

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.998/Ahd/2019**

**Asstt.Year : 2011-12**

Ashoksinh Indrasinh Kumpavat L/h of Late Shri Indrasinh Mansinh Kumpavat A-55, Prathna Bungalow Opp: Ambedkar Hall Saraspur, Ahmedabad. PAN : AIAPK 7634 C	Vs	ITO, Ward-7(1)(3) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	None
Revenue by :	Shri Mukesh Thawani

सुनवाई की तारीख/Date of Hearing : 08/09/2022

घोषणा की तारीख /Date of Pronouncement: 12/09/2022

**आदेश/ORDER**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-7, Ahmedabad (in short referred to as ld.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 18.2.2019 pertaining to Asst.Year 2011-12.

2. None appeared on behalf of the assessee. I have noted that on 21.3.2022 when the case was fixed for hearing, the ld.counsel for the assessee, Shri Abhimanyu Singh Bhati had submitted in writing before us that the assessee had passed away on 1<sup>st</sup> May, 2021 and his family had shifted to Idar. On the said date therefore adjournment was sought on the ground that his counsel was trying to contact the assessee's family members for substituting legal heirs

in place of the deceased assessee so as to pursue the matter. Thereafter, on 9.6.2022, a letter addressed to the Hon'ble Vice-President and the Bench was filed by the ld.counsel for the assessee stating that despite their best efforts the family members of the deceased assessee have not cooperated with them and none of the family members was ready to substitute herself or himself as legal heirs of the deceased assessee; further that they were not providing the details required to prepare the matter, and therefore, the counsel sought to withdraw himself from representing the matter. Subsequently, notices were sent to the assessee, which have remained un-delivered.

3. Considering the facts as above that the assessee is no more, whereabouts of his family members are not known, the ld.counsel for the assessee who was earlier representing the matter has withdrawn from the matter and his family members are stated by the ld.counsel to be non cooperative ,both with respect to disclosing the legal heirs of the assessee so that the appeal can be continued in the names of legal heirs and also in the preparation of the appeal, in view of this, there is no recourse left with me, but to proceed with the hearing of the appeal *ex parte*.

4. Brief facts relating to the case are that the assessee's case had been reopened under section 148 of the Act on the ground that the assessee had not filed return of income whereas there was cash deposits to the tune of Rs.11.51 lakhs in his bank account in Dena Bank, Ahmedabad. During re-assessment proceedings, no explanation was filed by the assessee regarding source of such cash deposit. Accordingly, addition of Rs.11.51 lakhs was made to the

income of the assessee under section 68 of the Act. The AO also made addition of salary income of Rs.4,94,820/-, based upon income shown as salary in the return for the preceding assessment year i.e. Asst.Year 2010-011.

5. Before the ld.CIT(A), the assessee raised several grounds, including grounds challenging validity of the assessment framed under section 147 of the Act as also on the merits of the case, which were all dismissed by the ld.CIT(A), in turn dismissing the assessee's appeal.

6. Aggrieved with the order of the ld.CIT(A), the assessee has now come up in appeal before us, raising the following effective grounds of appeal:

1. *The ld.CIT(A) erred in law and on facts in dismissing the appeal of the appellant.*
2. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in upholding the re-assessment proceedings even though on record there was no material to have reasonable belief of escapement of income. Further, the notice u/s 148 was issued without subjective satisfaction and/or independent application of mind by the Id. A.O.*
3. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in upholding the re-assessment proceedings even though no notice u/s 143(2) of the Income Tax Act, 1961 was issued.*
4. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in upholding the notice u/s 148 of the Income tax Act, 1961 even though the notice was issued to a dead person.*
5. *The learned Commissioner of Income -tax erred in law and on facts in holding that re-assessment was sustainable even though the Id. A.O. had in reasons recorded mentioned that the re-opening was made to verify merely on the basis of 'suspicion' in order to conduct fishing and roving enquires.*
6. *The learned Commissioner of Income-tax (Appeals) erred in law and on facts in upholding the addition of Rs. 4,94,820/-on account of*

