AO u/s 147 r.w.s 144B of the Act when the notice u/s 148 was issued and order u/s 148A(d) was passed by JAO[ITO WARD 3(1)(4) Vadodara] and not Faceless Assessing Officer as required by the amended provisions and scheme of the Act. It be so held now and order passed by ld. AO be now quashed by setting aside the appellate order.*

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3. *Without prejudice to the above grounds, the Id Commissioner of Income tax (Appeals) also further erred in law and on facts in confirming addition of Rs. 8,89,901/- when no any addition of the alleged escapement of so called income based on alleged information as per notice u/s 148A(b) regarding withdrawals of cash from bank account was not made and hence the very proceedings is bad in law. It be so held now and orders passed by ld. AO and CIT(Appeals) be cancelled.*
4. *Without prejudice to the above grounds, the appellant being eligible to deduction u/s 80P(2) (b) of the IT Act , the addition made by ld. AO ought to have been deleted by ld. CIT(Appeals). It be deleted now.*
5. *The Ld. Commissioner of Income Tax (Appeals) ought to have alloId the appeal in toto.*
6. *The appellant craves leave to add, alter, modify or delete any grounds at the time of hearing.”*

5. Ground No. 1 to 3 are legal grounds raised before us challenging the validity of the assessment framed under Section 147 of the Act on the following grounds:

(1) that since the basis or the reasons with the AO for believing escapement of income of the assessee did not survive ,no addition being made on account of the same by the AO, the jurisdiction with the AO to frame assessment in the present case failed / did not survive and the disallowance of claim of deduction of the assessee under Section 80P of the Act, therefore, could not have been made by the AO.

(2) that as per the provisions of law ,notice under Section 148 of the Act was to be issued by the Faceless AO (FAO), while in the present case it was issued by the Jurisdictional AO (JAO) and therefore, the jurisdiction assumed to frame assessment under Section 147 of the Act being not in accordance with law, the order was invalid.

I shall first deal with the legal ground raised by the assessee before us in Ground No 1 & 3 of the AO having exceeded his jurisdiction in making disallowance on an issue for which reopening was not resorted, as noted above.

6. The argument of the Ld. Counsel for the assessee before us was that reopening was resorted to by the AO on the belief of escapement of income to the tune of Rs. 1.13 crores, being cash withdrawn from its bank account, in the backdrop of the fact that no return of income was filed by the assessee, but ultimately in the assessment framed under Section 147 of the Act, no addition was made on account of the same, the AO being satisfied with the explanation of the assessee that it was a Milk Producers Cooperative Society which received income from the sale of milk by way of cheques and withdrew the amount in cash for payment to the milk producers. However, the AO, he pointed out, disallowed the assessee's claim of deduction of its income under Section 80P of the Act. The contention was that since the basis of assuming jurisdiction under Section 148 of the Act did not survive, the AO could not have made any other disallowance. Reliance was placed on the following decision in this regard:

- (i) Soyala Gram Sewa Sahakari Samiti Ltd. vs. The ITO ITA No. 1116/JP/2024
- (ii) CIT vs Shri Ram Singh (2008) 306 ITR 343 (Raj)
- (iii) Excel Commodity And Derivative Pvt. Ltd. vs. UOI POT/132/2022 IA No. GA/1/2022
- (iv) CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom) (HC)
- (v) Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 (Delhi High Court)

7. Our attention in this regard was first drawn to the notice issued by the AO to the assessee under Section 148A(b) of the Act confronting the assessee with the information in his possession regarding escapement of income of the assessee placed at Paper Book page No. 1 and 2. Referring to the same ,it was pointed out that the information related to the assessee having made cash withdrawals of 1,13,20,000/- during the year and coupled with the fact that no return of income had been filed by the assessee for the impugned year. The AO noted that the said information suggested that income of Rs. 1.13 crore had escaped assessment.

