

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.769/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

Mr. Kailash Kanhaiyalal Gidwani, ACIT, Circle-2
Mr. Sunil Kanhaiyalal Gidwani Vs. Sangli
Mr. Amit Kanhaiyalal Gidwani
1001, Bhima Apartments,
Worli Sagar Coop. Housing
Society,
Sir Pochkhanwala Road,
Worli, Mumbai - 400 030
Legal heirs of Late Smt. Devi
Kanhaiyalal Gidwani
PAN : AIMPG1083B

(Appellant)

(Respondent)

Appellant by

Shri Sunil Ganoo

Respondent by

Shri Sudhendu Das

Date of hearing

09-09-2019

Date of pronouncement

11-09-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 31-01-2014 passed by the Commissioner of Income-tax (Appeals), Kolhapur in relation to the assessment year 2009-10.

2. The first ground is against the validity of initiation of re-assessment.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) initiated re-assessment by means of notice u/s.148 of the Income-tax Act, 1961 (hereinafter also called 'the Act') which was issued on 19-03-2012 alleging that the source of loan given by the assessee to Kanhaiyalal Vishandas Gidwani to the tune of Rs.7.00 lakh was not substantiated. The assessee filed return in response to such notice and then sought reasons leading to the issuance of notice u/s.148. Objections were raised after receiving the reasons, which were dealt with by the AO by means of a separate order. Thereafter, the AO espoused the assessment determining total income at Rs.46,03,300/- as against the returned income of Rs.9,96,340/-. The assessee, *inter alia*, challenged the initiation of re-assessment before the Id. CIT(A) but without success and thus is now aggrieved before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The reasons which led to the issuance of notice u/s.148, a copy supplied on page 9 of the paper book, read as under:

“According to information gathered from informed sources, local enquiries and media reports, it has come to be known that Shri Kanhaiyalal Gidwani, owns three flats, one in his name and two in the names of his two sons - Kailash and Amit in the Adarsha Housing Society. Again, one flat is learned to be booked in the name of Shri Gajanan S. Koli, where apparently it is believed that Shri Sunil K. Gidwani, son of Kanhiyalal Gidwani, has lent finance to purchase the same. All payments for the same were apparently made through

Gidwani Family's various bank accounts in which apparently cash amounts were deposited and the same were transferred into the accounts of Gidwani's wife, son and daughter-in-law in HDFC Bank at Worli. Thereafter the said amounts were apparently transferred into the account of M/s Jay Maharashtra CPL, HFDC Bank, Worli, in which Gidwani's sons are directors for making payments towards cost of the flats.

On verification, it is seen that Shri Kanhaiyalal Vishandas Gidwani has taken interest free loan of Rs.500,000 on 08-03-2007 and Rs.200,000 on 25-11-2008 from the assessee Smt. Devi Gidwani. Genuineness of all these loans is not proved. The sources of the loans advanced by Sou. Devi Gidwani are not substantiated. Therefore, in view of the above, I have reasons to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 of the I. T. Act, 1961.”

5. It can be seen from the above extracted reasons that the first para talks of Kanhaiyalal Gidwani acquiring three flats, one in his name and two in the names of his sons in Adarsha Housing Society, which has no relation with the assessee in question. Second para relates to the assessee as per which Kanhaiyalal Vishandas Gidwani took two interest free loans of Rs.5.00 lakh and Rs.2.00 lakh from the assessee on 08-03-2007 and 25-11-2008. The first loan of Rs.5.00 lakh is dated 08-03-2007, which transaction falls in the previous year ending 31-03-2007 with the relevant assessment year 2007-08 and hence, is not relevant for the assessment year 2009-10 under consideration.

6. The only loan which relates to the relevant year is of Rs.2.00 lakh which as per the AO was given by the assessee to Kanhaiyalal

Vishandas Gidwani. Here, it is relevant to mention that the assessee filed her original return of income on 31-03-2010, much before the initiation of section 147 proceedings, declaring total income of Rs.9,96,340/-. Copy of acknowledgement of income-tax return has been placed at page 3 of the paper book. The computation of income is at pages 1 & 2 of the paper book. The assessee's Profit and loss account and Balance sheet find place at pages 5 & 6 of the paper book. It can be seen from the assessee's Profit and loss account that there is net profit of Rs.10,89,380/-. The same amount has been carried to the assessee's capital account, whose copy is available at page 7 of the paper book. Net closing balance of Rs.32,33,246.34 in the capital account has been taken to the balance sheet. It is with reference to these Annual accounts that the assessee filed the original return on 31-03-2010 declaring total income of Rs.9,96,344/-. In the said balance sheet of the assessee, which accompanied the original return of income, there is depicted a loan liability in favour of Kanhaiyalal V Gidwani at Rs.17,68,500/-. Copy of account of Kanhaiyalal Vishandas Gidwani has been placed at page 25 of the paper book, which shows opening credit of balance of Rs.20.00 lakh. Then there are two payments made by the assessee to Kanhaiyalal Vishandas Gidwani through HDFC bank

amounting to Rs.2.00 lakh and Rs.31,500/- with closing balance of Rs.17,68,500/-, which finds place in the assessee's balance sheet filed with the original return of income.

7. From the above narration of facts, it is amply clear that firstly the assessee did not advance any loan to Kanhaiyalal Vishandas Gidwani amounting to Rs.2.00 lakh as has been alleged in the reasons. On the contrary, it is a case of repayment of loan of Rs.2.00 lakh as against the opening balance of loan of Rs.20.00 lakh. The reasons noted by the AO that it was a case of advancing loan by the assessee to Kanhaiyalal Vishandas Gidwani, is therefore, not correct to that extent. Be that as it may, the substance of the reasons is that "*the sources of the loans advanced by Sou. Devi Gidwani are not substantiated*". This is the main reason which led to the initiation of re-assessment proceedings in the hands of the assessee. We are unable to find any justification for initiation of re-assessment on such ground as it is a case where the assessee had made repayment of loan out of regular books of account maintained by her. As against the opening balance of Rs.20.00 lakh, the assessee paid Rs.2.00 lakh vide cheque dated 25-11-2008. This transaction was properly recorded in the assessee's books of account. The assessee is payer and not the recipient of loan. Once

the assessee paid Rs.2.00 lakh to Kanhaiyalal Vishandas Gidwani out of her regular books of account, there cannot be any question of the assessee not substantiating the source of loan, which is overtly from the regular books of account maintained by her. This sort of enquiry, if warranted, ought to have been conducted in the hands of the recipient to justify the source of the loans received and not the payer of the loan, who has given loan out of her regular books of account. In view of the foregoing discussion, it is clear that the reasons recorded by the AO for initiating re-assessment proceedings are invalid and do not justify initiation of re-assessment.

8. Even though the original summary assessment was made u/s 143(1) of the Act and the period of four years from the end of the assessment year had not expired before issuing notice u/s 148 of the Act, still, the AO, having missed the opportunity of making assessment u/s 143(3) after issuing notice u/s 143(2) of the Act within the stipulated period, could have made assessment or reassessment u/s 147 only on the basis of the some reasons to believe about the escapement of income. Existence of reasons for escapement of income are *sine qua non* to embark upon the assessment or reassessment u/s 147 of the Act. Change or no change of opinion, as argued by the ld. DR, are the factors to be considered

after fulfilling the jurisdictional condition of there being an escapement of income, in the absence of which no assessment or reassessment can be made u/s 147. As it is apparent from the above discussion that no valid reasons exist about the escapement of the assessee's income, we hold that the AO was not justified in taking recourse to the provisions of section 147 of the Act. We, therefore, strike down the initiation of assessment proceedings and the consequential assessment order passed u/s 147 of the Act and also the impugned order.

9. In the result, the appeal is allowed.

Order pronounced in the Open Court on 11th September, 2019.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11th September, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), Kolhapur
4. The CIT-I, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" /
DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-09-2019	Sr.PS
2.	Draft placed before author	11-09-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*