*salary income especially when the appellant was employed with the government agency and appropriate TDS was being deducted.*

7. *The ld.CIT(A) erred in law and on facts in upholding the addition of Rs.11,51,000- u/s.68 of the Act on account of unexplained cash credits.”*

7. Ground Nos.2, 3, 4 and 5 are legal grounds raised by the assessee challenging validity of the assessment framed under section 148 of the Act on primarily three grounds, viz –

- i) Insufficiency of material to form a reasonable belief of escapement of income, which is an essential pre-requisite for initiating re-assessment proceedings under section 148 of the Act;
- ii) No notice under section 143(2) of the Act being issued on the assessee;
- iii) Notice under section 148 of the Act being issued to dead person.

8. I find that out of the above three grounds on which validity of reassessment have been challenged before us, ground no.(i )and (iii) were also raised before the ld.CIT(A).

Vis-à-vis the assessee's argument, as per Ground No.iii, that the notice was issued to a dead person, and therefore, re-assessment framed was bad, I find that the ld.CIT(A) has dealt with the issue, while rejecting the assessee's contentions, in para-5.2 of her order as under:

*“5.2 During the course of appellate hearing, AR of the appellant has objected reassessment notice and order as same has been passed in the name of appellant but he died on 03/02/2015. The appellant has argued that notice of reassessment is not served on legal representative and on the date of issuance of notice, appellant had already expired hence such*

*reassessment is bad in law. The appellant has relied upon various decisions and provisions of the Act being section 159 of the Act and contended that such reassessment order need to be quashed. The appellant has relied upon decision of Hon'ble Madras High court in the case of Alamelu Veerappan Vs ITO 95 taxman.com 155 and contended that Notice issued in name of dead person is not enforceable in law. It is pertinent to note that in said case, the court at para 3 has observed that \* The petitioner is the wife of the said Mr.S.Veerappan, who died on 26.1.2010 and this fact is not disputed by the respondent. The petitioner claims to be a home maker and is living with the support of her two daughters along with mother in law. The petitioner received a notice dated 30.3.2017 addressed to her late husband - the said Mr.S.Veerappan. In the said notice, it was stated that certain income of the said Mr.S.Veerappan escaped assessment for the assessment year 2010-11 and that the respondent proposed to re-assess the income for the said assessment year. The petitioner sent a reply dated 04.4.2017 pointing out that her husband died on 26.1.2010 and enclosed a copy of the death certificate to establish the said fact" . It is seen that in such case, assessee has informed that appellant's husband has died and such fact was clearly mentioned in response to notice issued u/s 148 of the Act whereas in present case, even though notice u/s 148 has been received but none of the family members of appellant has informed department that appellant has died. It is the first time legal representative of appellant has claimed that appellant has died. In this connection, reliance is placed on ration of decision of HonTDle Gujarat High court rendered in the case of Chandreshbhaijayantibhai PatelVs ITO 101 taxman.com 362 wherein court has held as under:*

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9. On going through the above, I find that the ld.CIT(A) noted that in the present case, the department was never informed by the family of the assessee that the assessee was no more and had expired. The ld.CIT(A) has noted that even though notice under section 148 was received by the assessee's family, but none of the family members informed the department that the assessee has died. She has stated that it is the first time before her that the legal heir of the assessee has claimed that the assessee has died. She thereafter placed reliance on the decision of Hon'ble jurisdictional High Court in the case of Chandreshbhai Jayantibhai Patel Vs. ITO, 101 taxman.com 362 and pointed out that notice issued in the name of deceased person have been held to invalidate reassessment proceedings only in the circumstances that legal heirs informed the

department of the demise of the assessee, and despite the same, the AO still continued with the proceedings in the name of the deceased assessee. I have noted that the Id.CIT(A) further distinguished the case law relied upon by the Id.counsel for the assessee before her in support of her contentions in the case of Alamelu Veerappan Vs ITO, 95 taxamnn.com 155 wherein the notice issued in the name of dead person was held to be not possible in law, pointing out again, in the said case also, the fact that the legal heirs had informed the Revenue about the demise of the assessee.

10. In view of the above, we find that the Id.CIT(A) has passed a well reasoned order on the issue considering the proposition of law in this regard, and applying it to the facts of the case at hand. In the absence of any other decision, either of the jurisdictional High Court in this regard being brought to our notice, or the Hon'ble Apex Court, we see no reason in the order of the Id.CIT(A) dismissing the assessee's argument of the assessment order being invalid since notice under section 148 was served on a deceased assessee.

11. With regard to the next argument that there being no material to form a belief of escapement of income, and therefore, reassessment proceedings being bad in law, I find that this issue has been dealt with by the Ld. CIT(A) at para 5.4 of the order as under:

*"5.4 So far as merits of the case is concerned, appellant has objected additions on the ground that reassessment notice is based upon vague reasons and there is no formation of belief of escapement of income. On careful consideration of reasons recorded reproduced in assessment order, AO was having information that appellant has not filed any. return of income and there is cash deposit of Rs 11,51,000. The AO has also mentioned that before issuing notice u/s 148 of the Act, AO has issued letter dated 12/10/2017 for verifying the sources of cash deposits but appellant has not filed any reply against such notice. When appellant has made cash deposits during the year and not filed return of income, whether*

*cash deposits are reasonable looking to income or not cannot be decided by AO. Even before issuing notice u/s 148, appellant was asked to provide sources of such deposits but appellant or his legal representative failed to provide such sources hence AO has correctly issued notice u/s 148 of the Act. The reasons recorded are very specific and clearly state about information available with assessee hence such reassessment notice cannot be held as vague as claimed by appellant. The appellant has relied upon various decisions in support of his claim that only non filing of return of income does not mean that appellant has escaped income. Reference is drawn to decision of Hon'ble Madras high court in the case of Smt A Sridevi [2018] 100 taxmann.com 434 wherein it is held as under:*

*“.....*

*69, read with sections 147 and 149, of the Income-tax Act, 1961 - Unexplained investment (Loans/advances) Assessment year 2009-10 - Assessee filed her return of income which was processed under section 143(1) - Subsequently, case was reopened by issuing a notice under section 148 and, further, reassessment order was passed making addition in respect of unexplained cash credit - Later on, Income Tax Officer, once again reopened assessment by issuing notice under section 148 - Reason furnished for reopening of assessment was that assessee had given certain advance to one, 'SN' for purchase of property and source of amount so paid was not explained - Assessee raised an objection that there was full and true disclosure of all material facts as when earlier reassessment proceedings took place; she had filed all necessary details including cash flow, which reflected payments made to SN as advance, and, therefore, reopening of assessment was not permissible - It was noted that merely because a cash flow : could not be taken to statement was appended by assessee it dc established that assessee had made full and true disclosure of advance paid to SN - Further, assessee had not filed balance sheet or statement of affairs related to such advance - Even when reassessment proceedings were commenced by issuance of notice, assessee did not file a fresh return of income, but informed Assessing Officer to treat return of income filed as return in response to notice under section 147 - Whether, on facts, it could not be said that there was full and true disclosure made by assessee pertaining to transactions with SN and; therefore, impugned reassessment proceeding was justified - Held, yes [Paras 17, 20 and 21] [In favour of revenue]"*

*The court in above case held that where reassessment proceedings were initiated against assessee on ground that assessee had advanced several crores of rupees to a party but source of such amount was not explained, since assessee had not filed balance sheet or statement of affairs related to such advance, impugned reassessment proceedings were justified. In the present case, it is undisputed facts that appellant has made cash deposits in bank account for Rs.11,51,000 and he has not filed return of income prior to issue of notice u/s 148 of the Act hence AO cannot verify whether credits in bank account represent income or not. In above case, the court has held that for explaining source, material evidence is filing of annual account*

