

ITA No. 2390/DEL/2012 [A.Y. 2008-09]

Income tax Officer
Ward 1 (5)
Faridabad

Vs.

Shri Mahavir Singh
S/o Shri Lal Singh, Village Sihi,
Near Sarvodhya School,
Sector - 8, Faridabad

PAN : DBMPS 7304 M

ITA No. 2391/DEL/2012 [A.Y. 2008-09]

Income tax Officer
Ward 1 (5)
Faridabad

Vs.

Shri Giriraj Singh
S/o Shri Lal Singh, Village Sihi,
Near Sarvodhya School,
Sector - 8, Faridabad

PAN : DCGPS 0744 N

ITA No. 2392/DEL/2012 [A.Y. 2008-09]

Income tax Officer
Ward 1 (5)
Faridabad

Vs.

Shri Karan Singh
S/o Shri Lal Singh, Village Sihi,
Near Sarvodhya School,
Sector - 8, Faridabad

PAN : AIMPD 9533 F

[Appellant]

[Respondent]

Date of Hearing : 29.08.2017

Date of Pronouncement : 18.09.2017

Revenue by : Shri Arun Kumar Yadav, Sr.DR
Assessee by : Shri Shyam Sundar Mangla, CA

ORDER

PER B.P. JAIN, ACCOUNTANT MEMBER:

The present batch of seven appeals filed by the Revenue pertains to A.Y. 2008-09. As the appeals pertain to same group of assessees, issues raised are identical and were heard together, the same are disposed of by this common order for the sake of convenience and brevity.

2. Brief facts of the case are that the respondent-assesseees are farmers of Ballabgarh Tehsil, Faridabad. The aforesaid assesseees transferred their land jointly owned by them to M/s BPTP Ltd. and had received sale consideration for the transfer.

3. Since the facts in each of the appeals are identical, the facts pertaining to one of the appeal i.e. ITA No. 2391/Del/2012 are referred to for the purpose of adjudication. The assessee on 07.06.2007 received Rs. 1,05,23,215/- as sale consideration of his land from M/s Green Valley Housing & Development Pvt. Ltd. M-II, Middle Circle, Connaught Circle, New Delhi. It was noticed that the assessee had not filed the return of income for the said A.Y. Thereafter, the AO

issued a notice under section 142(1) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] to the assessee. The order sheet relied upon by the parties reveal that the entry by which the said proceedings were closed on account of non attendance was not signed by the AO.

4. Pursuant thereof, a notice under section 148 of the Act was issued to the assessee on 16.03.2010 which was followed by a notice under section 142(1) of the Act. The assessee participated in the said proceedings and the AO vide assessment order dated 30.11.2010 treated the entire sale consideration of Rs. 1,05,23,215/- as long term capital gain of the assessee.

5. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). The CIT(A), vide impugned order dated 27.02.2012, remanded the matter to the file of the AO to carry out the reassessment proceedings again, strictly in terms of the provisions of law. It was held by the CIT(A) that the proceedings under section 142(1) of the Act were in force when the notice under section 148 was issued to the assessee and therefore the reassessment proceedings were not legally sustainable. It was further held that the notice under

section 148 was not issued by the same AO who recorded reasons for the said proceedings and, therefore, the proceedings were void ab initio.

6. The revenue is in appeal before us and has raised the following concise grounds of appeal:

“1. Whether notice u/s 148 issued without dropping/dropping off existing proceedings initiated by the Assessing Officer by issuing notice u/s 142(1) is invalid.

2. Whether the Id. CIT(A) is justified in holding that the notice u/s 148 issued by the successor Assessing Officer on the basis of reasons recorded by his predecessor Assessing Officer is not valid and the assessment completed in pursuance as such notice is void ab initio and therefore, such assessment order is annulled?

3. Whether the Id. CIT(A) is justified in directing the Assessing Officer to initiate fresh reassessment proceedings. In this regard, it is submitted that the Id. CIT(A) has no authority to direct the Assessing Officer to initiate the reassessment proceedings afresh.

4. Whether the Id. CIT(A) is justified in not adjudicating the case on merit. Since the appellant did not cooperate during the

assessment proceedings the Assessing Officer was left with no option except passing the best judgment assessment order on the basis of material available on record. Appellants did not file their return of income despite ample opportunities afforded by the Assessing Officer. It appears that the appellants had nothing to say on the merit of the case, thus additions made by the Assessing Officer deserve to be upheld.”

7. Ground No. 1 pertains to the issue whether the notice under section 148 of the Act was invalid as the same was issued before completion of the proceedings initiated under section 142(1) of the Act. The Ld. DR submits that the challenge to the notice under section 148 is not taken specifically in the grounds of appeal raised by the assessee before the CIT(A). It was further submitted that the reliance placed upon the decisions of ITAT Bangalore in the case of H. Gouthamchand Vs. ACIT, 131 TTJ 2004 is not applicable to the facts of the present case as the purpose of issuance of notice under section 142(1) of the Act was to ask the assessee to file his return of income for A.Y. 2008-09. It was argued that non-signing of the order sheet, dropping the proceedings under section 142(1) of the Act, is curable defect and bona-fide omission on the part of the AO. It was submitted that this Tribunal can take its independent view and the aforesaid decision was not binding on it. The Ld. AR on the other hand, relied

upon the order passed by the CIT(A) and the aforesaid decision passed by ITAT Bangalore.

