

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMEBR
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 1065/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2010-11)

Adinath Leasing And Finance P. Ltd. A-12, Silver Arc, Abhyankar Hospital, Behind Town Hall, Madalpur Underbridge, Ellisbridge, Ahmedabad - 380006	बनाम/ Vs.	The Income Tax Officer Ward 1(1)(1) Room No.-A 301, 3 rd Floor, Pratyaksh Kar Bhavan, Behind Kamdhenu Complex, Near Panjara Pol, Ambawadi, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAUPD7883L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Sakar Sharma, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri N. J. Vyas, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	08/07/2022
घोषणा की तारीख/Date of Pronouncement	23/08/2022

ORDER

PER MAHAVIR PRASAD, JM:

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short) vide Appeal No. CIT(A)-1/ITO, Wd-1(1)(1)/09/2015-16 dated 27.02.2017 arising in the assessment order dated 05.03.2015 passed by the

Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY. 2010-11.

2. The ground of appeal raised by assessee reads as under:

- “1. *The Ld. CIT (A) erred on facts and in law in upholding the action of Assessing Officer in issuing notice u/s 148 and making consequential re-assessment u/s 147 ignoring the fact that neither the reasons recorded were in accordance with the provisions of section 148(2) nor there was any escapement of income within the meaning of section 147 of the Act.*
2. *The Ld. CIT (A) erred on facts and in law in upholding action of Assessing Officer in treating and disallowing loss of Rs. 34,00,000 /- incurred in property transaction between the appellant and Smt. Neela R Gandhi to be sham and bogus transaction.*
3. *The Ld. CIT (A) erred on facts and in law in upholding disallowance of Rs. 1,14,869/- made by Assessing Officer u/s 14A r.w.r. 8D.”*

3. The facts of the case are that assessee is a Private Limited Company engaged in the business of Finance and Real Estate purpose. The assessee furnished return of income on 28.09.2010 declaring total income of Rs.Nil. The return was accepted under S.143(1) of the Act and no notice under S.143(2) of the Act was issued to the assessee to scrutinize the return within the permissible time limit. The learned AO issued notice under S. 148 of the Act on 13.03.2014 and same is part of paper book. The assessee furnished return of income under S.148 of the Act on 25.04.2014 declaring Nil income. The assessee provided reasons of reopening vide letter dated 08.05.2014 and same are part of paper book at page no.55. The reopening was made on the basis of investigation carried out by the Investigation Wing concluding that there was no transfer of property located at 7, Nalanda Society, Ahmedabad within the meaning of section 2(47) (v) of the Act nor was there any transfer of property within the meaning of section 53A of the Transfer of Property Act. Such conclusion was derived on the ground that banakhat dated 16.03.2009 entered by assessee to

acquire the property as well as possession agreement were simply on stamp paper of Rs. 100/- and were not registered. Therefore, loss of Rs. 34 lacs incurred on sale of said property and consequential set off said loss against profit earned in another land transaction was considered not genuine leading to escapement of income to the extent of loss of Rs.34 lacs. The assessee objected to the re-opening vide letter dated 11th June, 2014 and same are part of paper book at page nos. 62 to 64. The Assessing Officer passed order disposing of the objections of the assessee on 16.06.2014 and the same are part of paper book at Pages 69 to 72. Consequently, Assessing Officer passed assessment order u/s 143(3) r.w.s. 147 on 05.03.2015 wherein following additions/ disallowances were made and which are subject matter of appeal before us:

(i)	Disallowance of loss on sale of property	- Rs. 34,00,000/-
(ii)	Disallowance u/s 14A r.w.r. 8D	- Rs. 1,14,869/-

		Rs. 35,14,869/-
		=====

4. Thereafter, assessee preferred first statutory appeal before the learned CIT(A) who confirmed the action of the learned AO on the ground that assessee has made same transaction of purchase of property situated at 7, Nalanda Society, Ahmedabad belonging to Smt. Neela R. Gandhi, one of the shareholder of the assessee company for amount of Rs.105 Lakhs on 16.03.2009. Later on the said property was sold to one Mr. Dinesh Shah and Smt. Kamla Shah for an amount of Rs.71 Lakhs resulting into capital loss of Rs.34 Lakhs.

5. So far next ground relating to Section 14A of the Act is concerned, the learned AO made addition on dividend income of Rs.5,63,596/- and made disallowance of Rs.1,14,869/-.

6. But before the both lower authorities, assessee has not submitted any evidence regarding sources and applications in support of its contention that there is a direct nexus between utilization of interest free funds and investigation made by it. In our considered opinion, disallowance under S. 14A r.w. Rule 8D was correctly worked out. The assessee has not disallowed any expenditure for earning exempt income in P&L account, which does not form part of total income. Further, the assessee has paid interest of Rs.2,36,887/- and assessee has made average investment of Rs.63,85,900/- and having average assets of Rs.2,00,64,030/-. In our considered opinion, learned AO has rightly made disallowance under S.14A r.w. Rule 8D. In view of the above, we concur the decision of the lower authorities and dismiss this ground of appeal.

7. Now, assessee has come before us by way of second appeal. The lower authorities have made addition of Rs. 34 Lakhs only on the ground that proper registration has not been taken place before the relevant authorities of the State Government. Learned AR has relied on following judgments:

(i) Kantibhai Dharamshibhai Narola v. Assistant Commissioner of Income Tax, [2021] 125 taxmann.com 348 (Gujarat)

“Section 69B. read with section 148. of the Income-tax Act, 1961 - Undisclosed investments (Reassessment) - Assessment year 2011-12 - During year, assessee sold a land to two individuals for consideration of Rs. 1.46 crores and filed its return declaring same as capital gain - Same was processed under section 143(3) and an assessment order was passed - After four years, Assessing Officer

issued a reopening notice on ground that an information was received from Dy. Commissioner that during course of search in case of one 'KS1 group it was found that said land was actually sold to said 'KS' group for sale consideration of Rs. 13.08 crores - Thus, differential amount was not shown by assessee in his return of income -Assessee contended that land was not sold by him to 'KS' group and land was sold to two individuals and later if those two individuals sold land to 'KS' group then same had nothing to do with transaction of sale between assessee and two individuals - It was noted that it appeared from materials on record that assessee had been giving abovesaid contention from day one, however, Assessing Officer had kept a conspicuous silence in this regard - Further, source for all conclusions of Assessing Officer was information received from Dy. Commissioner and that too, based on a search and survey carried out at premises in case of 'KS1 group - Thus, Assessing Officer had recorded reasons of reopening merely on borrowed satisfaction- Assessing Officer had not applied his mind to arrive at conclusion That there was any failure on part of assessee to disclose fully and truly all material facts - Whether, on facts, impugned reopening notice issued against assessee was unjustified and same was to be set aside - Held, yes [Paras 33, 34, 39 to 41] [In favour of assessee]"

- (ii) Principal Commissioner of Income-tax v. Shodiman Investments (P.) Ltd. [2018] 93 taxmann.com 153 (Bombay)

"Section 147 of the Income-tax Act, 1961 - Income-escaping assessment - Non-disclosure of primary facts (Information) - Assessment year 2003-04 - Whether where Assessing Officer has merely issued a reassessment notice on basis of intimation regarding re-opening notice from DDIT (Inv.), this is clearly in breach of settled position in law that re-opening notice has to be issued by Assessing Officer on his own satisfaction and not on borrowed satisfaction - Held, \ yes - Whether where reasons as made available to assessee for reopening assessment merely indicated information received from Director (Investigation) about a particular entity, entering into suspicious transactions and, that material was not further linked by any reason to come \to conclusion that assessee had indulged in any activity which could give rise to reason to believe on part of Assessing Officer that income chargeable to tax had escaped assessment, reassessment was an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax had escaped assessment -Held, yes [Paras 13 and 14][in favour of assessee]"

- (iii) Surani Steel Tubes Ltd. v. Income-tax Officer [2022] 136 taxmann.com 139 (Gujarat)

"Section 68, read with sections 147 and 148, of the Income-tax Act, 1961 - Cash credit (Reassessment) - Assessment years 2014-15 and 2015-16 - In relevant assessment years, petitioner-company made several purchases, sales and

availed certain loans which were reflected in its annual accounts - During scrutiny, Assessing Officer called upon petitioner to furnish various documents related to transactions undertaken in relevant assessment years and after considering all material submitted by petitioner passed assessment order under section 143(3) - Later, on basis of information received from Investigation Wing, Assessing Officer issued notices for reopening assessment on ground that petitioner entered into high value financial transactions and availed accommodation entries by way of bogus sale/purchases/fictitious loans - It was noted that there were no specific details recorded by Assessing Officer in reassessment notices related to particulars of nature of transaction and regard to name of person with whom such transactions were entered into -Whether since, Assessing Officer had mechanically relied on information provided by Investigation Wing and issued impugned notices without proper application of mind, same were to be quashed - Held, yes [Paras 10, 11 and 12] [In favour of assessee]”

- (iv) Patel Engineering Ltd. v. Deputy Commissioner of Income-tax, Central Circle [2022] 136 taxmann.com 115 (Bombay)

“Section 147. read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Illustration/Non-disclosure of primary facts (Reasons to believe) - Notice under section 148 was issued seeking to reopen assessment in case of assessee - Entire basis, for reopening was that certain companies were accepting contracts and were subcontracting those contracts to other entities and revenue came to know about this based on a survey under section 133A of one SEPCL - Assessing Officer had recorded reasons that a contract was received by assessee from one SECPL during relevant assessment year - However, this could not be a reason to reopen because Assessing Officer did not even state, whether assessee executed contract and received any income - Moreover, assessee had sub-contracted said contract to one BIL for a consideration and contracting charges were credited by assessee to profit and loss account and offered as income - During assessment proceedings, on being asked about details of sub-contract given, assessee had given entire details required by Assessing Officer - Whether therefore, it could not be said that there was non-disclosure on part of assessee - Held, yes - Whether since Assessing Officer had not verified facts with data available with him and simply on basis of information received from DDIT had issued notice to assessee, it could not be said that exclusive satisfaction of Assessing Authority based on some direct, correct and relevant material had been met -Held, yes - Whether therefore, reopening of assessment was not justified and had to be set aside - Held, yes [Paras 7, 8 and 12] [In favour of assessee]”

8. We have heard both the parties and gone through the relevant record. In this case, it is an undisputed fact that assessee purchased a flat in residential colony and in assessment order, learned AO himself has

mentioned that assessee is having business of Financing services and is a Private Limited Company. In this case, the learned AO received an information from the Investigation Wing that a so called purchase of property by the assessee was purely sham transaction and the loss claimed by the assessee on the sake of the said property on a later date was an artificial loss created by the assessee in its books of account to take the advantage of set off of loss against the income earned by the assessee. But nowhere AO has applied his own mind before issuing notice and to arrive at conclusion that assessee has escaped an income and on the basis of report submitted by the Investigation Wing, learned AO issued notice purely on borrowed satisfaction. In our considered opinion, in such case addition cannot be made.

9. In the result, the appeal filed by the Assessee is partly allowed.

This Order pronounced in Open Court on 23/08/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 23/08/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।