*whereas in present case, cash is deposited and unless, appellant has filed return of income, AO cannot be aware of taxable income of appellant or whether cash deposits are commensurate to income disclosed or not. Even in present case, reasons recorded by AO itself state that appellant did not make any compliance in response to letters issued for clarification of financial transactions vide letter dated 12/10/2017 and these facts also prove that appellant was not in position to explain correct sources of cash deposits and AO has rightly recorded reasons for reassessment and issued notice u/s 148 of the Act. Reliance is also placed on decision of Hon'ble Delhi ITAT in the case of Smt. Arti Gupta, Meerut Vs ITO ITA No. 1209/Del/2018 wherein it is held as under:*

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12. On going through the above, I find that the Id.CIT(A) has noted from the relevant facts before her that reopening was resorted to not merely on the information that no return had been filed by the assessee and cash was found to be deposited in the bank account of the assessee, but she noted that thereafter necessary inquiry was sought to be made by the Revenue from the assessee seeking explanation of the cash deposited. And since no response was forthcoming from the assessee, it is only thereafter that the AO recorded reasons for forming belief of escapement of income.

13. We do not find any infirmity in the order of the Id.CIT(A). The information that there was no return filed by the assessee and there was substantial cash found deposited in the bank account of the assessee was sufficient for formation of belief of escapement of income, when the assessee did not explain the source of the same to the Revenue in the investigation conducted prior to the issuance of notice under section 148 of the Act. The Id.CIT(A) has relied upon judicial decisions in this regard. I therefore see no reason to interfere in the order of the Id.CIT(A) dismissing the assessee's ground for holding the assessment order passed, as has been invalid



on the ground of insufficiency of material for forming the belief of escapement of income.

14. Taking up now the third argument raised by the assessee that since no notice under section 143(2) was issued, the assessment order passed was invalid. In this regard, the ld.DR pointed out that since the assessee had not filed any return of income in response to the notice under section 148 of the Act, there was no occasion as per law to issue notice under section 143(2) of the Act, the purpose of which is to assume jurisdiction to assess income of the assessee as returned in his return of income.

15. Relevant provisions of law were considered by me and I find no infirmity in the argument of the Ld.DR . As per law jurisdiction to frame reassessment u/s 147 of the Act is assumed by issuing notice u/s section 148 of the Act requiring assesses to file return in response. And to such returns, the provisions of law apply, treating the returns as filed u/s 139 of the Act. To check the correctness of returns filed u/s 139 of the Act , notice u/s 143(2) of the Act is required to be issued to assesses . Clearly therefore notice u/s 143(2) of the Act is to be issued only when return is filed by the assessee.

16. In the present case since no return has been filed by the assessee, we are in agreement with the ld.DR that no notice under section 143(2) of the Act was required to be issued to the assessee . The non issuance of notice u/s 143(2) of the Act in the present case where no return was filed by the assessee, does not render the reassessment proceedings as invalid ,we hold. This ground raised by the assessee is also dismissed.

Ground No 2, 3,4 & 5 are accordingly dismissed.

17. Ground No.6 and 7 are on the merits of the additions made in the present case in relation to the salary income of the assessee amounting to Rs.4,94,820/- and on account of unexplained cash credit of Rs.11.51 lakhs under section 68 of the Act.

18. I have gone through the order of the Ld.CIT(A) and I find that additions were confirmed on merits noting that no submissions were filed by the assessee in this regard. Her finding in para 5.6 of her order are as under:

*“5.6 With regards to addition made in assessment order which includes salary income of Rs4,94,820/- and unexplained cash credit of Rs. 11,51,000/-, appellant has not filed any specific written submission either in the assessment proceedings or in the appellate proceedings, hence both the additions made are confirmed and related grounds of appeal are dismissed.”*

19. Since even before us, nothing has been filed, either in writing nor has the assessee been represented before me by an authorized person, I am left with no option but to uphold the order of the ld.CIT(A) confirming additions under section 68 of the Act of Rs.11,51,000/- and salary income of Rs.94,820/-. Ground Nos.6 and 7 are dismissed.

20. In the result, appeal of the assessee is dismissed.

**Order pronounced in the Court on 12<sup>th</sup> September, 2022 at Ahmedabad.**

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

Ahmedabad, dated 12/9/2022