8. We have heard the submissions and perused the record including the order sheet relied upon by the parties. Admittedly, notice under section 142(1) of the Act was issued to the assessee on 16.03.2009. The said proceedings were not taken to its logical conclusion by passing an order under section 143(3) or 144 of the Act. It is unclear as to when and why the proceedings were dropped by the Department. The order sheet does not bear the signatures of the officer. As the order sheet is not signed, it cannot be held that the proceedings under section 142(1) were dropped by the revenue.

9. The notice under section 148 of the Act was therefore, issued during the pendency of the earlier proceedings initiated through notice issued under section 142(1) of the Act for the same A.Y. 2008-09. The said issuance of notice for reassessment of income is legally untenable without the conclusion of the earlier proceedings. We agree with the reasoning given by the CIT(A). In the case of H. Gouthamchand Vs. ACIT(supra), the ITAT Bangalore held as under:-

“4. It is an undisputable fact that the AO has issued a notice under s. 142(1). The AO in his order has mentioned that the assessee has acknowledged the receipt of notice under s. 142(1) on 25th Jan., 2006. Thus, notice has been issued for the asst. yr. 2005-06 during the relevant assessment year. As per proviso to s. 142(1)(i) introduced by the Finance Act, 2006 with retrospective effect from 1st April, 1990, notice under s. 142(1) issued on 25th Jan., 2006 is a valid notice, vide which, the AO could have required the assessee to file the return of income. The AO has mentioned that another notice was issued on 18th Oct., 2006 vide which the assessee was asked to file the return of income for the asst. yr. 2005-06 and to file certain details and documents as per Annexure to that notice. The AO can ask for filing of return under s. 142(1)(i) and can ask for details. To be filed under s. 142(7). Power under s. 142 was given to the AO for the purpose of making an assessment under the IT Act. Sec. 142(1) starts with the wordings ‘for the purpose of making an assessment under the Act, the AO may serve on any person who has made a return or in whose case the time allowed u/ss (1) of s. 139 for furnishing the return has expired.’ Thus, the proceedings under s. 142(1) were initiated for the purpose of making an assessment. There is nothing on record to suggest that proceedings so initiated through notice under s. 142(1) were either dropped or concluded. During the pendency of such proceedings, the AO has issued a notice under s. 148 on 16th Feb., 2007. Before initiating proceedings under s. 148, the AO has also issued a notice under s. 142(1)(ii) vide which the AO called for certain details. Basically, such details can be asked

only for the purpose of making an assessment. But the AO cannot have jurisdiction under s. 142(1) to call for the details unless the assessment proceedings or some other proceedings are pending. During the pendency of such assessment proceedings, the AO has initiated parallel proceedings under s. 148 by issuing a notice under s. 148 on 16th Feb., 2007. Copy of this notice is available at p. 1 of the paper book filed by the learned Authorised Representative. In the notice, the AO has mentioned that he is proposing to assess the assessee and require the assessee to file the return. Hence, it is not a case of reassessment but a case of assessment. This impliedly suggests that proceedings initiated under s. 142 were not concluded before the proceedings under s. 148 were initiated-Notice under s. 148 can be issued for making an assessment, reassessment or recomputation.”

10. We see no reason to take a contrary view from the aforesaid decision of ITAT Bangalore. The points of distinction raised by the Ld. DR are insignificant as the Tribunal has clearly held that during the pendency of the notice under section 142(1) of the Act, notice under section 148 could not have been issued to the assessee. In the case of Smt. Nilofer Hameed and Am. Vs. ITO, 235 ITR 161, the Hon'ble Kerala High Court held as under:-

"If an assessment is pending either by way of original assessment or by way of reassessment proceedings, the AO

cannot issue a notice under section 148 but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice under section 148 within the time mentioned in the section."

11. The ratio of the aforesaid decisions is applicable to the facts of the present case. We do not agree with the submissions made by the Ld. DR that the said issue could not have been decided by the CIT(A) as it was not specifically taken by the assessee in the grounds of appeal. The assessee had taken a ground challenging the assessment framed under section 147 of the Act. Moreover, in the submissions filed before the CIT(A) the aforesaid issue has been elaborately argued. Even otherwise, the CIT(A) was not barred from entertaining a pure legal issue going to the root of the matter. We, therefore, uphold the view taken by the CIT(A) w.r.t. this issue. Ground No. 1 raised by the revenue in the concise grounds of appeal is dismissed.

12. Since we have dismissed the aforesaid ground and upheld the view of the CIT(A), that the reassessment proceedings initiated pursuant to notice under section 148 of the Act during the pendency of earlier proceedings under section 142(1) of the Act, were bad in law, we shall not adjudicate the rest of the grounds raised by the revenue and the same are disposed of accordingly.

13. We further hold that the CIT(A) has correctly remanded the matter to the file of the AO to carry out fresh reassessment proceedings and to correctly determine the long term capital gain in the hands of the assessee. Accordingly, the appeal of the Revenue is dismissed.

14. Since the issues are identical in all other appeals of the Revenue, our order hereinabove in ITA No. 2391/DEL/2012 shall be identically applicable to all other appeals and, accordingly, all other appeals of the Revenue are dismissed.

15. In the result, all the appeals of the Revenue are dismissed.

The order is pronounced in the open court on 18.09.2017.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 18th September, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi