

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

ITA No.462/Ahd/2019

Asstt.Year : 2010-11

Shri Vasantkumar Prahladbhai Kanudawala Risala Bazar Gandhi Chowk Road Deesa, Banaskantha. PAN : AQXPK 9617 N	Vs	The ITO, Ward-4 Palanpur.
--	----	------------------------------

(Applicant)		(Respondent)
Assessee by :		Shri Mehul K. Patel, AR
Revenue by :		Shri B.P. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 21/03/2023

घोषणा की तारीख /Date of Pronouncement: 29/03/2023

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-4, Ahmedabad, Ahmedabad (in short referred to as Id.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 27.11.2018 pertaining to Asst.Year 2010-11.

2. The grounds raised by the assessee are as under:

(1) That on facts, and in law, the re-opening of assessment u/s 147 of the Act is not justified, and it be held as invalid and void ab initio.

(2) That on facts, and in law, the learned CIT (A) has grievously erred in confirming the addition of Rs.15,00,000/- made u/s 68 of the Act in respect of deposits in appellant's bank account.

3. Ground No.1 raised by the assessee challenges validity of the assessment framed in the present under section 147 of the Act.

4. The contention of the ld.counsel for the assessee before us that reopening was resorted to on the information with the AO that there was cash deposits in the bank account of the assessee amounting to Rs.15.00 lakhs. The ld.counsel for the assessee contended that this information alone could not lead to formation of belief of escapement of income for assumption of valid jurisdiction to reopen the case of the assessee under section 147 of the Act. In this regard, he relied upon the decision of the ITAT, Ahmedabad Bench in the case of Mariyam Ismail Rajwanivs ITO in ITA No. 676 /Ahd/2016 dated 09/08/2016 and BirBahadur Singh Sijwali v. I.T.O. [2015] 53 taxmann.com 366 (ITAT-Delhi). The ld.DR however, relied on the order of the ld.CIT(A).

5. We have heard both the parties and gone through the orders of the authorities below. We have noted from the assessment order that reopening was resorted to by the AO on the information received from ADIT (Investigation), Mehsana that there were three transactions of cash deposits of Rs.5.00 lakhs each amounting in all to Rs.15 lakhs in the HDFC Bank account of the assessee. This fact finds mention at page no.2 of the assessment order as under:

“In this case, the information has been received from the ADIT(Inv.), Mehsana dated 27/2/2017 that to verify the suspicion, summons u/s.131(1A) r.w.s. 131 of the I.T.Act, 1961 was issued to Shri VasantkumarPrahlabdbhaiKanudawala on 28/11/2016 to explain the source of cash deposit of rs.15, in 3 transactions i.e. Rs.5,00,000/- on 15/4/2009, Rs.5,00,000/- on 16/4/2009 and Rs.5,00,000/- on 17/4/2009 in his HDFC Bank A/c.”

6. The ld.CIT(A), I have noted, did not entertain contention raised by the assessee that this information solely could not have led to formation of belief of escapement of income, stating that case laws relied upon by the assessee were not applicable to the facts of the case; no reasoning was given by the ld.CIT(A) for the same.

7. I am not in agreement with the ld.CIT(A) in this regard. Only information in the possession of the AO for assuming jurisdiction to reopen the case of the assessee was that of cash deposited in the bank account of the assessee, and this information has been held in various decisions of the ITAT cited by the ld.counsel for the assessee before us, is not sufficient for formation of belief of escapement of income. There is no information on record that on receipt of this information by the AO any inquiry or investigation was conducted by him so as to gather information regarding source of cash deposits either from the assessee or from any other source. In the absence of the same, mere information of cash deposits could not have led to formation of belief of escapement of income. The issue is squarely covered by the decision of the ITAT in the cases Mariyam Ismail Rajwani and BirBahadur Singh Sijwali (supra).

In view of the same, we hold that jurisdiction assumed by the AO to reopen the case of the assessee was not in accordance with law in the absence of formation of belief of escapement of income by the AO. The assessment order so framed is therefore not sustainable in law, and is set aside as invalid.

7. Since we have set aside the assessment order passed under section 147 itself, adjudication of addition on merits is merely an academic exercise. Accordingly, the same are disposed off.

8. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 29th March, 2023 at Ahmedabad.

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

Ahmedabad,dated 29/3/2023