

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1296/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

The Income Tax Officer,
Ward 1(3), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Kusum Sitaram Thakur
L/H of late Shri Sitaram V. Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur

.... प्रत्यर्थी / Respondent

PAN: AAWPM3998H

आयकर अपील सं. / ITA No.1326/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

Kusum Sitaram Thakur
L/H of late Shri Sitaram V. Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur

.... अपीलार्थी/Appellant

PAN: AAWPM3998H

Vs.

The Income Tax Officer,
Ward 1(3), Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1322/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

Pradnya Sudhir Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur – 416209

.... अपीलार्थी/Appellant

PAN: AEVPT4425K

Vs.

The Income Tax Officer,
Ward 1(4), Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1323/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

Sudhir Sitaram Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur – 416209

.... अपीलार्थी/Appellant

PAN: ABHPT1467H

Vs.

The Income Tax Officer,
Ward 1(4), Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1324/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

Pushpa Baliram Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur – 416209

.... अपीलार्थी/Appellant

PAN: AETPT1655D

Vs.

The Income Tax Officer,
Ward 1(4), Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1325/PUN/2014

निर्धारण वर्ष / Assessment Year : 2001-02

Baliram Vasantrya Thakur,
A/p Nitawade,
Tal: Bhudargad,
Dist: Kolhapur – 416209

.... अपीलार्थी/Appellant

PAN: AETPT1653F

Vs.

The Income Tax Officer,
Ward 1(4), Kolhapur

.... प्रत्यर्थी / Respondent

Assessee by : Shri Sudhir Taori
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 15.02.2018	घोषणा की तारीख / Date of Pronouncement: 28.02.2018
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

Out of this bunch of six appeals, cross appeals filed by Revenue and the assessee in the case of Shri Sitaram V. Thakur and other appeals relating to different assessee are against separate orders of CIT(A), Kolhapur, all dated 18.03.2014 relating to assessment year 2001-02 against respective orders passed under section 143(3) r.w.s. 147 of the Income Tax Act 1961 (in short the 'Act').

2. The cross appeals in the case of Shri Sitaram V. Thakur and appeals relating to four related parties on identical issue were heard together and are being disposed of by this consolidated order for the sake of convenience. First, we make reference to the facts arising in the cross appeals i.e. ITA No.1296/PUN/2014 & 1326/PUN/2014.

3. The Revenue in ITA No.1296/PUN/2014, relating to assessment year 2001-02 has raised the following grounds of appeal:-

1. *On the facts and in law, the learned CIT(A) erred in ignoring the fact that the assessee failed to follow the directions of the H'ble Tribunal to remain present during assessment proceedings to submit the information required.*
 2. *On the facts and in Law, the learned CIT(A) erred in deleting the income of Rs.80,83,626/- assessee in the hands of assessee as per his admission in his statement / letter, as well as, on the basis of irregularities emerged in accounting during statutory audit of **Bhudargad Nagari Sahakari Pat Sanstha Ltd., Bhudargad Dist: Kolhapur***
 3. *On the facts and in Law, the learned CIT(A) erred in ignoring the fact that there does not appear anything in the assessment order regarding addition on substantive or on protective basis.*
4. The assessee in ITA No.1326/PUN/2014, relating to assessment year 2001-02 has raised the following grounds of appeal:-
1. *On the facts and the circumstances of the case and in Law, the learned CIT(Appeals) erred in sustaining the income of Rs.153,075/- on account of investment in the purchase of agriculture land ignoring the evidences produced regarding the agriculture receipts.*
 2. *On the facts and the circumstances of the case and in Law, the learned CIT(Appeals) erred in sustaining the income of Rs.15,000/- on account of investment in FRDs in Bhudargad NSPS ignoring the evidences produced regarding the agriculture receipts.*
5. The sad demise of assessee took place and hence, appeal has been filed by the legal heir.
6. Briefly, in the facts of the case, the case relate to Bhudargad Nagari Sahakari Pat Sanstha Ltd., Gargoti. The assessee was the Chairman of the said Pat Sanstha. The Government Auditor carrying out the audit had come across discrepancies in the accounts maintained by Pat Sanstha and consequent thereto, information was passed on to the Assessing Officer, who in turn, issued notice under section 148 of the Act on 13.06.2003 to the assessee. The assessee did not comply with the notice and the assessment was completed under section 144 r.w.s. 147 of the Act by the Assessing Officer vide order dated 31.03.2005 relating to assessment year 2001-02. Simultaneously, additions

