

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE
BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1600/PUN/2019

निर्धारण वर्ष / Assessment Year : 2011-12

Meenakshi Dhanaji Patil, 1237, G-1, Opp. Ubha Maruti Chowk, A-Ward, Shivaji Peth, Kolhapur, Maharashtra – 416012 PAN : ALDPP0262D	Vs.	ITO, Ward-2(2), Kolhapur
(Appellant)		(Respondent)

Appellant by Shri Bhuvanesh Kankani

Respondent by Shri Arvind Desai

Date of hearing 26-05-2022

Date of pronouncement 30-05-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2011-12 arises against the CIT(A)-2, Kolhapur's order dated 19-08-2019 passed in case No. Kop/CIT(A)-2/10201/2018-19 involving proceedings under Section 143(3) r.w.s.147 of the Income Tax Act, 1961 in short the Act.

Heard both the parties. Case file perused.

2. I first all come to the assessee's legal ground challenging validity of the impugned reopening. Page 11 in assessee's paper book contains the Assessing Officer's reopening reasons on two counts, i.e. purchase of immovable property of Rs.1,21,54,000/- and salary to employees u/s.192 of the Act. The Assessing Officer thereafter framed the impugned

reassessment adding unexplained investment in immovable property of Rs.18.25 lakhs, stamp charges thereupon of Rs.1,61,000/- and unexplained cash deposits of Rs.5,01,000/-; respectively. The CIT(A) has deleted the former twin heads in the lower appellate order. Meaning thereby that assessee's grievance on merits is only regarding the last issue of unexplained investment of Rs.5,01,000/- which nowhere formed part of the Assessing Officer's reopening reasons.

3. The question that arises in this backdrop is as whether the impugned reopening is sustainable or not. This tribunal's coordinate bench order in ITA No.6611/Del/2016 Indu Arts Vs. ACIT dated 07-06-2017 holds that reopening in such an instance gets quashed as follows :

“7. The position which follows from the above discussion is that the Assessing Officer can make `other addition' in the reassessment proceedings, provided, the `foundational addition' is made. When this proposition is taken to a next level, no different consequences will emerge, if the `foundational addition' is itself finally deleted in an appeal. In such a scenario, the `other addition' made by the Assessing Officer would automatically cease to stand in isolation. This view has been affirmed by the Hon'ble jurisdictional High Court in CIT vs. Adhunik Niryat Ispat Ltd. (2011) 63 DTR 212 (Del). In that case, the return filed by the assessee for the asst. yr. 1999-2000 declaring income @ Rs. 1,22,460 was processed under s. 143(1) of the IT Act. However, notice was issued under section 148 of the Act subsequently, on the information received from the Director of IT (Inv.), New Delhi, to the effect that the assessee had accepted the accommodation entries from M/s I.G. Properties (P) Ltd., M/s Parivartan Capital & Financial Services (P) Ltd. and from M/s Victoria (P) Ltd. in the garb of share capital. The AO passed the reassessment order making additions of Rs. 31 lacs on account of unexplained share capital including the capital subscribed by the aforesaid three applicants on the basis of which the assessment was reopened. However, during the assessment proceedings, the

AO also made certain additions of the credits received from M/s Adhunik Niryat, M/s Mahadev Metals, M/s Royal International and M/s Single Finshare India Ltd., albeit the assessment was not reopened on that basis. The assessee filed an appeal against these additions. The CIT(A) confirmed the additions of Rs. 31 lac which was the basis for reopening reassessment, but deleted the other addition. Both the assessee as well as the Revenue preferred appeals against the orders of CIT(A). Appeal of the assessee was allowed by the Tribunal thereby deleting the addition of Rs. 31 lac. Against this order, no appeal was preferred by the Revenue. Thus, the reasons which persuaded the AO to reopen the reassessment proceedings and on the basis of which additions were made were not found valid or justifiable as those additions were deleted by the Tribunal. Appeal of the Revenue was dismissed. In further appeal, the Hon'ble High Court upheld the order of the tribunal by holding that : 'Since the grounds for reopening the reassessment do not exist any longer and no additions were ultimately made on that account, the additions in respect of other items which were not part of "reasons to believe" cannot be made.' On going through the ratio decidendi of the above judgment, it is vivid that if the 'foundational addition' is finally deleted in appeal, then 'other addition' also can't stand.

8. At this stage, it is pertinent to note the effect of insertion of Explanation 3 to Section 147 by the Finance (No.2) Act, 2009 w.r.e.f. 1.4.1989, which reads as under : -

'Explanation 3.— For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under subsection (2) of section 148.'

9. The Memorandum explaining the provisions of the Finance Bill, in this regard, reads as under : 'The existing provisions of section 147 provides, inter alia, that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for re-opening the assessment. Further, he may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Some Courts have held that the Assessing Officer has to

restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent. With a view to further clarifying the view to further clarifying the legislative intent, it is proposed to insert an explanation in section 147 to provide that the assessing officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148. This amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to assessment year 1989-1990 and subsequent years. [Clause 57]'

10. It is palpable that the Explanation has not enhanced the scope of the provision. It simply embodies the position more clearly, which is already embedded in the opening part of section 147 providing that the AO may: 'assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section'. The foregoing legal position about not continuing with the 'other additions', if none of the 'foundational additions' is either made or finally sustained, has not been watered down by the insertion of Explanation 3. Ambit of the Explanation is confined only to making 'other addition' and not sustaining the 'other addition', when the 'foundational addition' is not made or finally deleted.

11. Reverting to the facts of the instant case, it is found that the Assessing Officer made the 'foundational addition' of Rs.22.57 lac which came to be finally deleted in the first appeal. In the absence of such an addition, neither the Assessing Officer nor for that purpose, the Id. CIT(A), exercising his coterminous power, could have made the 'other addition'.

12. The situation can be viewed from another angle as well. The Assessing Officer initiated reassessment proceedings and made addition of Rs.22.57 lac. When the Id. CIT(A) held that the addition of Rs.22.57 lac was not sustainable, it meant that the jurisdiction of the Assessing Officer was lacking in initiating the reassessment proceedings. As a consequence of his deletion of the addition, not only the assessment order but all the proceedings flowing therefrom had the effect of becoming null and void. As such, he could not have gone ahead with any other issue and made

enhancement of income. Making an enhancement in such circumstances would mean that though the jurisdiction of the Assessing Officer in initiating the reassessment was lacking, still, the assessment would be valid and ex consequenti, the addition would be sustainable. This, in my considered opinion, is a totally illogical and unsound proposition. I, therefore, order to delete the addition of Rs.2.36 lac and odd made by the Id. CIT(A).”

4. I accordingly reject the Revenue’s vehement contentions and accept the assessee’s arguments challenging validity of the impugned reassessment. The same stands quashed accordingly.

5. This assessee’s appeal is allowed.

Order pronounced in the Open Court on 30th May, 2022.

Sd/-

(S.S.GODARA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 30th May, 2022
Satish/Doc

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Kolhapur
4. The Pr.CIT-2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “SMC”
/ DR ‘SMC’, 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	26-05-2022	Sr.PS
2.	Draft placed before author	27-05-2022	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.		