

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
(Conducted through Virtual Court)
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

ITA No.1813/Ahd/2018
निर्धारण वर्ष/ Asstt.Year : 2010-11

Shri Omprakash Kanayalal Shah 64/506, Gujarat Housing Board Opp: Chamanpura Police Station Kalapinagar, Asarwa Amedabad 380016. PAN : AEAPS 2498 J	Vs.	ITO, Ward-6(1)(5) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shrio P.F. Jain, AR
Revenue by :	Shri R.R.Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/05/2021

घोषणा की तारीख /Date of Pronouncement: 04/06/2021

आदेश/ORDER

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-6, Ahmedabad passed for the Asstt.Year 2010-11.

2. In the first ground of appeal, the assessee has pleaded as under:

"1. The ld.CIT(A) has erred in law and facts in upholding the assessment order passed u/s.143(3) r.w.s. 147 inasmuch as that the reassessment proceedings initiated against the assessee are invalid, void ab-initio without jurisdiction."

3. Brief facts of the case are that the AO has issued a notice under section 148 of the Income Tax Act, 1961. According to him, this notice was issued on 30.3.2017 which was served upon the assessee. In response to the notice, the assessee has filed return of income on 23.9.2017 declaring total income of Rs.94,010/-. The ld.AO thereafter

passed the assessment order on 20.12.2017 under section 143(3) r.w.s. section 147 of the Income Tax Act, 1961. He determined taxable income of the assessee at Rs.26,37,960/-. The ld.AO has made addition of Rs.25,43,950/- on account of unexplained cash deposit in the bank account. The appeal to the CIT(A) did not bring any relief to the assessee.

4. The ld.counsel for the assessee while impugning order of the Revenue authorities contended that notice under section 148 was issued to the assessee after recording reasons for reopening the assessment. Copy of such reason is available on page no.4 of the paper book. He drew our attention towards page no.1 of the paper book wherein copy of the notice under section 148 is being placed. According to him, this notice is dated 29.3.2017. Since the assessment involved herein is A.Y.2010-11 and the AO wants to issue notice after expiry of four years, therefore, for reopening assessment beyond four years from the end of the assessment year, a prior approval is required under section 151(1)/151(2) of the Act. The AO sought this approval, and the copy of proforma vide which this approval has been given placed at page no.2 and 3 of the paper book. The approval was granted by the Pr.CIT-6, Ahmedabad on 30.03.2017 and notice under section 148 was issued on 29.3.2017 i.e. one day prior to the approval granted by the competent authority. Thus, according to the ld.counsel for the assessee, notice under section 148 in itself is bad in law. He relied upon order of the Division Bench of the ITAT, Surat Bench in ITA No.1505/Ahd/2017 which was authored by me while sitting in the Division Bench. He placed on record copy of the Tribunal's order.

7. On the other hand, the Id.DR contended that notice must have been issued on 30th March 2017. The proforma is printed one, where the AO failed to square off the date. Otherwise, there is no irregularity.

8. I have duly considered rival contentions and gone through the record carefully. Copy of the notice, and approval from the Pr.CIT-6, Ahmedabad read as under:

“Office of the
INCOME-TAX OFFICER, WARD-6(1)(3),
Room No. 104, 1st Floor, Narayan Chambers, Nr. Nehru Bridge, Ahmedabad-380009
(Ph) 079-2657 6721

Notice Under Section 148 of the Income-Tax Act, 1961.

Date: 29.03.2017

To
Omprakash Kanayalal Shah
1226/5, Dahelawali Khadki, Shahpur,
Ahmedabad - 380004
A.Y. 2010-11
PAN: AEAPS2498J

Whereas I have reason to believe that your income chargeable to tax for the Assessment Year 2010-11 has escaped assessment within the meaning of Section 147 of the Income-Tax Act, 1961.

I, therefore, propose to assess the income for the Assessment Year 2010-11 and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your income for the Assessment Year 2010-11 in respect of which you are assessable for the said Assessment Year.

Sd/-
(RANJIT SHAH)
Income-Tax Officer, Ward-6(1)(3), Ahmedabad.

Form for recording the reasons for initiating proceedings under section 148 and for obtaining the approval of the Pr.Commissioner of Income-Tax-6, Ahmedabad.

