

आयकर अपीलीय अधिकरण, A/“SMC” न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
A/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

**I.T.A.No.2097/Mds./2017**

(Assessment Year : 2007-08 )

**Ms.B.Malathi,**  
No.1/11, Govindam street,  
Ganesh Apartments, II floor,  
Choolai, Chennai 600 112.  
**PAN AAJPM 4778 Q**

(अपीलार्थी /Appellant)

**Vs.** The Income Tax officer,  
Non corporate ward 9(2),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mr.S.Sridhar, Advocate,  
प्रत्यर्थी की ओर से/Respondent by : Mr.N.Madhavan, ACIT, D.R

सुनवाई की तारीख/ Date of hearing : 13.11.2017  
घोषणा की तारीख /Date of Pronouncement : 13.11.2017

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-10, Chennai dated 19.05.2017 pertaining to assessment year 2007-08.

2. The assessee has raised the following grounds for consideration.

1. The order of The Commissioner of Income Tax (Appeals) 10, Chennai dated 19.05.2017 in I.T.A.No.17/2015-16/CIT(A)-10 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in confirming the order of re-assessment for the reasons given from para 4.3 to para 4.3.3 of the impugned order without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
4. The CIT (Appeals) failed to appreciate that the lack of proper service of the reopening notice would vitiate the consequential re-assessment under consideration and further ought to have appreciated that the conditions prescribed for the valid assumption of jurisdiction u/s 147 of the Act were not complied with on the factual matrix of the case.
5. The CIT (Appeals) failed to appreciate that the provisions of section 292BB of the Act had no application to the facts of the case and ought to have appreciated that the improper service of notice which was vehemently objected at every stage would be fatal to the consequential re-assessment thereby vitiating the presumption of applicability of section 292BB of the Act.
6. The CIT (Appeals) failed to appreciate that the reopening of the assessment proceedings in any event was bad in law in view of lack of tangible materials, change of opinion and further ought to have appreciated that the principles laid down by the Apex Court in the case

reported in 259 ITR 19 were not followed, thereby vitiating the consequential reassessment.

7. The CIT (Appeals) erred in sustaining the disallowance of claim of tax exemption u/s 10(38) of the Act without assigning proper reasons and justification and went wrong in recording the findings in this regard in para 5.3.1 of the impugned order without assigning proper reasons and justification.
8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

2.1 There was a delay of 03 days in filing this appeal by the assessee. The assessee has filed a petition for condonation of delay. The Id.A.R submitted that the assessee signed the appeal papers on 23.08.2017, which was forwarded to office of Authorised Representative of assessee. Further, the Id.A.R submitted before us that the filing of appeal belatedly by 3 days before the Tribunal was the mistake committed by his office and prayed to condone the delay in filing the appeal. I have heard the Id. Representative and the Id. DR. I find that there was sufficient cause for not filing the appeal within the stipulated time. Therefore, I condone the delay and admit the appeal.

3. The brief facts of the case are that the assessee filed her return of income for assessment year 2007-08 on 20.03.2009 admitting a total income of ₹1,07,705/-. The return was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently the assessment was reopened u/s 147 of the Income Tax Act, 1961 for the AY 2007-08 by issue of Notice u/s 148, dated 31-01-2014 and served on the assessee on 05-02-2014.

3.1 The issue in dispute is with regard to the assessee during the year ended 31-03-2007, relevant to Asst.year 2007-08 sold shares of Zen Shaving Limited and derived Long-term Capital Gain. She admitted in her return this income and claimed exemption u/s 10(38) of the Act. The return was processed and accepted by the Officer. The same was reopened u/s 147 of the Act for treating this Long-term Capital Gain as taxable income, as in the opinion of the Officer the shares sold were not listed as on the date of sale. For the purpose of reopening the Officer issued notice u/s 148 of the Act on 05-02-2014 but the year mentioned in the notice was 2006-07 instead of 2007-08.

The main objection is that there was no notice issued u/s 148 for the relevant AY 2007-08. For this objection, the AO has clarified that there was a separate notice u/s 148 for AY 2006-07 issued on 20-03-2013. There was one more notice u/s 148 dated 20-03-2013 issued for the relevant AY 2007-08 but it was inadvertently mentioned as AY 2006-07. In view of this clarification, the AR's objection on this point is rejected by Id. Assessing Officer.

