

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 451 of 2018

With

R/TAX APPEAL NO. 457 of 2018

With

R/TAX APPEAL NO. 458 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX 5

Versus

MANZIL DINESHKUMAR SHAH

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Appearance:

MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 07/05/2018

COMMON ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These Tax Appeals arise out of common background, we may record facts from Tax Appeal No.451 of 2018.

2. Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 16.06.2017 raising following questions for our consideration:

"[A] Whether the Appellate Tribunal was right in law and on facts in admitting the additional ground challenging the reopening of assessment which was not raised earlier in assessment proceedings as well as before the CIT(A) and therefore was not emerging from the order of the CIT(A)?

[B] Whether the Appellate Tribunal was

right in law and on facts in quashing the reassessment order ?"

3. Respondent assessee is an individual and is a proprietor of one trading firm. For the assessment year 2009-10, the return filed by the assessee was accepted without scrutiny. To reopen such assessment, the Assessing Officer issued a notice. In order to issue the notice, he had recorded following reasons:

"The assessee has filed his return of income in ACIT, CPC, Bangalore vide acknowledgment No.96931140300909 for A.Y. 2009-10 on 30/09/2010 declaring total income Rs. 3,44,587/- which was processed u/s. 143(1) of the I.T. Act on 11/08/2010. However no scrutiny assessment u/s. 143(3) was made.

In this case the information conveyed by the DGIT (Inv.) Mumbai dated 22/02/2013 addressed to DGIT(Inv.)Ahmedabad alongwith the Board's confidential letter dated 21/02/2013 to take actions in respect of cases of no-genuine Bills-information emanating out of VAT Department, Mumbai to the CCIT-III, Ahmedabad. The CCIT-III, Ahmedabad vide letter dated 20/03/2013 forwarded the same to the CIT-V, Ahmedabad. The same was forwarded to the O/o. The Jt. CIT, Range-11, Ahmedabad by the CIT-A'bad-V, Ahmedabad vide letter No.VIT-V/Ahd/Inf.VAT/2012-13/6675 DATED 21/03/2013. The Jt. CIT. Range-11, Ahmedabad vide letter No.Jt.CIT/R-11/Non-Genuine Bills/2012-13/6675 dated 22/03/2013 forwarded the same to this office.

The information received from the VAT Department, Mumbai relating to bogus

purchases of each beneficiary firm from Hawala Biller. On verification of information it is found that the assessee MANJIT DINESHKUMAR SHAH has also made purchases of Rs.3,21,74,262/- during the F.Y. 2008-09 (A.Y. 2009-10) from Hawala Dealer as information received by this office. It needs deep verification.

I have therefore firm 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. Thus, the case needs to be re-opened by issuing notice u/s 148 of the I.T. Act, 1961."

4. The Tribunal by the impugned judgment held that the notice was invalid, against which view of the Tribunal, the Revenue has preferred this appeal.

5. Mrs.Bhatt for the department vehemently contended that Assessing Officer had sufficient material to enable him to form a belief that income chargeable to tax has escaped assessment. After verifying the information emerging from the record he was *prima-facie* of the opinion that the assessee had shown purchases from Hawala dealers. In other words, the purchases were bogus. Original assessment was made under section 143(1) of the Income Tax Act, 1961 ('the Act' for short). The Tribunal committed an

error in invalidating the reassessment proceedings.

6. By now it is well settled that even in case where the original assessment is made without scrutiny, the requirement of the Assessing Officer forming the belief that income chargeable to tax has escaped assessment, would apply. Reference in this respect can be made of the judgment in case of ***Inductotherm (India) P. Ltd. v. M. Gopalan, Deputy Commissioner of Income-Tax*** reported in ***[2013] 356 ITR 481 (Guj)***.

7. It is equally well settled that the notice of reopening can be supported on the basis of reasons recorded by the Assessing Officer. He cannot supplement such reasons. The third principle of law which is equally well settled and which would apply in the present case is that reopening of the assessment would not be permitted for a fishing or a roving inquiry. This can as well be seen as part of the first requirement of the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment. In other words, notice of reopening which is issued barely for making fishing inquiry, would not satisfy this requirement.

8. With this background, we may revert to the reasons recorded by the Assessing Officer. Information from the Value Added Tax Department of Mumbai was placed for his consideration. This information contained list of allegedly bogus purchases made by various beneficiaries from Hawala dealers. Assessee was one of them. As per this information, he had made purchases worth Rs.3.21 crores (rounded off) from such Hawala dealers during the financial year 2010-11. According to the Assessing Officer, this information 'needed deep verification'.

9. If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this

fundamental defect.

10. Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. *'it needs deep verification'*.

11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it.

12. Both these Tax Appeals are dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

ANKIT SHAH