1.	<i>Name and Address of the assessee</i>	<i>Omprakash Kanayalal Shah 1226/5, Dahelawali Khadki, Shahpur, Ahmedabad - 380004</i>
2	<i>Permanent Account No.</i>	<i>AEAPS2498J</i>
3	<i>Status</i>	<i>Individual</i>
4	<i>Dist/ Circle/ Range</i>	<i>Ward-6(l)(3), Ahmedabad.</i>
5	<i>A.Y. in respect of which it is proposed to issue Notice u/s. 148</i>	<i>2010-11</i>
6	<i>If assessment already completed, mentioned order .under which assessment completed with date of order</i>	<i>N.A.</i>
7	<i>The quantum of income which has escaped assessment</i>	<i>Rs.25,43,950/-</i>
8	<i>Whether the provisions of Section 147 (a) or 147(b) are applicable for both the sections.</i>	<i>Explanation 2 (a) to Sec. 14 7</i>
9	<i>Whether the assessment is proposed to be made for the first time. If the reply is in the affirmative, please state- (a) Whether any voluntary return had already been filed. (b)If so. The date of filing the said return.</i>	<i>Yes</i> <i>No</i> <i>-</i>
10.	<i>If the answer to Item 8 is in the negative, Please state, (a) The income regularly assessed whether it is a case of under assessment, assessment at too low rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.</i>	<i>NA</i>
11	<i>Whether the provisions of section 150(1) are applicable. If the reply is in the affirmative</i>	<i>N.A.</i>

	<i>the releant facts may be stated against Item No.11 and it may also be brought out that the provision of section 150(2) would not stand in the way of initiating proceedings u/s.147</i>	
12.	<i>Reasons for the belief that income has escaped assessment.</i>	<i>As per Annexure "A".</i>

Date : 28.03.2017

*Sd/-
(Ranjit Shah)
Income-Tax Officer
Ward-6(1)(3), Ahmedabad.*

13. Whether the Addl.CIT is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148 of the I.T.Act. Yes, I am satisfied that this is fit case for the issue of notice u/s.148 of the I.T.Act.

Date: 29.03.2017

*Sd/-
(P.S.Choudhary)
Addl.Commissioner of Income-Tax
Range-6(1), Ahmedabad.*

14. Whether the Pr.CIT is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148 of the I.T.Act. Yes, I am satisfied

Date: 30.03.2017

*Sd/-
(Ajai Das Mehrotra)
Pr.Commississioner of Income-tax-6
Ahmedabad."*

6. A perusal of the above would indicate that approval under section 151(1) has been obtained by the Id.AO on 30.3.2017, but he has issued the notice on 29.3.2017. On that date he was not empowered to issue such notice. Therefore, the notice is without jurisdiction and on this very foundation, the reassessment order is not sustainable. An identical issue was considered by the ITAT, Surat Bench in the case of ITO Vs. Shri Ashok Jain, in ITA No.1505/Ahd/2017 order dated 14.11.2018. The discussion made by the Tribunal reads as under:

“4. With the assistance of the ld.representatives, we have gone through the record carefully. Section 151 of the Income Tax Act, 1961 contemplates that no notice under section 148 shall be issued by the Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless necessary approval from Commissioner or competent authority is obtained. No doubt in the present case, the ld.AO has applied for such approval which was granted on 29.3.2017, but before grant of approval, the ld.AO has already issued notice on 28.3.2014 which is without any jurisdiction. He can issue notice only after getting approval. Thus, the ld.CIT(A) has rightly quashed the assessment because the very foundation for issuance of notice under section 148 is the approval from the competent authority, i.e. Commissioner of Income Tax, and in the absence of such, such notice is void ab initio. Considering the above, we do not find any merit in this appeal of the Revenue. It is dismissed.”

In the light of the above order of the Tribunal, the facts in the present case on hand being identical, for the reasons stated hereinabove, I hold that the very action of the ld.AO in initiating the issuance of notice under section 148 is unsustainable and outside the jurisdiction, and therefore, I quash the impugned order passed under section 143(3) r.w.s. 147. Since I quash the reassessment order, all other issues raised in the grounds of appeal become *infructuous* and do not call for separate adjudication.

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

Order pronounced in the Court on 4th June, 2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated 04/06/2021