

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

(Through Virtual Court)

BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं / ITA No.977/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Parveen Sewak Nayyar,
801-802, A2A, Manikchand Malabar Hills,
Lullanagar, Pune – 411040.

..... अपीलार्थी /
Appellant

PAN : ABWPN8238Q.

बनाम v/s

The Income Tax Officer,
Ward – 5(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri M. Hari Krishan.
Revenue by : Shri Prashant Mahajan.

सुनवाई की तारीख / Date of Hearing : 23.06.2020
घोषणा की तारीख / Date of Pronouncement : 24.06.2020

आदेश / ORDER

PER SHRI D. KARUNAKARA RAO

The appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) – 9, Pune dated 10.05.2019 for the assessment year 2009-10.

2. Assessee is an individual who filed her return of income for A.Y. 2009-10 declaring total income at Rs.2,28,780/- on 06.06.2011. Originally, the assessment was completed u/s 143(3) of the Act. The case was

reopened by issuing notice u/s 148 of the Act dated 29.03.2012. In response to the notice u/s 148 of the Act, assessee filed return on 06.06.2011 and also filed various documents as required by the AO. Thereafter, the re-assessment was framed u/s 143(3) r.w.s. 147 of the Act re-computing the total income of the assessee at Rs.48,27,360/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dt.10.05.2019 dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before me and has raised the following grounds :

“1. On the facts and in the circumstances of the case and in law, the re-opening of the assessment by issue of notice u/s 148 of the Income Tax Act in this case, is ab-initio-void and unsustainable in law. The assessment has been re-opened to verify the genuineness of the loan of Rs.26,00,000/- given by the assessee to Mr. Vishal Kedari. The notice u/s 148 issued for re-opening the assessment order passed by the Assessing Officer u/w 143(3) r.w.s. 147 of the Income Tax Act may also be quashed.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the additional ground No.1 raised before him challenging the re-opening of the assessment, by simply holding that there is no merit in the claim of the assessee as, she is relying only on the technicalities.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs.26,00,000/- made by the Assessing Officer to the income of the assessee as unexplained investment in loan of Rs.26,00,000/- given to Mr. Vishal Kedari.

4. The Ld. Assessing Officer has wrongly assumed jurisdiction in the re-assessment proceedings to reject assessee's claim of exemption of Rs. 15,00,000/- claimed u/s 54 of the Income-tax Act from Long Term Capital Gains.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the additional ground No. 2 raised before him challenging the jurisdiction of the Assessing Officer to make disallowance of the deduction claimed u/s 54 of the Income Tax Act from long term capital gains of Rs.15,00,000/-, by simply holding that there is no merit in the claim of the assessee as, she is relying only on the technicalities.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer in denying the deduction of Rs.15,00,000/- claim u/s 54 of the Income Tax Act from Long Term Capital Gains.”

3. The Ld.A.R. subsequently, filed the following “**additional grounds**” :

“1. As per sub-section (4) of section 139 of the Income Tax Act the return of income could have been filed only upto 31-03-2010. The assessee however filed her return of income on 06-06-2011. Accordingly the return of income filed after 31-03-2010 is an invalid return.

2. The assessment in this case has been made u/s 143(3) r.w.s. 147 of the Income Tax Act.

The Hon'ble Pune bench of the Income Tax Appellate Tribunal in its recent judgment dated 06-09-2019, in the case of Gulab 8adgujar (HUF) ITA No. 1663/PUN/2014 and the Hon'ble Mumbai Bench of the Income Tax Appellate Tribunal in its judgment in the case of S. Kumar Enterprises (Synfabs) Ltd. (2005) 4 SOT 412 (Mumbai) have held that in a case where there is no valid return of income, the assessment completed u/s 143(3) of the Income Tax Act is not valid.

3. In view of the above, the assessment order dated 28-03-2013 passed u/s 143(3) of the Income Tax Act is invalid and is required to be quashed.

4. In the original grounds of appeal filed by the assessee however the assessment order has remained to be challenged on the above ground. Assessee therefore wants to file the following additional ground of appeal.

Additional Ground of Appeal

The assessment order dated 28-03-2013 passed in this case u/s 143(3) of the Income Tax Act is invalid and unsustainable in law. The assessment order therefore may be quashed.

5. It is respectfully submitted that the above mentioned additional ground of appeal is purely legal ground and all the relevant facts for adjudicating the ground is already available on record and no new facts are required to be investigated. The additional ground could not be taken at the time of filing the appeal for bonafide reasons as the judgment of the Hon'ble Pune bench of the Income Tax Appellate Tribunal dated 06-09-2019, in the case of Gulab 8adgujar (HUF) ITA No. 1663/PUN/2014 has come after filling the appeal

6. In this regard reliance is placed on the following judgments wherein it has been held that purely legal additional grounds which do not require any further investigation into the facts may be admitted.

- (i) Jute Corporation of India Ltd. 53 Taxman 85 (SC)*
- (ii) NTPC Ltd. 88 taxmann.com 561 (SC)*
- (iii) Ahmedabad Electricity Company Ltd 66 Taxman 27 (Bombay)”*

4. At the outset, before me, the Ld.A.R. brought my attention to the additional grounds and submitted that the same are legal in nature. In this case, as per Ld.A.R. the AO assumed jurisdiction u/s 148 of the Act merely for verification of the transaction by the assessee with one Shri Vishal Kedari. AO desires to conduct the verification of the said transactions. The Ld.A.R. for the assessee vehemently argued stating that in the absence of any **“tangible”** material to demonstrate or leading to the discovery of the escapement of income, the opening of a completed assessment is bad-in-law. Thus, the assessee is aggrieved with the decision of AO, who assumed jurisdiction u/s 147 of the Act merely for conducting / roving enquiries in the name of mere verification into the transactions. As per the Ld.A.R., such attempts of the AO are not approved by a series of judgments of various High Courts as well as the Tribunals.

5. In this regard, the Ld.A.R. brought my attention to the judgment of the jurisdictional High Court in the case of Nivi Trading Limited Vs. Union of India reported in (2015) 375 ITR 308 (Bom) - *whether mere fact that more details were sought or some verification was sought with regard to value of these shares in terms of Sec.47(iii), would not enable Revenue to resort to Sec.147 of the Act and it is also held yes.* Discussion given in Para 26 of the Judgment is relevant and the same is thoroughly relied upon by the Ld.A.R. Subsequently, Ld.A.R. brought my attention to the decision of the Pune Tribunal in the case of Mr. Lalchand Mehrumal Jagwani Vs. ITO (ITA No.1241/PUN/2019 order dated 16.10.2019) wherein the Tribunal did not allow the re-opening of the assessment merely for verification of cash

transactions. Reliance has been placed by the Tribunal on the decision of Hon'ble Gujarat High Court in the case of Inductotherm (India) Pvt. Ltd. Vs. M. Gopalan, DCIT reported in 356 ITR 481. This judgment is reliable for the proposition that for mere verification of the claim, power of re-opening of the assessment could not be exercised.

6. On the other hand, Ld. D.R. for the Revenue informed that the transactions of payments of money to Shri Vishal Kedar involves the role of Adarsh Cooperative Housing Society Limited which is the subject matter of the legal scrutiny. Otherwise, Ld. D.R. heavily relied on the order of Commissioner of Income Tax (Appeals).

7. Hearing on both sides, I find that legal issue for adjudication relates to the validity of the re-opening of the completed assessment. There is no tangible material in this case. Admittedly, re-opening is done for mere verification of certain transactions. I will not dig into the merits of the issue and correctness of the addition at this stage without deciding on the legal issue.

8. Here, I proceed to extract the relevant lines from Para 1 of the assessment order as under :

*“ To **verify the genuineness** of the loan transaction, the notice u/s 148 of the Act for re-opening the case has been issued to the assessee.”*

From the above extraction, undoubtedly, re-opening is done for mere verification only. In our view, such attempts of the AO are not approved by the decisions of higher judicial authorities as well as the Co-ordinate Bench

of the Tribunals. Relevant case laws are cited above. For the sake of ready reference, the above mentioned legal propositions are discussed hereunder :

- (a) Para 26 of the Judgment in the case of Nivi Trading Limited Vs. Union of India reported in (2015) 375 ITR 308 (Bom).

*26. This is a stand taken in the affidavit in reply but what we find is that the gift without any consideration and as noted in the reasons recorded and supplied has not been termed as one which attracts any tax or which is chargeable to tax and therefore there is any income which has escaped assessment. In other words, the amount of Rs.1,21,33,429/- shown as gift has not been termed as an income and which is chargeable to tax and which has escaped assessment. All that is required from the Assessee is a verification and in terms of [section 47\(iii\)](#) of the IT Act and for enabling it, the Assessee was called upon to appear before the Assessing Officer. **Thus, it is for verification of the value of these shares** and whether the computation is on the market rate on the date of such transfer. This, to our mind, would not in any J.V.Salunke,PA WP.2314.2015.Oral Judgment.doc manner enable the Revenue/Respondents to resort to [section 147](#) of the IT Act. In the view that we have taken above, it is not necessary to refer to other Judgments relied upon by Mr. Pardiwalla and which also reiterate the settled principle that the reasons ought to be recorded on the date of the issuance of the notice and which must disclose the requisite satisfaction. The reasons as recorded cannot then be substituted or supplemented by filing an affidavit in the Court. Thus, additional reasons cannot be supplied and on affidavit. We are of the view that it is not necessary to refer to this principle any further in the facts and circumstances of the present case.*

- (b) Para 5 of the Order in the case of Mr. Lalchand Mehrumal Jagwani in ITA No.1241/PUN.2019.

*5.....I find that the Hon'ble Gujarat High Court in the case of Inductotherm (India) P. Ltd. Vs. M. Gopalan, reported in 2013 356 ITR 481 has observed that **for a mere verification of the claim, the power of re-opening of the assessment could not be exercised** and it further observed that AO under the guise of power to re-open the assessment cannot seek to undertake an undertaking a fishing or roving inquiry or seek to verify the claim as if he is the scrutiny officer.*

9. Considering the above facts, the referred decisions / judgments and in the absence of any tangible material, AO's reason of mere verification for re-opening the assessment, I am of the opinion, the jurisdiction assumed

by the AO in this case is not valid. Accordingly, relevant ground / additional grounds are allowed in favour of the assessee.

10. Considering the relief given on the legal issue, in my view, the adjudication of the other grounds on merits become academic exercise. Accordingly, the grounds raised by the assessee on merits stands dismissed. Thus, the ground No.1 read with additional ground No.1 are allowed and the other grounds are dismissed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 24th day of June, 2020.

Sd/-

**(D. KARNUKARA RAO)
ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 24th June, 2020.
Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-9, Pune.
4. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.