were made in the respective hands of relatives assessing respective incomes on account of amounts deposited in the loan accounts. The CIT(A) vide order dated 31.01.2006 granted partial relief to the assessee, against which both the assessee and Revenue were in appeal before the Tribunal. Simultaneously, additions were made in the hands of other four connected parties also, wherein the additions were confirmed and the respective parties filed appeals before the Tribunal. The Tribunal vide consolidated order dated 28.04.2008 with lead order in ITA No.669/PN/2006, relating to Sitaram V. Thakur Vs. ACIT and cross appeal in ITA No.507/PUN/2006 and appeals of related parties in ITA Nos.670 to 672/PUN/2006 and ITA No.675/PUN/2006, all relating to assessment year 2001-02 following the judgment of Hon'ble Supreme Court in GKN Driveshafts India Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC), remitted the matter back to the file of Assessing Officer to hear the assessee on objections if any, to the re-assessment proceedings and dispose of the same by way of speaking order and then proceed to frame re-assessment if needed, in accordance with law. The case of assessee thereafter, was taken up for scrutiny. The Assessing Officer passed an order under section 254 r.w.s. 147 of the Act, dated 21.12.2009. The Assessing Officer decided the issue raised against issue of notice under section 148 of the Act and held that the then Assessing Officer was right in issuing the said notice. Reliance in this regard was placed on the decision of Apex Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (1992) 193 ITR 297 (SC). The Assessing Officer thus, passed an order rejecting the petition of assessee. Thereafter, the Assessing Officer passed the order dated 31.12.2009 under section 143(3) r.w.s. 147 of the Act determining undisclosed income of assessee under section 69 of the Act at ₹ 82,30,077/-.

7. The CIT(A) held that the view of Assessing Officer was correct that the amounts deposited in the accounts had to be treated as unexplained deposits. The plea of assessee was that the said sum of ₹ 80,83,626/- was being added in his hands as well as in the hands of family members. The CIT(A) noted that the relatives of assessee on the other hand had stated that the amounts assessed related to diversion of funds by the management of Pat Sanstha and they were not concerned with the transactions which took place in their names. The assessee also affirmed that the family members did not hold any official position in Pat Sanstha and were not aware of the transactions which had taken place in their names. The CIT(A) observed that it was question of fact that loan accounts had been opened in the names of above persons and not in the name of assessee. The loans were also disbursed to the above persons and were presumably utilized by them. The CIT(A) was of the view that loan accounts were operated by family members and the assessee being the senior member and Chairman of Pat Sanstha could have been instrumental in getting the loans sanctioned. In view thereof, the CIT(A) held that the amounts deposited in the accounts of said persons were to be examined with regard to its assessability under section 69 of the Act in their income tax assessments and not that of assessee. As far as the assessee was concerned, since loan account was in his name and there was no deposit either in the bank account or otherwise made by him to square up any account, the amount of ₹ 80,83,626/- was deleted from his hands. However, simultaneously, the CIT(A) passed the order in assessing the said sum of ₹ 80,83,000/- in the hands of respective parties.

8. The Revenue is in appeal against deletion of addition of ₹ 80,83,626/- in the hands of assessee i.e. Shri Sitaram V. Thakur. The assessee is in appeal

against the order of CIT(A) on other issues, all sustaining of addition on account of investment in purchase of agricultural land of ₹ 1,53,075/- and investment in FDR of ₹ 15,000/-. The other four assessee are in appeal against respective order/s of CIT(A) in sustaining the addition on account of investments in their name accounts opened with Pat Sanstha. Different assessee had initially raised the issue on merits. However, before us, additional grounds of appeal have been raised which read as under:-