3.2 In response to issuance of notice u/s.148 of the Act dated 31.01.2014, which was served on assessee 05.02.2014 requiring the assessee to produce, inter alia, details of bank accounts, P&L A/c, Balance sheet, demat account copy, details of investments made during the year, the assessee filed a letter on 16.10.2014 stating that the assessee was not served with a notice u/s.148 dt.31.01.2014 for assessment year 2006-07 and she was not filing the details called for. Further, the assessee submitted that the issuance of notice u/s.148 was not served before the prescribed date of re-opening of assessment and the same was barred with limitation.

3.3 The Id. Assessing Officer observed that the assessment for assessment year 2006-07 was already reopened by issuing of notice u/s.148 of the Act on 20.03.2013 and the notice issued u/s.148 on 31.01.2014 was related to assessment year 2007-08 and it was an inadvertent error mentioning the assessment year 2006-07 instead of 2007-08. Further, it was observed that the assessee's husband Shri Bipin L. Dhamecha had received the notice on 05.02.2014 across the table of the AO on 05.02.2014 and he had not put any objection for the notice, hence it has to be considered as it was accepted by the assessee and therefore, Id. Assessing Officer rejected the objection of the assessee and also had taken shelter at Sec.292BB of the Act and completed re-assessment. The assessee, inter alia, challenged the re-opening of assessment.

3.4 The AO while framing the assessment, considered the long term capital gains on sale of shares to the tune of ₹3,70,229/- is taxable as the shares sold were not listed as on the date of sale. According to him, these shares are not eligible for exemption

u/s.10(38) of the Act. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A).

4. Before Ld.CIT(A), Id.A.R took a plea that impugned notice issued u/s.148 of the Act is bad in law as it does not contain correct assessment year. According to him, the assessment year mentioned therein as 2006-07 instead of 2007-08. According to him, provisions of the section 292BB of the Act cannot give any assistance to the Id. Assessing Officer and that was come to statute only with effect from 01.04.2008 and not applicable to the proceedings for assessment year 2007-08. For this purpose, he relied on the judgement of Allahabad High Court in the case of ACIT vs. Greater Noida Industrial Development Authority in [2015] 379 ITR 14 (All) and also the judgement of Bombay High Court in the case of CIT Vs. Abacus Distribution Systems (India) Pvt. Ltd., in ITA No.1382 of 2014 dated 07.02.2017.

5. On the other hand, Id.D.R relied on the order of Ld.CIT(A).

6. I have heard both the parties and perused the material on record. The issuance notice u/s.148 of the Act refers to a particular assessment year, which is not related to assessment year in which the assessee filed her return, so the AO have no jurisdiction to complete the assessment other than the said assessment year mentioned in the notice u/s.148 of the Act. In the present case, admittedly the notice issued by the AO was for the assessment year 2006-07 instead of 2007-08. This was duly brought to the notice of the AO. The AO was of the opinion that since assessee's husband received the notice and he has not put any objection, it deemed as a valid notice. In my opinion, this view of the AO is having no merits as held by the Supreme Court in the case of Kurban Hussain Ibrahimji Mithiborwala in [1971] 82 ITR 821 (SC) that Notice u/s.148 should mention the correct assessment year. A notice issued for one assessment year cannot be considered as a notice for other assessment years. In such circumstances, the AO has no jurisdiction to re-open the assessment for assessment year 2007-08. Being so, I do not find any merit in the argument of the Id.D.R. Further, I make it clear that provisions of the section 292BB came into effect

from 01.04.2008 and it was not applicable to the assessment year 2007-08 as held by the Allahabad High Court in the case of ACIT vs. Greater Noida Ind. Development authority (supra). Accordingly, I quash the assessment for assessment year 2007-08 and allow the appeal of assessee.

7. Since, I have quashed the assessment for assessment year 2007-08, I refrain from going into other grounds of appeal raised by the assessee.

8. In the result, the appeal of assessee is allowed.

Order pronounced on 13<sup>th</sup> November, 2017.

Sd/-  
(चंद्र पूजारी)  
(CHANDRA POOJARI)  
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,  
Dated the 13<sup>th</sup> November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |