

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA.No.1424/Ahd/2016
निर्धारण वर्ष/ Asstt. Year: 2006-2007

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| Sumer S. Sanghvi C/o. Mehta Lodha & Co Chartered Accountants 105, Sakar-I, Ashram Road Ahmedabad 380 009 PAN : AJFPS 4778 K | Vs | ACIT, Cir.5 Ahmedabad. |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|---|
| Assessee by : | Shri P.D. Shah, AR |
| Revenue by : | Shri Dilip Kumar, Sr.DR, and Shri J.K. Parikh, ITO |

सुनवाई की तारीख/Date of Hearing : 03/02/2020
घोषणा की तारीख /Date of Pronouncement: 06/02/2020

आदेश/ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-9, Ahmedabad dated 22.02.2016 passed for the Asstt.Year 2006-07.

2. In the first ground of appeal, the assessee has pleaded that the Id.CIT(A) has erred in upholding reopening of the assessment under section 147 of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed his return of income on 14.9.2006 declaring total income at Rs.1,36,750/-. This return was processed under section 143(1) of the Income Tax Act, 1961 on 31.3.2007. The Id.AO thereafter reopened the assessment by issuance of notice under section 148 of the 28.3.2013. In response to the notice, the assessee has filed

his return of income, and also sought copy of reasons recorded by the AO. The assessee thereafter filed an objection to reopening, and those objections have been rejected by the Id.AO. Copies of reasons, objection filed by the assessee and order of the AO rejecting the objection dated 22.2.2014 are placed on paper book from page no.1 to 14. The AO thereafter passed re-assessment order under section 143(3) r.w.s. 147 on 7.3.2014. The Id.AO has made addition of Rs.43,03,195/- on the ground that the assessee has claimed long term capital gain of Rs.43,03,195/- and claimed it as exempt under section 10(38) of the Act. According to the AO it is a bogus claim of the assessee and he made addition. Dissatisfied with reopening of the assessment, the assessee carried the matter in appeal before the Id.CIT(A). He has challenged reopening of the assessment as well as addition made on merit. The Id.CIT(A) has rejected both grounds of assessee, and confirmed the assessment order.

4. Before me, while challenging order of the Id.CIT(A), the Id.counsel for the assessee took us through reasons recorded by the AO. He pointed out though specifically complete reasons recorded by the AO has not been provided to the assessee, but in response to the application of the assessee, the AO has issued a letter dated 29.5.2013 and in this letter, he has reproduced the reasons. Taking us through these reasons, the Id.counsel for the assessee submitted that there is no coherence between information alleged to have been available with the AO vis-à-vis formation of his belief that income has escaped assessment. He pointed out that the AO has not quantified income alleged to have been escaped because in the reasons the AO has not made mention of any amount. Thus, these are vague reasons. Notice under section 148 was issued on 28.3.2013 i.e. after four years from the end of the relevant assessment year, but before six years. Taking us through section 149 of the income-tax Act, the Id.counsel for the assessee pointed out that this section

contemplates limitation for issuance of notice under section 148 of the Act. As per clause (b) of sub-section 1, a notice under section 148 could be issued after expiry of four years, but before end of six years from the relevant assessment, if income escaped assessment has exceeded one lakh. In the present case, the AO has not quantified the amount which has escaped the assessment. Therefore, how it could be ascertained that the notice issued under section 148 is within the limitation? He submitted that this notice is without jurisdiction. For buttressing his contentions, he made reference to the decision of Hon'ble Gujarat High Court in the case of Bakulbhai Ramanlal Patel Vs. ACIT, 56 DTR 212 (Guj). He placed on record copy of this decision.

5. In his next fold of contentions, he submitted that in the reasons for re-assessment, it is stated that there is transaction with Gold Star Finvest Securities Pvt Ltd., Mahasagar Securitis P.Ltd. which are engaged in providing accommodation entries in view of information supplied by the ITO, Ward 16(3)(1), Mumbai. The assessee has not carried out any transaction through these two entities, rather it has sold shares through Alliance Intermediaries Networking P.Ltd. There is no mention of Alliance Intermediaries Networking in the reasons, thus, the reasons are vague and based on irrelevant information. He relied upon judgment of Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. Manzil Dineshkumar Shah, Tax Appeal No.451 of 2018. Copy of this decision has also been placed on record.

6. On the other hand, the Id.DR assisted by Shri J.K. Parikh, ITO contended that the Department is unable to lay its hand on the complete proforma in which reasons were recorded. The reasons reproduced in the copy of the letter issued to the assessee are the only reasons with the

department. These very reasons have been considered by the AO while disposing of the objection of the assessee against reopening of the assessment. He pointed out that the AO was having concurrent information indicating the fact that the assessee has generated bogus long term capital and claimed exemption under section 10(38) of the Income Tax Act. These transactions have been carried out through Gold Star Finvest Securities P Ltd., Mahasagar Securities P.Ltd. and other entities managed by the directors of Mahasagar Securities. In the order, while rejecting the objections, the AO has made reference to the information received from National Stock Exchange relating to M/s.Alliance Intermediaries and Network i.e. the concern through whom the assessee has undertaken his transaction.

7. I have duly considered rival submissions and gone through the record carefully. The reasons recorded by the AO and supplied to the assessee vide letter dated 28.5.2003 reads as under:

"..As per the information received from the ITO Wd. 16(3)(1), Mumbai, assessee carried out transactions in share/ securities with m/s Gold Star Finvest Securities Pvt. Ltd. Further it was learnt that the said M/s Gold Star Finvest securities Pvt. Ltd. was engaged in fraudulent billing activities and was in this business of providing bogus speculation profit/ loss, STCG/LTCG /Loss, Shares applications money, commodity profit/ loss on commodity trading (through MCX) etc. In view of the non genuineness of the said transaction of the assessee, the assessee has prima facie received an other un-entitled benefit to the extent of the amount of the said transactions, Further, as per the information the effect of this transitions is reflected in the balance sheet on the asset side as investment in shares of Talent infoways Ltd., at Rs.36795.66. It has been found in case of this type that such effect has been recorded in the balance sheet on the asset side as investment in shares, speculation profit or some such narration. The said effect has been generally encashed in the future years and claim of LTCG have been made, in the instant case, information was received by the ITO Wd. 16(3)0), Mumbai, from the investigation wing pertaining to share transaction with M/s Gold Star Finvest Securities Pvt. Ltd., whereas, as per the ITO Wd. 16(3)(1), Mumbai, the assessee has carried out transactions with M/s Mahasagar Securities Pvt. Ltd.

The major benefit if any would be in the assessment year under consideration where in the claim has been made of having liquidated the purported assets held in the balance sheet as at 31/03/2005 and such liquidation has resulted in gain to the assessee, which needs to be brought to tax.

On the basis of material available on record as well as the information received, i am of the opinion and I have reason to believe that the assessee's income chargeable to tax has escaped assessment for the year under consideration due to failure of the assessee to disclose fully and truly all the material facts in the Return of income. Therefore, I am satisfied that it is a fit case for initiating proceeding u/s.148 of the I.-T. Act...."

8. A perusal of the above reason would indicate that the AO has nowhere quantified the income escaped. The Hon'ble jurisdictional High Court has considered identical reasons where no quantification of escaped income was made by the AO. Hon'ble Court had considered issue about limitation provided under section 149(1)(b) of the Act. The discussion made by the Hon'ble High Court in the case of Bakulbhai Ramanlal Patel Vs. ACIT (supra) in para-31 is worth to note. It reads as under:

"As regards the contention that the reasons do not reflect that the income having escaped assessment is more than rupees one lakh or likely to be more than rupees one lakh as laid down under the provisions of s. 149(1)(b) of the Act and as such, the assessment is time barred, a perusal of the reasons recorded indicates that nothing has been recorded by the AO to indicate as to what is the amount of income which is alleged to have escaped assessment. In the light of the provisions of s. 149(1)(b) of the Act, while reopening the assessment beyond a period of four years from the end of the relevant assessment year, since there is a statutory bar against reopening the assessment in case where the amount of income escaping assessment does not amount to rupees one lakh or more, the AO is also required to record a finding to that effect. In the present case, no such finding has been recorded. Except for a bare averment in the affidavit-in-reply wherein it is stated that the income which has escaped assessment is more than rupees one lakh, there is no material on record to indicate the extent of income which has escaped assessment. In fact, as observed hereinabove, there is nothing to indicate that the AO has reason to believe that any income whatsoever has escaped assessment. In the circumstances, on this count also, the assumption of jurisdiction under s. 147 of the Act is invalid.:"

9. Since in the present case also notice has been issued after an expiry of four years from the end of the relevant assessment year, but before six years. This notice could be issued within limitation if the AO has made out a case that income exceeded rupees one lakh has escaped assessment. No such finding or observation or reference has been made in the reasons extracted (supra). In the opening line of the reasons, the AO has observed that as per information received from the ITO, Ward-16(1), Mumbai, the assessee carried out transaction in shares/securities with M/s.Gold Star Finvest. This information is factually incorrect or not cross-verified by the AO before recording reasons. The assessee has not carried out its share/security transaction with Gold Star Finvest in respect of which capital gain arose to the assessee stand ultimately considered by the AO for denial of exemption under section 10(38) of the Act. Further, a perusal of the reasons would indicate that there is no coherence between the information available with the AO vis-à-vis transaction of the assessee, and formation of belief that income has escaped the assessment. These reasons are vague and inconclusive. Therefore, on the basis of such reasoning, the assessment assessee cannot be reopened. Respectfully following the judgment of Hon'ble jurisdictional High Court in the case of Bakulbhai Ramanlal Patel Vs. ACIT (supra), I allow this ground of appeal and quash the re-assessment order.

10. Since re-assessment order has been quashed, there is no need to examine other grounds on merit. With this observation, I allow the appeal of the assessee.

11. In the result, appeal of the assessee is allowed.
Order pronounced in the Court on 6th February, 2020 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 06/02/2020