

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 770/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2010-11)

Vipul Virendrakumar Patel 8, Siddhivinayak Row House, Nr. Jivraj Park Over Bridge, Ahmedabad - 380051	बनाम/ Vs.	ITO Ward – 3(3)(14), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGQPP0881N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri A. L. Thakkar, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	19/08/2020
घोषणा की तारीख /Date of Pronouncement	03/09/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad ('CIT(A)' in short), dated 22.02.2017 arising in the assessment order dated 31.03.2015 passed by the

Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. When the matter was called for hearing, the learned AR for the assessee broadly voiced two fold objections to assail the additions of Rs.85,85,865/- made by the AO under s.68 of the Act.

3. As regards legal objection on lack of jurisdiction, the learned AR adverted to the assessment order and submitted that the case of the assessee was reopened by issuance of notice under s.147 of the Act on the basis of certain information available with the AO which gave rise to the alleged belief that chargeable income of the assessee has escaped assessment. A notice under s.148 of the Act was consequently issued dated 29.08.2013. The learned AR further submitted that in the absence of any chargeable positive income, the assessee was under bonafide belief that he is not required to file return of income. On issuance of notice under s.147 of the Act, the assessee sought reasons recorded for formation of belief about the income having escaped assessment to enable him to file a proper and correct return of income. It was submitted that implicit objective of issuance of notice under s.147 of the Act is to extend help to an assessee to enable him to file a proper return in response to such notice. No concrete information, however, was shared with the assessee. The learned AR further submitted that despite the absence of return, a notice under s.143(2) of the Act was issued to assume jurisdiction for assessment giving rise to inherent jurisdictional defect. The learned AR thereafter stated that vide letter dated 15.11.2013, it was vaguely informed that the assessee has deposited cash in the bank account above Rs.10 Lakhs and has entered into share transactions above Rs.20,000/- which has resulted in formation of belief towards escaped assessment against the

assessee. The learned AR thus submitted that in the absence of any objective and intelligible reasons and quantum of escapement, the so called belief towards escapement of chargeable income cannot pass the scrutiny of law. It was alleged that the AO has entered into an arbitrary fishing expedition while exercising the jurisdiction at the time of issuance of notice. The learned AR however submitted that in compliance of notice under s.147 of the Act, the assessee eventually filed return of income on 31.03.2015 declaring salary income of Rs.76,821/- and short term capital loss of Rs.42,68,655/-.

4. On merits, the learned AR submitted that the cash deposits in the bank account has been added to the declared income of Rs.76,821/- so returned by the assessee. The learned AR pointed out that the AO did not pay any heed to the losses incurred on sale of shares as well as source of cash deposits explained to be out of sale of family gold. The learned AR thus submitted in conclusion that the whole action of the AO and the CIT(A) is unsustainable in law both on grounds of jurisdiction as well as on merits.

5. The learned DR, on the other hand, relied upon the order of the lower authorities and contended that where large amount of cash in the vicinity of Rs.85Lakhs is seen to have been deposited, the AO was right in issuance of notice under s.147 of the Act for proper assessment of income.

6. We have carefully considered the rival submissions. We shall straightway address ourselves to the validity of assumption of jurisdiction under s.147 of the Act in the instant case.

6.1 Section 147 of the Act enables the AO to reopen the assessment where any chargeable income has escaped assessment.

Explanation 2 to Section 147 of the Act *inter alia* deems escapement of chargeable income where no return of income has been furnished by the assessee although the total income of the assessee in respect of which he is assessable under the Act exceeds the maximum amount which is not chargeable to income tax. Hence, the essential pre-requisite for invocation of power under s.147 of the Act is escapement of chargeable income, both in the event of return having been filed or where no return has been filed. The AO can compel the assessee to file return of income under s.147 of the Act only in the event of escapement of income. Without having cogent reasons for belief towards escapement, even a non-filer of return of income cannot be forced to file a return with the aid of Section 147 of the Act.

6.2 In this backdrop, we firstly observe that the salary income of the assessee is admittedly Rs.76,821/-, which is not chargeable to tax on standalone basis being lower than threshold limit. Secondly, there are allegations of cash deposits in bank account in excess of Rs.10Lakhs as per some non-descript and vague information as per AIR-001. Similarly a non-specific reference has been made by the AO to the CIB-32 regarding share transactions of Rs.20,000/- or more entered into by the assessee. Thus, entire gamut of information available with AO is vague and without any proper identification and quantification of alleged escaped income. Hence, what is essentially available before AO is that assessee has deposited cash above Rs.10 Lakhs and entered into certain share transactions giving rise to presumption of escapement of income. We now straightway notice the decision of the co-ordinate bench of Tribunal in the case of *Shri Ravindrasinh N. Gohil vs. ITO ITA No. 3343 & 3344/Ahd/2015 order dated 04.09.2019* wherein it has been observed that mere cash deposits in the bank account cannot justify

the belief or inference of escapement of income *per se*. Same logic would apply for indulging in share transactions in reference. Thus, the initial onus which lay upon the AO towards alleged escapement of chargeable income at the time of issuance of notice and Section 147 of the Act is not found to be discharged. In the absence of specific details of escaped income above the threshold limit shown to be in possession of AO, the notice under s.147 of the Act is extraneous and bad in law.

6.3 Since, the proceedings under s.147 of the Act is quashed for the reasons noted above, we do not consider it necessary to go into the other aspects of legality of the proceedings nor do we consider it necessary to look into the merits of the additions.

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

This Order pronounced on 03/09/2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad: Dated 03/09/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।