

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

(Convened through Virtual Court)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. Nos. 1802 & 1803/Ahd/2019

(निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12)

Income Tax Officer Ward-5(3)(1), Ahmedabad	बनाम/ Vs.	Shri Manjil Dineshkumar Shah 52, Lavana Society, New Vikas Gruh Road, Vasna, Ahmedabad-7
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIRPS3893G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri S. S. Shukla, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Smt. Preyashi Tated, A.R.

सुनवाई की तारीख / Date of Hearing	09/02/2022
घोषणा की तारीख /Date of Pronouncement	04/03/2022

ORDER

PER MAHAVIR PRASAD, JM:

Both captioned appeals have been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-5, Ahmedabad ('CIT(A)' in short)

vide Appeal No. CIT(A)-5/ITO.Wd.5(3)(1)/10800/2017-18, both dated 23.09.2019 arising in the assessment order both dated 29.12.2017 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AYs. 2010-11 & 2011-12.

2. Since, in these two appeals assessee and facts & circumstances are common, therefore, for the sake of brevity, we would like to dispose of these matters by way of a common order.

3. The ground of appeal raised by Revenue in ITA No.1802/Ahd/2019 read as under:

- “(I) Whether, on the facts and circumstances of the case, the Ld CIT(A) is right in allowing the assessee's appeal by treating the re-assessment proceedings invalid holding that the notice issued u/s 143(2) of the Act was issued beyond the statutory limit, though the facts are that the assessee has intentionally avoided to intimate the AO about filing of ITR in spite of repeated reminders issued during the course of assessment proceedings.*
- (II) Whether the benefit of law can be allowed to assessee for misleading the AO by withholding the facts of filing of return u/s 148 of the Act.*
- (III) The Ld CIT (A) has erred in law and on facts in allowing the deduction of Rs. 8,37,044/- made on account of bogus purchases.*
- (IV) The addition made on account of bogus purchases is based on information from VAT department which falls under exception clause 10(e) of CBDT Circular No. 03 of 2018 r w Circular No. 17 of 2019., hence the appeal be decided on merits.*
- (V) On the facts and circumstances, the Ld CIT (A) ought to have upheld the order of the AO.*

(VI) It is therefore, prayed that the order of the Ld. CIT(A) may be set aside and restored the order of AO.”

4. The brief facts of the case are that assessee is in the business of building material, such as, sand, stone, bricks etc. In this case re-assessment order under s.143(3) r.w.s. 147 of the Act was passed on 19.03.2014 determining total income of Rs.2,82,06,410/- which includes addition on account of bogus purchases of Rs.2,78,37,535/- from 13 parties under Hawala Billers. Subsequent to the finalization assessment under s.143(3) r.w.s. 147 of the Act was passed and learned AO received information from Sales Tax Department, which was forwarded by DGIT(Inv.), Mumbai vide letter dated 26.12.2013 received by the learned AO on 26.03.2014. On analysis of the data received, it is found that addition to the above Hawala Billers, the assessee has made bogus purchases amounting to Rs.8,37,044/- from R. K. Enterprises also during F.Y. 2009-10 relevant to A.Y. 2010-11. Thus, the learned AO held that income chargeable to tax to the extent of Rs.8,37,044/- escaped assessment within the meaning of Section 147 of the Act and assessment was reopened by issue of notice under s.148 of the Act on 31.03.2017 asking the assessee to comply with the same within 30 days. In reply, assessee challenged the reopening by citing the order of ITAT and High Court but learned AO did not agree with the same and made addition of Rs.8,37,044/-.

5. Thereafter, assessee preferred first statutory appeal before the learned CIT(A) who allowed the appeal on the ground that re-assessment proceedings were invalid.

6. Now, Revenue has come before us.

6.1 At the outset, learned counsel on behalf of the assessee Smt. Preyashi Tated argued that these cases are covered by CBDT Circular No. 3 of 2018 dated 11/07/2018 which contemplates that if in an appeal where tax is less than Rs.50 Lakhs that cannot be filed before the ITAT if already has been filed by the Revenue, then same to be dismissed by the Tribunal.

