

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 42/Ahd/2021  
Assessment Year 2012-13**

Shri Hemang Chimanbhai Pokal 08, Satatya Green Bungalow, B/h. Rajpath Club, Bodakdev, Ahmedabad-380059 PAN No: AIDPP4256E (Appellant)	Vs	The Pr.CIT-3, Ahmedabad (Respondent)
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**Appellant by : Shri Vipul Khandhar, A.R.  
Respondent by : Shri Alokkumar, CIT/D.R.**

Date of hearing : 28-06-2022  
Date of pronouncement : 02-09-2022

**आदेश/ORDER**

**PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-**

The present appeal has been filed by the Assessee against the order passed by the Pr. Commissioner of Income Tax (Appeals)-3, Ahmedabad, (in short referred to as CIT(A)), dated 26-03-2021, in exercise of his revisionary powers u/s. 263 of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2012-2013.

2. As transpires from the orders of the authorities below, the revisionary powers were exercised by the Ld. PCIT with respect to the assessment order passed in the case of the assessee for the impugned year u/s.143(3) r.w.s. 147of the Act on 15.11.2019 and the said order was held to be erroneous causing prejudice to the revenue for the reason that the Assessing Officer (A.O) had failed to verify the capital gain returned by the assessee on property sold during the year with respect to the provisions of Section 50C of the Act. Meaning thereby that the A.O. had failed to substitute the sale consideration of the property sold by the assessee with its stamp duty value which was higher, applying the provisions of Section 50C of the Act, while computing the capital gain earned by the assessee. Accordingly the assessment order was set aside by the ld. PCIT directing the A.O. to make requisite inquiry and proper verification with respect to the issue.

3. Before us, ld. Counsel for the assessee pointed out that in the impugned case regular assessment u/s. 143 (3) of the Act was not framed and the only assessment order passed was in reassessment proceedings u/s. 147 of the Act which the Ld. PCIT sought to revise. Copy of the said order was placed before us dated 15-11-09 and our attention was also drawn to para 1 and para 6 of the order of the Ld.PCIT referring in clear terms to this order passed u/s 147 of the Act dated 15-11-09 being revised by him. He thereafter contented that the reassessment proceedings were initiated for the limited purpose of examining the claim of Long term capital gain on sale of shares amounting to Rs. 58,67,180/- claimed as exempt by the assessee ,on account of the AO being in possession of

information that the same was only an accommodation entry. This information being revealed in a report forwarded to the AO by the DGIT(Inv), Kolkata. In this regard he drew our attention to para 1-3 of the assessment order . Ld. Counsel for the assessee pointed out from the said order that addition accordingly was made on account of alleged accommodation entries of Rs. 62,52,420/-. Ld. Counsel for the assessee contended that the issue of capital gain earned on sale of land was not the reason for reopening at all and the AO was not empowered to go beyond the scope of reasons recorded for reopening as per section 147 of the Act. Therefore the AO not being empowered to consider the issue of long term capital gain on sale of land, non examination of this issue could not have resulted in the assessment order passed being erroneous.

4. Ld. D.R. on the other hand argued that under the provisions of Section 147 of the Act, the A.O. can look into matters beyond the scope of reasons recorded for reopening and the A.O. therefore having not considered the issue of capital gains earned on sale of land, the order passed by him had been rightly held to be erroneous so as to cause prejudice to the Revenue.

5. We have heard both the parties, and also gone through order of the ld. PCIT and documents and case laws referred before us. Undeniably the assessment order which has been subjected to revisionary proceedings by the ld.Pr.CIT in the present case was passed under section 143(3) read with section 147 of the Act. It is also fact on record, as emanating from the assessment order so passed under section 147 of the Act, that the reassessment proceedings were initiated for assessing income which had escaped

assessment relating to exempt income amounting to Rs.58,67,180/ on sale of shares, which as per the investigation carried out by the DGIV (Invest)), Kolkata, report of which was forwarded to the AO of the assessee, revealed was only an accommodation entry, and the assessee was beneficiary of the said accommodation entry by way of claiming long term capital gains on sale of shares as exempt. The benefit to the assessee being to the extent of Rs.62,36,881/- in the form of receipt of sale proceeds of shares which formed the exempt income. The Ld.PCIT has found the assessment order erroneous and prejudicial to the interest of the Revenue on account of the AO not having examined the issue of long term capital gain earned by the assessee on sale of and vis-à-vis section 50C of the Act. Thus the Ld.PCIT has found the assessment order passed u/s 147 of the Act erroneous on an issue which did not form the basis of reopening the case of the assessee u/s 147 of the Act.