8. Thereafter, our attention was drawn to the order passed by the AO under Section 148A(d) of the Act after considering the assessee's explanation in response to the information confronted to the assessee in terms of the provisions of Section 148A(b) of the Act, placed at Paper Book page No. 3 to 7. Drawing our attention to Para 5 to 6 of the said order, Ld. Counsel for the assessee pointed out that the AO categorically noted therein that he had information and details in his possession that the assessee had made cash withdrawals of 1.13 crores from his bank account and was a non-filer of return and since the nature and source of fund to make such withdrawals remain unexplained, therefore, the source of fund of Rs. 1.13 crores to make cash withdrawals from the bank account of the assessee represented undisclosed/unexplained income of the assessee for A.Y. 2019-20 .Para 6 of the order was pointed out to us showing that the AO had categorically recorded therein that the information in his possession suggested income of Rs. 1.13 crores being the undisclosed income of the assessee for the impugned year, and therefore it was a fit case to issue notice under Section 148 of the Act.

9. From the above notices it was pointed out that the satisfaction of the AO with respect to escapement of income of the assessee for assuming jurisdiction to frame assessment under Section 147 of the Act was with respect to the source of cash withdrawals made from his bank account to the tune of Rs. 1.13 crores remaining unexplained.

10. Thereafter, Ld. Counsel for the assessee drew our attention to the order passed by the AO pointing out that the AO recorded his satisfaction with respect to the explanation of the assessee on the withdrawals made from the bank account as relating to the activity of milk cooperative activity being carried out by it and the funds deposited and withdrawals, relating to the funds of members. Our attention was drawn to Para 2.3 of the AO's order containing the above satisfaction of the AO. He, thereafter, pointed out that ultimately the AO disallowed the claim of deduction of income of the assessee amounting to Rs. 8,89,901/- on the premise that the return of income was not filed by the assessee within the due date prescribed as per the Section 139(1) of the Act in terms of section 80AC of the Act, which mandated the filing of returns of income within the due dates prescribed as per law for claiming deduction in terms of the provisions of Section 80P of the Act.

11. Thus, from the above documents Ld. Counsel for the assessee pointed out that the information with the AO for the escapement of the income of the assessee of Rs. 1.13 Crs of cash withdrawals from bank, did not ultimately culminate in addition being made in the hands of the assessee; that therefore, the jurisdiction of the AO to frame assessment under Section 147 of the Act was lost and no further addition on any other issue could be made by the AO. Support for

this proposition of law was drawn from various decision which are noted to above.

12. Ld. D.R. on the other hand, vehemently opposed the contention of the Ld. Counsel for the assessee, though he was unable to contradict the factual contention of the Ld. Counsel for the assessee before us that the basis of information in the possession of the AO regarding escapement of income did not result in any addition being made to the income of the assessee and that addition was made on some other issue. Nor was Ld. D.R. able to distinguish the case laws relied by the Ld. Counsel for the assessee before us in support of his contention that where no addition had made on the basis of information with the AO for escapement of income of the assessee, law does not permit any other addition to be made in such cases.

13. In light of the same since it is abundantly clear that the AO while framing order under Section 147 of the Act in the present case did not make any addition on the income which he believed had escaped assessment, which in the present case was the cash withdrawals of Rs. 1.13 crores from its bank account the source of which was found to be unexplained, the AO I hold , could not have made addition or disallowance on any other account, in the present case being disallowance of deduction claimed under Section 80P of the Act, since Courts have time and again reiterated that the moment the AO finds no escapement of income of the assessee on the basis of which he had assumed jurisdiction under Section 147 of the Act he loses jurisdiction to proceed further and make any other addition or disallowance to the income of the assessee.

14. In this regard we quote the relevant findings of the Hon'ble Rajasthan High court in the case of CIT vs Shri Ram Singh 306 ITR 343:

"29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, Which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.

30. xxx xxx

31. xxx xxx

32. The result of the aforesaid discussion is that the question framed, in the order dated 23rd May, 2006, is required to be, and is, answered the manner that the Tribunal was not justified in holding, that the proceedings for reassessment under section 148/147 were initiated by the AO, on non-existing facts because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the AO was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment."

15. In light of the same I hold that the disallowance of deduction under Section 80P of the Act made in the present case by the AO is not sustainable being not in accordance with law, beyond the jurisdiction of the AO and accordingly, direct deletion of the same.

16. Ground No. 1 and 3 of the assessee's appeal are accordingly allowed.

17. Since I have held the addition / disallowance in the present case to be invalidly made, allowing the legal ground raised by the assessee as above, I do

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not consider it necessary to deal with the rest of the grounds raised by the assessee, being a mere academic exercise.

18. In the result, the appeal of the assessee is allowed in above terms.

This Order pronounced in Open Court on	23/04/2025
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/04/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/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