6.2 On the other hand, learned Sr. D.R. Shri S. S. Shukla argued that this argument cannot be accepted as in Circular No. 03 of 2018 dated 11th July 2018. It is contemplated as follows:

“Subject: Amendment to para 10 of the Circular No. 3 of 2018 dated 11.07.2018-reg:

Madam/Sir,

Kindly refer to the above.

2. The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been revised by Board's Circular No. 3 of 2018 dated 11,07.2018.

3. Para. 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para

*should be **contested on merits** notwithstanding that, the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular. No. 3 of 2018 dated 11.07.2018 is hereby amended as under:*

*"10. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra, vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.

(e) Where addition is based on information received from, external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court."

4. The said modification shall come into effect from the date of issue of this letter.

5. The same may be brought to the knowledge of all officers working in your region."

7. We have heard both the parties. Undisputedly, addition was made on the basis of information received from the Sales Tax Department of the State Government and it has been categorically mentioned in the above said circular that where additions have been made on the basis of information received from external sources in the nature of law, investments agencies, such as, CBI / ED / DRI / SFIO /

Directorate General of GST Intelligence (DGGI). In our considered opinion, this case fall in the exceptional clause of the circular and to our mind, these cases filed by the Department should not be dismissed on account of low tax effect. The learned AO has passed the assessment order under s.143(3) r.w.s. 147 of the Act on 29.12.2017 by determining total income as under:

Total income as per return filed U/S 148 of the Act	Rs.3,68,872/-
Add. Additions made in the assessment order U/S 143(3) r.w.s. 147 dated 19.03.2014	Rs.2,78,37,535/-
Add. Bogus purchase as discussed	Rs.8,37,044
Total Income	Rs.2,90,43,450/-

Thereafter, ITAT, Ahmedabad vide its order dated 16.06.2017 has deleted addition made of Rs.2,78,37,535/- in assessment order under s.143(3) r.w.s. 147 of the Act dated 19.03.2014. The learned AO has passed order on 29.01.2018 giving appeal effect to the order of ITAT and determined total income at Rs.12,05,919/-. It is argued that AO cannot derive jurisdiction to reopen the assessment which was completed u/s. 143(3) of the Act from the end or the assessment year. In this case, assessee received notice under s.148 of the Act on 31.03.2017 from the learned AO. In response to said notice, assessee submitted that he has filed return of income for AY 2010-11 showing total income of Rs.3,68,872/- on 14.10.2010. During the year under reference assessee has purchased the goods of Rs.4,03,26,300/-. The case of assessee was reopened and

notice u/s.148 of the Act was issued on 25.03.2013. Thereafter, assessee vide letter dated 15.05.2013 submitted that return filed on 14.10.2010 may be treated filed in response to notice issued u/s.148 of the Act. The assessee has filed return of income for A.Y. 2011-12 showing income of Rs.4,38,377/- on 30.09.2011. During the year under reference assessee has purchased the goods of Rs.3,88,06,374/-. The case of assessee was reopened and notice u/s.148 of the Act was issued on 25.03.2013. The assessee vide letter dated 15.05.2013 submitted that return filed on 30.09.2011 may be treated filed in response to notice issued under s.148 of the Act. In this matter, learned CIT(A) held that assessment proceedings under s.147 of the Act were completed without issue of statutory notice under s.143(2) within time specified under the Act and although learned CIT(A) called for remand report and a misleading report was filed before him. Learned CIT(A) cautioned that in future lower authority should be cautious while submitting their remand report to the learned CIT(A). It has been held in plethora of judgments that the service of notice under s.143(2) of the Act within the statutory time limit is mandatory and is not an inconsequential procedural requirement. Omission to issue notice u/s.143(2) of the Act is not curable and the requirement cannot be dispensed with s.143(2) of the Act is applicable to proceedings under s.147 & 148 of the Act. Undisputedly, in this case notice has been issued beyond the statutory period of four years as notice

under s.143(2) of the Act was issued beyond the prescribed time limit in the Act. In view of the above, we do not find any infirmity in the order passed by the learned CIT(A) and we are not inclined to interfere in the order of the learned CIT(A). In our considered opinion, the learned CIT(A) has passed a detailed and reasoned order as per law.

8. In the result, both captioned appeals filed by the Revenue are dismissed.

This Order pronounced in Open Court on 04/03/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 04/03/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL 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 ।