IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

(BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER & SHRI S.S. GODARA, JUDICIAL MEMBER)

I.T. A. No. 1346 /AHD/2015
(Assessment Year: 2008-09)

Parul Bhupendra Patel Mahyavanshi Falia, Sanjan Maroli Road, Taluko: Umbergaon, Valsad	**V/S**	**Income Tax Officer, Ward-2, Vapi**
(Appellant)		**(Respondent)**

PAN: AMJPP 9329A

Appellant by	**: Shri Parin Shah, AR**
Respondent by	**: Smt. Anita Hardasani, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 11-09-2015
Date of Pronouncement : 30 -10-2015

PER ANIL CHATURVEDI, ACCOUNTANT MEMBER

1. This appeal filed by the Assessee is against the order of CIT(A), Valsad dated 19.03.2015 for A.Y. 2008-09.

2. The relevant facts as culled out from the material on record are as under.

3. Assessee is an individual stated to be deriving income from tutions and other sources. She filed her return of income for A.Y. 08-09 on 21.03.2007 declaring total income of Rs. 1,44,954/-. The return of income was initially processed u/s. 143(1) of the Act. Subsequenlty notice u/s. 148 of the Act was issued on 30th March, 2013 and the case was reopened and thereafter the assessment was framed u/s. 143(3) r.w.s. 147 vide order dated 30.12.2013 and the total income was determined at Rs. 3,44,950/-. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who vide order dated 19.03.2015 dismissed the appeal of the Assessee. Aggrieved by the aforesaid order of ld. CIT(A), Assessee is now in appeal before us and has raised the following grounds:-

1. *Ld. CIT (A) erred in law and on facts in confirming re - opening of assessment u/s 148 of the Act ignoring fact that no new tangible material brought on record and re-opening merely on the basis of details / information filed along with return of income. Ld. CIT (A) ought to have quashed reassessment on plea that land purchased by the appellant is duly shown in books of accounts, no new tangible material brought on record by AO and there is no escapement of income by the appellant. It be so held now.*
2. *Without prejudice to the above ld. CIT (A) ought to have given his findings on merits as details regarding source of investment are submitted to AO and duly reflected in statement of facts filed before him. Ld. CIT (A) ought to have adjudicated ground no. 3 raised before him and give his finding on it. It be so held now.*
3. *Ld. CIT (A) ought to consider source of cash deposited in bank accounts are the tuition fees earned by the appellant, details of list of students also submitted to AO and earlier cash on hand balance duly accounted in books and reflected in return of income, since evidences submitted in support of income hence investment of Rs. 2, 00,000/- made by the appellant is considered as explained. It be so held now.*
4. *Levy of interest u/s 234A, 234B & 234C of the act is not justified.*
5. *Initiation of penalty proceedings u/s 271 (l)(c) is unjustified.*

4. Before us, ld. A.R. submitted that though Assessee has raised several grounds but the only effective ground is with respect to re-opening of assessment and the additions made in reassessment proceedings.

5. Before us, ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further submitted that the present case was reopened within a period of 4 years from the end of the relevant assessment year. He submitted that the re-opening has been made on the basis of material which was already available on record of A.O and the reopening was not based on any new material. He relying on the decision of Hon'ble Apex Court in the case of CIT vs. Kelvinator India Ltd. 320 ITR 561 submitted that reason to believe does not give arbitrary powers to reopen an assessment and that change of opinion cannot be reason to believe that income chargeable to tax has escaped assessment. He submitted that in the absence of any new material, the A.O cannot re-open the assessment. He further placed reliance on the decision of Hon'ble Delhi High Court in the case of Orient Craft Ltd. (ITA No. 555/A/2012 order dated 12.12.2012). He further submitted that ld. CIT(A) has decided the issue on the legal aspect of reopening but has not adjudicated the issue on merits. He therefore submitted that since the reassessment itself being not as per law the same needs to be quashed. The ld. D.R. on the other hand supported the order of A.O.

6. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the original return of income for A.Y. 08-09 was processed u/s. 143(1) and the notice for re-opening u/s. 148 has been issued on 30th March, 2013 i.e. within a period of 4 years from the end of the relevant assessment year and in such a case the jurisdiction to reassess the

Assessee under the Act can only arise if the conditions specified in Section 147 of the Act is satisfied. The conditions that are to be fulfilled are that the A.O must have reason to believe that income chargeable to tax for the assessment year concerned has escaped assessment and such reason to believe must be based upon some tangible material leading to the belief. Thus in the absence of cumulative satisfaction of reason to believe and in the absence of any income chargeable to tax escaping assessments of the A.O is not empowered with jurisdiction to reopen the assessment. In the present case, the reasons disclosed by the A.O vide intimation dated 17.06.2013, which has enabled him to reach the belief that there was escapement of income was "as per the information available with this office ". Thus it can be seen that there was no new material before A.O which prompted him to issue notice u/s. 148 but on the contrary the reasons was on the basis of material already available on record meaning thereby that the assessment has been reopened on the basis of change of opinion, which is not permissible as per law even though when the originally intimation was issued u/s. 143(1) of the Act and for which we find support by the decision of Hon'ble Delhi High Court in the case of Orient Crafts Ltd (supra) where the Hon'ble High Court has made the following observations:-

13. In other words, the expression "reason to believe" cannot have two different standards or sets of meaning, one applicable where the assessment was earlier made under section 143(3) and another applicable where an intimation was earlier issued under section 143(1). It follows that it is open to the assessee to contend that notwithstanding that the argument of "change of opinion" is not available to him, it would still be open to him to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment. In doing so, it is further

open to the assessee to challenge the reasons recorded under section 148(2) on the ground that they do not meet the standards set in the various judicial pronouncements.

14. In the present case the reasons disclose that the Assessing Officer reached the belief that there was escapement of income "on going through the return oj income" filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in CIT vs. Kelvinator (supra). The reasons recorded by the Assessing Officer in the present case do confirm our apprehension about the harm that a less strict interpretation of the words "reason to believe" vis-a-vis an intimation issued under section 143(1) can cause to the tax regime. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147.

15. For the above reasons, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the Revenue. The appeal of the Revenue is accordingly dismissed. There shall be no order as to costs.

7. Considering the totality of the aforesaid facts, we are of the view that the impugned reassessment order passed by the A.O cannot be upheld. We therefore quash the re-assessment order passed by the A.O on 30.12.2013 and thus the grounds of Assessee are allowed.

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

Order pronounced in Open Court on 30 - 10 - 2015.

Sd/- Sd/-

(S.S. GODARA) **(ANIL CHATURVEDI)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

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