

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.2302/Ahd/2016
Asstt.Year 2007-08**

ITO, Ward-2(1)(1) Ahmedabad.	Vs.	M/s.Gujarat Storages P.Ltd. 605, Samedh Complex Nr.Associated Petroleum C.G. Road, Ahmedabad. PAN : AABCG 7431 K
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Revenue by :	Shri S.S. Shukla, Sr.DR
Assessee by :	Shri Mehul K. Patel, AR

सुनवाई की तारीख/Date of Hearing : 12/08/2021
घोषणा की तारीख/Date of Pronouncement: 24/08/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 27.6.2016 passed for Asstt.Year 2007-08.

2. Though the Revenue has taken three grounds of appeal, but its solitary grievance is that the Id.CIT(A) has erred in quashing reassessment order passed under section 147 read with section 143(3)

of the Income Tax Act, 1961 on the ground that reopening is bad in the eyes of law.

3. Brief facts of the case are that the assessee is a private limited company. It has filed its return of income electronically on 5.11.2007 declaring total income at Rs.26,008/- which was processed under section 143(1) on 11.1.2009. According to the Id.AO, DCIT (Investigation) Mumbai has transmitted certain information exhibiting the fact that the department has conducted various search and seizure operations wherein it revealed that one Shri Praveen Jain was providing accommodation entries and the assessee is the beneficiary of such accommodation entry. Accordingly, he recorded reasons for reopening the assessment and issued notice on 27.3.2014. In response to the notice, the assessee filed reply dated 16.4.2014 submitting therein that original return filed by it be treated as filed in response to the notice issued under section 148 of the Income Tax Act. The Id.AO thereafter issued notice under section 143(2) and 142(1) of the Act. He ultimately, held that the assessee has obtained accommodation entry which are reflected in its books of accounts, and accordingly made addition of Rs.2,22,50,000/-. He determined taxable income of the assessee at Rs.2,20,76,008/- as against Rs.26,008/- declared by the assessee.

4. In appeal, the assessee has challenged reopening of the assessment before the Id.first appellate authority. The Id.CIT(A) after recording detailed reasoning held that the AO has erred in reopening the assessment. He has not provided any satisfactory reasoning for taking action under section 147 of the Act. The Id.CIT(A) did not adjudicate the issue on merit, though noted down arguments of the assessee, but ultimately held that since he has quashed the assessment order on the preliminary jurisdictional issue, there is no necessity to examine the issue on merit. The department in its appeal has

submitted that the Id.CIT(A) ought to have upheld the reopening and ought to have adjudicated the issue on merit.

5. With the assistance of the Id.representatives, we have gone through the record carefully. For appreciating the aspect, whether the AO has rightly reopened the assessment or not, it is imperative upon us to take note of reasoning assigned by the AO. Such reasons have been reproduced by the Id.CIT(A) in para-2.5 of the impugned order. It reads as under:

"Please refer to the above. The reasons recorded for reopening of the assessment in your case for the A. Y 2007-08 is as under:-

"In this case, it has been found that the assessee company has filed its return of income for A. Y. 2007-08 on 15/11/2007. The return of income was duly processed u/s. 143(1) of the I. T. Act, 1961.

On receipt of the written instructions from the DG(IT) (Inv.), Mumbai vide letter dated 07/03/2014 and forwarded by the DIT (Inv.), Ahmedabad vide their letter dated 12/03/2014, wherein it has been noticed that in case of certain companies, Accommodation entries have been provided by Shri Praveenkumar Jain. One of the assessee company, Viz. Gujarat Storage Limited bearing PAN : AABCG 7431 K had entered into bank transactions as follows, which needs further verification:

<i>Name of bank & branch</i>	<i>Amount involved</i>	<i>Date of transaction</i>
<i>Punjab National Bank, Opera House Branch, Mumbai</i>	<i>Rs.15,00,000/-</i>	<i>30/05/2006</i>
<i>- do-</i>	<i>Rs.10,00,000/-</i>	<i>-do-</i>
<i>- do-</i>	<i>Rs.10,00,000/-</i>	<i>20/05/2006</i>
<i>- do-</i>	<i>Rs.7,00,000/-</i>	<i>03/06/2006</i>
<i>- do-</i>	<i>Rs.8,00,000/-</i>	<i>05/06/2006</i>