6. We find merit in the contention of the Ld.Counsel for the assessee that the assessment order passed by the AO could not be said to be erroneous since the issue of examination of long term capital gain on sale of land was beyond his domain as per section 147 of the Act.

7. A bare perusal of the provisions of section 147 reveals that the jurisdiction of the AO is confined to assess issues on which he has reason to believe that income has escaped assessment and it is only if during the course of assessing these incomes that he is made aware of any other income escaping assessment that he can assess the other such income also. This is evident from the provisions of section 147 which are reproduced as under:

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

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*Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.*

The decision relied upon by the Ld.Counsel for the assessee in support of the above proposition of the ITAT in the case of Royal Western India Turf Club vs Principal Commissioner of Income Tax, in ITA No.640/Mum/2021, clearly hold so while dealing with an identical aspect of reassessment order being subject to revision u/s 263 of the Act on an issue which was not the subject matter of reopening. The relevant findings of the ITAT at para 8-10 of the order are as under:

*“8. We have considered rival submissions in the light of decisions relied upon and perused materials on record. Undisputedly, the original assessment in case of the assessee was completed under section 143(3) of the Act on 06-02-2014. Subsequently, the assessment was reopened under section 147 of the Act and ITA 640/Mum/2021 notice under section 148 of the Act was issued to the assessee on 26-03-2018. The reason recorded for reopening of assessment under section 147 of the Act, a copy of which is at page 40 of the paper book, would reveal that for assessing the escaped income of Rs.2,00,50,000/- being the contribution received from*

*certain members towards infrastructure facilities, the assessing officer had reopened the assessment. Ultimately, the assessing officer completed the assessment under section 143(3) r.w.s. 147 of the Act assessing the alleged escaped income of Rs.2,00,50,000/-. Thus, neither the issue relating to non deduction of tax on payment made to contractors and professional fees nor the cash deposit of Rs.31,95,28,429/- in the savings bank account were forming part of reasons recorded. In other words, the reopening of assessment was for the specific purpose of assessing the amount of Rs.2,00,50,000/- . That being the case, it is necessary to examine whether the assessing officer in the re-assessment proceedings could have gone into the aspects raised by learned PCIT.*

*9. A reading of section 147 of the Act makes it clear that the assessing officer, in course of proceedings under the said provision can not only assess/reassess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision. Explanation 3 to section 147 of the Act further clarifies the substantive provision by saying that the assessing office, in course of proceedings under the said provision can not only assess/re-assess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision, ITA 640/Mum/2021 notwithstanding that such issue does not form part of reasons recorded for reopening of assessment. Thus, on a holistic reading of section 147 of the Act it becomes very much clear that along with escaped income for which the assessment was reopened, the assessing officer can assess other escaped income which subsequently comes to his notice in course of re-assessment proceedings. In the facts of the present case, undisputedly, the issues raised by learned PCIT neither were the subject matter of reopening as per reasons recorded, nor did such matter come to the notice of the assessing officer in course of re-assessment proceedings.*

*10. The reopening of assessment as contemplated under section 147 of the Act is for the specific purpose of assessing the escaped income. Therefore, in a re- assessment proceeding, the assessing officer can only assess that income which has escaped assessment. The income which is subject matter of assessment in the original assessment proceedings or which was in the domain of the*

*assessing officer in course of original assessment proceedings certainly cannot be considered in the re-assessment proceedings.*

8. In the facts of the present case the issue raised by the Ld. PCIT being not the subject matter of reassessment nor it being the case of the Revenue that the issue had come to the notice of the AO during reassessment proceedings, the assessing officer could not have considered this issue in reassessment proceedings. Therefore the assessment order passed u/s 147 of the Act in the present case cannot be said to be erroneous on the ground of the AO not having examined an issue which clearly was beyond his powers.

The order passed under section 263 of the Act is accordingly held to be not sustainable in law. The same is therefore set aside and the ground of appeal of the assessee is allowed.

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

**Order pronounced in the Court on 2<sup>nd</sup> September, 2022 at Ahmedabad.**

*Sd/-*  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 02/09/2022