

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

*(Convened Through Virtual Court)*

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1138/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2009-10)

<b>Shri Sujay Pankajbhai Shah</b> 3/4, Sweet Home Society, Nr. Shreyas Foundation, Ambawadi, Ahmedabad	<b>बनाम/</b> Vs.	<b>Asst. commissioner of Income Tax (OSD)</b> Circle – 10, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGSPS6448Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Jaimin Shah, A.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri Shaurya S. Shukla, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	10/12/2020
घोषणा की तारीख /Date of Pronouncement	04/01/2021

**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)-5, Ahmedabad, ('CIT(A)' in short), dated 16.02.2016 arising in the assessment order dated 29.01.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The grounds of appeal raised by the assessee are two fold; (i) challenging the legality of jurisdiction under section 147 of the Act and (ii) challenging the action of the Assessing Officer (AO) in making addition of Rs.7,79,178/- on merits as unaccounted income in pursuance of alleged wrongful jurisdiction assumed under s.147 of the Act.

3. When matter was called for hearing, the learned counsel for the assessee, at the outset, challenged the action of the AO in usurping jurisdiction under section 147 of the Act wrongfully. The learned AR contended that the reasons recorded by the AO do not meet the pre-requisites for assumption of jurisdiction and therefore the notice issued under s.148 of the Act pursuant to the reasons spelt out is bad in law. It was thus essentially submitted that consequent re-assessment order is without authority of law. For this purpose, the learned counsel adverted our attention to the reasons recorded under section 148(2) of the Act and firstly contended that notice under s.148 of the Act was issued on the assessee dated 19.03.2013. The learned counsel thereafter referred to the reasons recorded which is shown to be dated 26.03.2013. It was thus contended that the reasons were recorded subsequent to the issuance of notice and therefore the whole action of the AO is vitiated in law. At this stage itself, we also take cognizance of the counter submissions of the Revenue in this regard. The learned DR for the Revenue pointed out that the reasons were actually recorded on 19.03.2013 itself which is evident from the proposal sent by the AO to the Jt.CIT for his approval under s.151 of the Act on 19.03.2013. The reasons recorded showing date of 26.03.2013 is merely a date on which the reasons recorded might have been reproduced and provided to the assessee and does not convey the date of recording of reasons *per se*. We find from the proposal memo under s.151 of the Act dated 19.03.2013 that exact reasons were pre-existing on the

date of issuance of the notice. Thus, we see no merit in this first line of argument.

4. The learned counsel next adverted to the body of reasons recorded and contended that a bare reading of the reasons recorded would show that the initiation of proceedings under s.147 of the Act by the AO is based on certain information stated to be received from the Director of Income Tax (I&CI), New Delhi vide a letter dated 07.03.2013. Based on such information, the AO has proposed to reopen the case *inter alia* with expression "*the said transactions required to be verified thoroughly*". The learned counsel in this context submitted that no reference to the nature and description of information purportedly received from the office of Director of Income Tax is discernible either from the reasons recorded or even from assessment order. It was thus submitted that the AO not privy to any such information which is the basis for drastic action taken under s.147 of the Act to re-open a completed/time barred assessment. The learned counsel thereafter submitted that it is ostensible from the reasons recorded that the AO did not form any firm 'reasons to believe' contemplated under section 147 of the Act towards escapement of income. The learned counsel exhorted that a plain reading of the reasons provided would overtly show that the AO merely wanted to make enquiry to find out the correctness of so-called information claimed to have been received from the Director of Income Tax. The learned counsel accordingly submitted that a bonafide 'belief' towards escapement of income is clearly absent in the present case. The learned counsel consequently submitted that the entire action of the AO is a complete non-starter and thus requires to be struck down. The learned counsel pointed out that there are long line of judicial precedents delivered both by the Jurisdictional High Court as well as other High Courts for the proposition that re-assessment notice for mere verification or for

conducting a fishing enquiry is not permissible in law notwithstanding that the return of income was not subjected the scrutiny under s.143(3) of the Act. The learned counsel accordingly contended that action of the AO for invoking jurisdiction is not consistent with the mandate of law and therefore requires to be quashed.

5. The Ld. DR on the other hand relied upon the orders of the authorities below to defend the action of the Revenue.

6. We have carefully considered the rival submissions. We have also perused the reasons recorded for issuance of notice under section 147 of the Act which is under challenge. It will be apt to reproduce reasons recorded hereunder for easy reference:-

*“The assessee has filed its return of income for the A.Y.2009-10 on 25/09/2009 declaring total income of Rs.2260660/- The same was processed u/s. 143(1) of the Act. However, no scrutiny assessment u/s. 143(3) has been made. The Search & Seizure action was carried out by the Department on 25.11.2009 in the case of M/s. Mahasagar Securities Ltd., which also covered its group companies, controlled by Shri Mukesh M. Chokshi, at Mumbai. Shri Mukesh Chokshi himself admitted that in his statement recorded on oath u/s. 131 of the IT. Act on 16.01.2013 that his group companies are providing entry for taking profit or loss by showing purchase or sale of the shares and securities to various parties across India on which he charged certain commission from the beneficiaries. This information is received by this office from the Director of Income Tax (I&CI); New Delhi, vide letter dated 07.03.2013. On scrutiny of the data/details received, it is ascertain that the assessee **Shri Sujay Pankajbhai Shah** is also involved in the taking entry from the group companies belongs to Shri Mukesh Chokshi during the **F.Y.2008-09** relevant to **A.Y. 2009-10** and involved in total transaction of **Rs. 804836/-** by showing fictitious entries of purchase and sale of share and securities. Therefore, in the case of the assessee, the said transactions required to be verified thoroughly.*

*In view of the above, I have reason to believe that the income chargeable to tax has escaped assessment for the **A.Y. 2009-10** due to the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, this case needs to be re-opened by issuing notice u/s. 148 of the IT Act, 1961.”*

6.1 A bare glance of the reasons recorded gives an unflinching impression that powers exercised under section 147 of the Act was to enable the AO to carry out detailed verification of the various aspects of such matter in reference made to the AO herein by the

office of Director of Income Tax, Delhi. Thus, it is self-evident that no definite formation of belief towards escapement of income was existing at the time of issuance of notice by the AO. What the AO really intended is to make an objective inquiry into the correctness or otherwise of the information received from other wing of the department to find out if there is any escapement of chargeable income indeed. The AO merely seeks to conclude that there is a case for investigation to unearth and ascertain truthfulness of alleged transactions. This is not the same thing as saying that there are 'reasons to believe' that some chargeable income has escaped assessment. Ostensibly, the AO, at best, has made out a case of probable escapement in contrast to a definite *prima facie* conclusion of escapement of income. Mere quoting of Section or iteration of expression 'reason to believe' would not satisfy the requirement of law. Thus, the requirement of section 147 of the Act is clearly not fulfilled in the instant case.

6.2 Needless to say, the provisions of section 147 of the Act which gives drastic powers to reopen a time barred/completed assessment can be invoked only when the conditions precedent for exercising the jurisdiction clearly exists. Exercise of power under section 147 of the Act cannot be made on the basis of mere *ipse dixit* of Revenue. A receipt of some information from another wing of the Department cannot be equated with a realization of escapement *per se*. Such information/evidence can possibly give birth to realization or belief of the AO as contemplated under section 147 of the Act. However, an independent formation of belief thereon is *sine qua non* for taking action under section 147 of the Act.

6.3 It is well settled by plethora of judicial precedents, including *Pr.CIT vs. Manzil Dineshkumar Shah (2018) 406 ITR 326 (Guj)*, the

SLP against which has been dismissed in (2019) 101 taxmann.com 259 (SC) that reopening is not permissible merely to seek investigation of facts collected without holding at least *prima facie* belief towards escapement of income based on relevant material. The conditions set out for invocation of Section 147 of the Act have not been met in the instant case. Hence, the notice issued under section 148 of the Act is not backed by authority of law and consequently bad in law.

6.4 The assessment under section 147 of the Act as a sequel to the illegal notice under section 148 of the Act is therefore a nullity and requires to be quashed.

7. In the result, the assessee succeeds on legal ground towards validity of jurisdiction under section 147 of the Act. Neither has the learned counsel for the assessee addressed us on the aspects of merits at the time of hearing nor do we consider it necessary to dwell upon the same.

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

**This Order pronounced in Open Court on 04/01/2021**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER  
Ahmedabad: Dated 04/01/2021

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 ।

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