

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A' - SMC**

BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER

ITA No.2518/Bang/2017
(Asst. Year - 2005-06)

Shri Jayakumar Reddy,
Ganigarahalli Village,
Chikkabanavara Post,
Bengaluru.

. Appellant

Vs.

The Income-tax Officer,
Ward-6(2),
Bengaluru.

. Respondent

Appellant by : Shri Sreeharikutta, Advocate
Respondent by : Shri K.N Dhandapani, JCIT

Date of Hearing : 07-3-2018

Date of Pronouncement : 28-3-2018

ORDER

PER N.V VASUDEVAN, JUDICIAL MEMBER :

This appeal by the assessee is directed against the order of the Commissioner of Income-tax (Appeals) - 7, Bengaluru dated 26.10.2017 relating to the Assessment Year 2005-06.

2. The assessee is an individual, who derives income from acting as commission agent. There was a search and seizure operation u/s 132 of the Income Tax Act, 1961 (Act) carried out in the RMD Gutkha Group on 21/1/2010. In the course of search in the case of RMD Gutkha, certain documents were seized which revealed that the assessee acted as an agent for real estate transactions and received commission income. Based on the material found in the course of search, assessment of the assessee for assessment year 2005-06 was reopened by

issuing notice on 23/3/2011 u/s 148 of the Act. The AO passed an order u/s 143(3) of the Act r.w.s 148 of the Act in which he made an addition of Rs.6,13,156/- as undisclosed commission income.

3. On appeal by the assessee the addition was confirmed by the CIT(A).
4. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal
5. The assessee has filed an application praying for admission of the following additional grounds:-

“1. The learned A.O. is not justified in re-opening the assessment for the aforesaid assessment year in as much as there was no income escaping assessment for the year under appeal and therefore, the order of assessment passed by the learned A.O. invoking the provisions of sec. 147 of the Act deserves to be cancelled.

2. Without prejudice to the above, the order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s.148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.”

6. Since the additional ground relates to the validity of initiation of re-assessment proceedings, the assessee has prayed for admission of the additional grounds as it goes to the jurisdiction of the AO to make the impugned assessment.
7. I have considered the request of the assessee and I am of the view that the issue with regard to validity of assumption of jurisdiction u/s 147 of the Act being

a legal issue and the facts necessary for adjudication of the legal issue are already available on record, the additional ground has to be admitted for adjudication. I am of the view that the decision of the Hon'ble Supreme Court in the case of NTPC, 229 ITR 383 (SC), wherein it was held that where the question of law is required to be adjudicated for proper determination of tax liability then the additional ground raised by an assessee should be admitted for an adjudication, supports the plea of the Assessee for admission of the additional ground of appeal.

8. The Id counsel for the assessee filed before me an order of the Tribunal in the case of Shri Purohita Shanthilal Vs. ITO in ITA No.1107/Bang/2017 dated 24/8/2017. In the aforesaid decision similar prayer for admission of additional grounds challenging the validity of assumption of jurisdiction u/s 148 of the Act was raised by the assessee. The Tribunal permitted the additional grounds to be raised and remanded the matter to the CIT(A) for fresh consideration and in doing so, the Tribunal placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Safetag International India Pvt. Ltd., in ITA No.332 ITR 622 (Del). The Id counsel for the assessee prayed that similar directions as contained in the aforesaid order should be passed in the present case also. The Id DR relied on the orders of the CIT(A).

9. I have considered the rival submission on identical plea raised by an assessee. This Tribunal in the case of Shri Purohita Shanthilal (Supra) held as follows:-

“5. I have considered the rival submissions. First I consider and examine the applicability of judgment of Hon'ble Delhi High Court cited by Id. DR of revenue. In that case, it was held by Hon'ble Delhi High Court that order of Tribunal for restoring back the matter to the file of AO was not justified but the Hon'ble Delhi High Court has also held that the matter should go back to the file of CIT(A) and Id. CIT(A) shall ensure that the reasons recorded by the AO for reopening should be provided to the assessee within 4 weeks from the judgment of Delhi High Court and after supply of reasons to believe, the assessee may make submissions based on those reasons challenging the reassessment and CIT(A) should

decide this issue on merit after hearing both parties. Accordingly in the present case also, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that he should ensure that the reasons recorded by the AO for reopening are provided by the assessee within 4 weeks from the date of the present order and after supply of the reasons to believe, it is open to the assessee to make submissions before the Id. CIT (A) regarding objection if any against validity of reopening based on those reasons. Thereafter, the CIT (A) shall decide this issue on merit after hearing both sides. Since this matter is being restored back to the file of CIT (A) for fresh decision regarding validity of reopening, I feel it proper to direct the CIT (A) that if it is held by id. CIT(A) that reopening is not valid then nothing remains to be decided on merit but if it is held by id. CIT(A) that reopening is valid then he decide the issue on merit afresh because after decision on technical aspect only, the issue on merit should be decided. Hence no adjudication is called for at this stage regarding the issue involved on merit.”

10. I am of the view that similar directions in the present case would be just an appropriate. Accordingly, I set aside the order of the CIT(A) and restore the matter back to the file of the CIT(A) for fresh decision with directions similar to the directions given by the Tribunal in the case of Shri Purohita Shanthilal (Supra).I allow the appeal of the assessee for statistical purposes.

11. In the result, the appeal by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **28th March, 2018.**

**(N.V VASUDEVAN)
JUDICIAL MEMBER**

Bangalore
Dated : 28/3/2018
Vms

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S.....
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.