1. *Proceedings under section 143(3) r.w.s. 147 dated 31/12/2009 are void rendering CIT(A) order dated 18/03/14 to be void.*
2. *There exists defect in section 254 order r.w.s. 147 order as same is not speaking order, there is no computation of income annexed, inadequate inquiries done these are beyond rectification and is infructuous and non-implementable.*
3. *Assessment is bad in law as per well settled case law which directed that Assessing Officer should dispose of the assessee objection to the reassessment and serve the order after that Assessing Officer should not proceed with assessment for 4 weeks thereafter. Thus four weeks time was the minimum reasonable period required for reassessment after hearing the assessee. Reference can be made to decision of Hon. Bombay High Court in Asian Paint Ltd. Vs. Dy. CIT 296 ITR 96 (Bom.), Bharat Jayantilal Patel v. UOI (2015) 378 ITR 596 (Bom) (HC).*
4. *When original order was passed by ACIT in our opinion change of jurisdiction case to ITO 1(4) is unauthorized as the income assessed was more than Rs.10 Lakhs and as per delegation of authority such case and should have found continued jurisdiction with ACIT.*
5. *Without prejudice to our rights even if merits of the case are considered the powers used by AO under section 69 were not exercised judicially and were driven by suspicion and lacked proper enquiry as was desired for the complicated issue like fraud were not done.*

An Humble Request to Hon ITAT

1. *All our ground above should also be considered as cross objections to the departmental appeal No.1296/PN/2016.*

9. The learned Authorized Representative for the assessee after referring to sequence of events pointed out that the Tribunal vide order dated 28.04.2008 directed the Assessing Officer to pass speaking order on re-assessment and also to frame re-assessment order. He further referred to the re-assessment

proceedings which were started on 30.11.2009 and stressed that the said proceedings were not validly initiated. Our attention was drawn to notice dated 17.12.2009 issued in the case by Assessing Officer for attending on 23.12.2009. However, the Assessing Officer passed an order under section 254 r.w.s. 147 of the Act dated 21.12.2009 deciding that reassessment was correctly initiated. He further referred to the second order passed under section 143(3) r.w.s. 147 of the Act, dated 31.12.2009, under which the demand was created. The plea of assessee before us was that re-assessment proceedings were not validly conducted and even otherwise, the Assessing Officer after having passed order under section 254 r.w.s. 147, dated 21.12.2009 was prevented from passing any other order under section 143(3) r.w.s. 147 of the Act on 31.12.2009. The learned Authorized Representative for the assessee before us stressed that in any case no opportunity of hearing was given to the assessee before passing the aforesaid order.

10. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below and stressed that even if we look at the orders passed by Assessing Officer i.e. first order dated 21.12.2009 and second order dated 31.12.2009, since both the orders were passed in the same month, there was no discrepancy in the said orders passed.

11. We have heard the rival contentions and perused the record. The assessment in the case of Shri Sitaram V. Thakur was made pursuant to certain investigations carried out on the business of Pat Sanstha, of which he was the Chairman. The allegation of enquiries were that certain amounts were deposited in different names by the assessee who was the Chairman of Pat Sanstha,

against which there was no source of investment, hence it was unexplained investment of assessee. In this regard, re-assessment proceedings were initiated both in the case of Shir Sitaram V. Thakur and the persons in whose names the said accounts appeared. The Tribunal in the first round vide order dated 28.04.2008 had remitted the issue back to the file of Assessing Officer to hear the objections of assessee, if any, on re-assessment proceedings and then dispose of the same by way of speaking order and also frame the assessment order, if needed, in accordance with law. Re-assessment proceedings in the case of Shri Sitaram V. Thakur and four other persons i.e. Pradnya Sudhir Thakur, Sudhir Sitaram Thakur, Pushpa Baliram Thakur and Baliram Vasant Rao Thakur were remitted to the Assessing Officer vide consolidated order of Tribunal. In order to initiate re-assessment proceedings against aforesaid persons, it was incumbent upon the Assessing Officer to initiate proceedings to give effect to the directions of Tribunal and call upon the assessee to furnish requisite information. The first objection of assessee in this regard is that notice dated 17.12.2009 was issued to assessee, wherein there is mention of office notice under section 143(2) of the Act, dated 07.12.2009 and notice under section 148 of the Act, dated 09.12.2009 and the submissions made by assessee on 15.12.2009. For disposal of petition so made, the assessee was required to attend office on 23.12.2009 but it is not clear how against the proceedings which were initiated in 2003 another notice under section 148 of the Act could be issued on 09.12.2009 i.e. where the Tribunal had already passed the order on 28.04.2008 without commenting on the said notice. Let us look at the second notice issued by the Assessing Officer which is also dated 17.12.2009. The Assessing Officer referred to the order of Tribunal for the same assessment year and asked the assessee to appear on 21.12.2009. Thereafter, the Assessing