6. We find that the Id.CIT(A) has examined these reasons in the light of various authoritative pronouncements, and thereafter dealt the issue from different angle. The Id.CIT(A) has assigned number reasons for satisfying himself as to why this reopening cannot be upheld. For the

sake of reference, we take note of relevant part of the finding. It reads as under:

"2.7. The appellant also submitted that the AO has mechanically issued notice u/s.148 of the Act on the basis of the information allegedly received by him from the DGIT/DIT [Inv.], Mumbai and therefore the same was bad in law in view of the decision of Hon'ble ITAT, Delhi In the case of Banki Bihari Properties Pvt. Ltd. Vs. ITO. Reopening on the basis of report of the Investigation department is held to be invalid by the Hon'ble Delhi High Court in the case of CIT Vs. Atul Jain (2008) 299 ITR 383 and Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Anupam Kapoor /(2008) 299 ITR 179.

2.8. It has also been noticed that in the reasons the A.O. has prepared table consists of the details like name of bank and branch, amount' involved and date of transactions and through this reopening proceedings the AO intended to verify those transactions. This has been clearly mentioned by the AO in the reasons recorded which has been highlighted in the reasons recorded and reproduced in the preceding paras. Thus, it is a settled position of law that for the purpose of verification and further inquiries the AO cannot reopen the assessment u/s. 143(3) r.w.s.l 47 of the Act. Thus, while reopening the case, the AO was not having any belief that the income has escaped assessment and the reopening was just made to make scrutiny / verification of the transactions. The AO was not of the specific opinion that income for the year under consideration has escaped assessment and carried out reopening merely to make roving inquiry in respect of transaction of share application. In support of this, the appellant has relied upon the various judgments, in support of the argument that no reopening is justified merely to make fishing and roving inquiry of transaction, particularly when the AO has not relied on any new material based on which he can form a belief that income for the year under consideration has escaped assessment.

2.8.1. This view has been held by the various Hon'ble High Court of which gist is given as under:-

- The Hon'ble Gujarat High Court in the case of Inductotherm India Pvt. Ltd. Vs. DCIT in SLP No.858 of 2006 dated 06/08/2012 has held that even in a case where only assessment u/s. 143(1) is passed, the power to reopen can be exercised only where there is reason to believe that income has escaped assessment and not merely to scrutinize the return or verify the expenditures.*
- Similarly, the Hon'ble Gujarat High Court in the case of Bakulbhai Ramanlal Patel Vs. ITO [2011] 56 DTR (Guj.) 212 has held that the reasons recorded that the AO feels that the matter requires detailed investigation and further verification, thus, it appears that the AO has reason to suspect and not reason to believe that income chargeable to tax has escaped assessment. This, however, was not a valid ground for invoking the provisions of section 147 of the I. T. Act.*
- Similarly, the Hon'ble Gujarat High Court in the case of V. B. investments Vs. DCIT in SCA/8467/2003 dated 12/06/2012 has also observed that assessment can be reopened u/s. 147 of the I. T. Act, if AO is of the belief that income chargeable to tax has escaped assessment and not to carry out a*

fishing inquiry to ascertain as to whether or not income chargeable to tax has escaped assessment.

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2.9. Further it has been noticed that in the reasons recorded the AO has recorded the reasons for verification of the bank transactions but he has nowhere form the opinion that these banking transactions were relating to the undisclosed income of the appellant or in what manner these transactions were the accommodation entries / unaccounted entries. Thus, the reasons recorded were vague and general in nature. Even the AO has not mentioned the question and answers of the statement of Shri Pravinkumar Jain admitting of providing the accommodation entries to the appellant. Neither the date of his statements, the question/answer numbers nor the name of the appellant etc. have been given so as to connect the nexus of the appellant with such accommodation entries. For the purpose of reopening there cannot be vague and fishing inquiry. AO need to prove that how the transactions were bogus, when all the transactions were duly entered through bank and there was no proof in the reasons as to what statement has been given and how it was related with the transactions given and how those transactions were not genuine. Mere disbelieving on those banking transactions without any other information will not give power to the AO to reopen the case.

In view of the specific details of such escapement of income in the hands of the appellant, the reasons recorded cannot be said to be proper and therefore the reopening on the basis of such reasons is lacking in accordance to various judicial pronouncements. The Hon'ble Courts in this regard have held that in such situations when the reasons are vague and not specific without the satisfaction of the escapement of income the same cannot be said to be sustainable in the eyes of law and accordingly the reopening proceedings have held to be void. Reliance is placed on the following judgements.

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2.12. In the reasons recorded, the AO has simply mentioned that he has reasons to believe that by failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment the income of the assessee has escaped assessment. However, there has been no failure on the part of the appellant to disclose any material facts as all the transactions were duly recorded in the bank account which the AO himself have accepted. All the banking transactions were properly recorded in the books of accounts which have been duly audited, bank balance was tallied and there was nothing more which required to be disclosed in the balance sheet or the return of income.

Moreover the AO's observation in the reason recorded that the banking transactions needed verification itself establishes that he was not fully satisfied about such banking transactions belonging to the undisclosed income of the appellant or not? Thus, without such satisfaction, he cannot record the reasons to believe and state 'that the appellant has failed to disclose truly and fully all material facts. Therefore, there was inherent defects in the reasons so recorded and does not stand on the test of law.

2.13 It is also be noticed that in the reasons recorded the AO has not mentioned anything about the approval taken from the higher authorities as per the provisions of Section 151 of the I.T. Act which was mandatorily to be mentioned in the reasons recorded by the A.O before issue of notice u/s. 148.

The Hon'ble Mumbai High Court in the case of DSJ Communication Ltd. Vs. DCIT 222 Taxman 0129 has held that since there was no mention of approval sought from the higher authority on the reasons as recorded by the A.O. to initiate reassessment proceedings the Entire initiation has been vitiated and become bad in law."

7. A perusal of the order of the Id.CIT(A) would indicate that the Id.CIT(A) has made reference to roughly more than 20 authoritative pronouncements, for buttressing himself as to why this reopening cannot be upheld. We do not deem it necessary to recite and reconceptualize all those decisions, because firstly an adjudicator ought to have construed the reasons assigned by an AO for reopening of the assessment. We have independently perused the reasons extracted (supra). A perusal of the above reasons would indicate that in first two paragraphs, the Id.AO has made reference about the details as to how the assessee has e-filed return, and how the return was processed. In third para, he has made reference to the written instruction from DGIT (Investigation) Mumbai which was forwarded by the DCIT(Investigation), Ahmedabad to him. In this paragraph, he has made reference to one Shri Praveenkumar Jain who was providing entries, and the assessee is one of the companies, who had entered banking transaction with them. Thereafter, he reproduced a following transactions, and then ultimately concluded. At the cost of repetition, we reproduce the same as under:

<i>Name of bank & branch</i>	<i>Amount involved</i>	<i>Date of transaction</i>
<i>Punjab National Bank, Opera House Branch, Mumbai</i>	<i>Rs.15,00,000/-</i>	<i>30/05/2006</i>
<i>- do-</i>	<i>Rs.10,00,000/-</i>	<i>-do-</i>
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<i>- do-</i>	<i>Rs.8,00,000/-</i>	<i>05/06/2006</i>

I have therefore, reason to believe that by failure on the part of the assessee to" disclose fully and truly all material necessary for the assessment, the income of the assessee has escaped assessment / needs detailed

investigations regarding these bank entries within the meaning of Sec. 147 of the Income-tax Act, 1961."

8. Now as far as banking transactions are concerned, these details were available with the AO. This information was given in the audited accounts. Any transactions shown in the bank statement could never be construed *per se* as an escaped income. It is the AO who has to form his opinion as to how the transaction appearing in the bank account could be treated as escaped income. There is no logical analysis of the information received from the DGIT (Investigation) establishing the direct nexus between the information vis-à-vis escaped income available in the hands of the assessee. He simply made reference to the information and then believed that some income must have been escaped, and therefore, a detailed investigation regarding the banking entries requires to be made. For that purpose, he should have selected the case for scrutiny assessment by issuing notice under section 143(2) of the Act. For the purpose of section 147, he has to be very specific as to how fresh information came into his possession establishing a live-link between the escapement of income vis-à-vis this information. No such things are available in the reasons, therefore, to our mind, the Id.first appellate has appreciated the facts in right perspective, and rightly quashed reopening of the assessment. We do not find any error in the order of the Id.CIT(A). Accordingly, this appeal of the Revenue is dismissed.

9. In the result, appeal of the Revenue is dismissed.

Pronounced in the Court on 24th August, 2021 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 24/08/2021