Officer passed one order dated 21.12.2009 under section 254 r.w.s. 147 of the Act, wherein he upholds the issue of notice under section 148 of the Act, which was issued on 13.06.2003. He relies on the ratio laid down by the Apex Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra) and holds that *In view of above discussion, I have no reason to accept petition made by AR and same deserves to be rejected. Accordingly, petition dated 15.12.2009 is hereby rejected.* The Assessing Officer thus, rejected petition of assessee without making any comments on assessment of income in the hands of assessee. Thereafter, another order was passed by the Assessing Officer dated 31.12.2009 under section 143(3) r.w.s. 147 of the Act, wherein reference is made to directions of Tribunal vide order dated 28.04.2008. The Assessing Officer then goes on to say that assessment is reopened for initiation of proceedings under section 147 of the Act. The Assessing Officer vide para 2 refers to notice under section 143(2) of the Act issued to the assessee on 07.12.2009 and under section 148 of the Act to furnish return of income to substantiate the claim of income and objections, if any, to the income determined by the then ACIT, Circle-1, Kolhapur, vide order under section 144 of the Act, dated 31.03.2005. The assessee also in response, filed the return of income. The Assessing Officer then goes on to refer to the directions of Tribunal and mentions that the case was selected for scrutiny to hear the objections, if any, by the assessee and to frame re-assessment, if needed. The assessee had requested for dropping the proceedings vide his letter dated 15.12.2009. The Assessing Officer notes that the Tribunal had remitted the issue to file of Assessing Officer, hence objections raised by the assessee in this regard were rejected vide order dated 21.12.2009 passed under section 254 r.w.s. 147 of the Act. The Assessing Officer in para 6 then refers to an opportunity letter along with fresh notice under section 143(2) of

the Act was issued to assessee on 17.12.2009, since the income of assessee was required to be re-computed. The Assessing Officer thereafter, re-computes the income in the hands of assessee on the basis of earlier order of Assessing Officer passed under section 144 r.w.s. 147 of the Act.

12. The above said events clearly establish the case of assessee that the Assessing Officer has failed to complete proceedings in the manner required under the Act. The Assessing Officer in total disregard to the provisions of the Act has not only failed to comply with the same but has in his haste to complete the assessment gone beyond his jurisdiction. The Assessing Officer had no authority to issue another notice under section 148 of the Act to the assessee in the month of December, 2009. Further, the Assessing Officer while passing the order under section 254 r.w.s. 143(3) of the Act had not only to decide the issue whether re-assessment was valid but had also to compute assessed income in the hands of assessee. However, the Assessing Officer in the first round passes an order under section 254 r.w.s. 147 of the Act, dated 21.12.2009 under which re-assessment proceedings were upheld but no income was assessed in the hands of assessee. The said order passed by Assessing Officer is the final order against the assessee, under which no demand of any tax has been raised. The second order passed on 31.12.2009 under section 143(3) r.w.s. 147 of the Act is beyond jurisdiction of Assessing Officer and is both invalid and *non est* in law. The demand created under the said order does not stand in the eyes of law. Accordingly, we quash the same. Consequently, the assessee succeeds and since the Assessing Officer in the first order passed pursuant to directions of Tribunal has failed to determine and assess income in the hands of assessee, the consequent order passed being *non-est* results in no assessment of any

income in the hands of assessee and his relatives. Accordingly, we hold so. In view thereof, the additional grounds of appeal raised by the assessee are allowed. The Assessing Officer is directed to reduce demand payable in the hands of each of assessee to Nil. Further, the Revenue is in appeal against the relief granted by the CIT(A) in the case of Shri Sitaram V. Thakur (deceased). Since, we have already held the order passed by the Assessing Officer in making aforesaid assessment as *non est*, there is no merit in the grounds of appeal raised by the Revenue and the same are dismissed.

13. In the result, appeal of Revenue is dismissed and all the appeals of assessee are allowed.

Order pronounced on this 28th day of February, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th February, 2018.

GCVSR

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune