

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member**

ITA No.155/Agr/2018
Assessment Year: 2007-08

Income Tax Officer, Ward-1(1)(2), Agra (Appellant)	vs.	Smt. Mamta Singh, 6, Amar Lok Colony, Opposite JALMA Hospital, Agra. PAN :AOBPS 7284 K (Respondent)
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CO No.36/Agr/2018
(ITA No. 155/Agr/2018)
Assessment Year: 2007-08

Smt. Mamta Singh, 6, Amar Lok Colony, Opposite JALMA Hospital, Agra. PAN : AOBPS 7284 K (Appellant)	vs.	Income Tax Officer, Ward-1(1)(2), Agra (Respondent)
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Appellant by	Shri Anil Verma, Advocate
Respondent by	Shri Waseem Arshad, Sr. DR

Date of Hearing	18.06.2018
Date of Pronouncement	14.08.2018

ORDER

Per Dr. Mitha Lal Meena, A.M.:

This appeal by the Revenue and cross-objection by assessee, are directed against the order of the Id. CIT(A)-I, Agra dated 30.11.2017 in respect of A.Y. 2007-08.

2. At the outset, the Ld A.R. submitted that there was a delay of 12 days in filing of cross objection no.36/Agr/2018 and the reason in the affidavit for delay in filing of the CO wherein assessee has stated that the delay was not intentional but got caused on account of the fact that assessee was not aware of the limitation of filing Cross objection within time of 30 days.

3. The Ld. D.R. had no objection in condoning the delay in filing the C.O. and finding reasonable cause for delay in filing of the Cross objection, we condoned the delay and admitted the C.O. for hearing. The Learned A.R. was directed to proceed with his arguments.

4. The Revenue has raised the following grounds of appeal:

“1. The learned CIT [Appeals) has erred in law and on fact in deleting the entire impugned additions on technical grounds, and not on merits, without appreciating complete facts of the case.

2. The learned CIT [Appeals] has erred in law and on fact in deleting the entire impugned additions even though-

- a. the A.O. validly issued notice u/s!42(l) which was not complied by the assessee i.e. neither return in compliance to notice u/s!48 was filed nor books of accounts & documents/papers were produced. Instead of compliance of notice u/s!42(l), the Assessee filed objection dated 17.01.2013 challenging the validity of notice/proceedings u/s148.*
- b. the A.O. disposed of the 'objection' dated 17.01.2013 of the assessee before completion of assessment which is in conformity with the judicial pronouncement in the case of GKN Drishaft [India] Ltd. V/s DCIT [2003] 259 [SC], hence*

this case relied upon by the assessee is not applicable in his case.

- c. *The A.O. erroneously mentioned section '147/143[3]' of assessment instead of '147/144' which does not invalidate the assessment by virtue of provision 292B of the IT Act.*
 - d. *The order of learned CIT [Appeals] being erroneous in law and on facts deserve to be quashed and that the order of AO to be restored.*
 - e. *The appellant craves leave to add alter any more ground or ground of appeal as may be deemed fit at the time of hearing of appeal.”*
5. In C.O. No.36/Agr/2018, the assessee has raised following grounds:
- “1. ***Because in any view, the Ld.CIT(Appeals) has not decided appeal on merits treating it as redundant being rightly deleting on legal Grounds No 1(i),2,3,4(a) and 4(b).***
 - 2.1 ***Because in any view, the Ld.CIT (Appeals) has rightly deleted the addition categorically by deciding impugned proceedings held to be void.***
 - 2.2 ***Because in any view, the Ld.CIT(Appeals) has given categoric finding that there is " no reliable evidence to prove the service of the so called A.O.'s letter dated 14/02/2013 before the completion of impugned proceedings could be located in Assessment record".***

(So called letter dated 14/02/2013 is said to be disposal of objections dated 17/01/2017)
 - 2.3 ***Because in any view, the so called ground taken by Revenue that the A.O. erroneously mentioned section '147/143(3)' of assessment instead '147/144' which does not invalidate the assessment by virtue of provision of 292B of the Income Tax Act is not arising from the impugned Order of Ld.CIT(Appeals).***
 - 2.4 ***Because in any view, the Order of Ld.CIT(Appeals) is not erroneous in law and on facts.***

3 *Because in any view, without prejudice to the aforesaid grounds no addition is warranted on the merit of the case in the peculiar facts and law.”*

6. Apropos cross objection No. 2.2, the assessee has raised a legal ground with regards to *“no reliable evidence to prove the service of AO’s letter dated 14.02.2013 for the completion of impugned proceedings could be located in the assessment records,”* which goes to the root of the matter, hence, taken up for adjudication first.

7. The Ld. CIT(A) while deciding the legal issue in favour of the assessee, observed vide Para 7 and 7.1 as follows:

“7. I have carefully considered the appellant’s submissions, facts of the case and the legal position in this regard.

I find that the appellant has assailed the impugned order both, on its legal validity, as well as, on facts. The legality of the impugned order has been questioned through the following main arguments :-

(i) The first proviso to section 147 has been ignored by the A.O.

(ii) While recording the 'reasons' no fresh material was available with the A.O. for believing that income had escaped assessment. Hence, it is a case of change of opinion.

(iii) The A.O.'s letter dated 14/02/2013 rejecting the objections of the appellant to the legality of the notice u/s 148, was not served on her before the completion of the reassessment proceedings.

(iv) Even though no return of income was filed by the appellant in response to notice u/s 148, the A.O. issued notice u/s 143(2) and thereafter completed the proceedings u/s 143(3). Hence, the impugned assessment is bad in law.

7.1 After going through to assessment record and the facts and arguments presented by the appellant, I have reached to the finding that some of the appellant's objections to the legality of the impugned proceedings are valid.

A comparison of the issues discussed and decided upon during the original assessment proceedings with the allegations/information contained in the reasons for re-opening the same, indicates that no new information had come to the notice of the A.O. and the audited books of accounts and documents were examined in detail by the A.O. during the original assessment proceedings. The appellant's reliance on the decision given in the case of G K N Driveshaft (India) Ltd Vs DCIT-(2003) 259 ITR 19(SC), too, in my opinion, is not misplaced. A perusal of the order sheet (page no. 3) of the assessment folder indicates that the last date of hearing during the impugned proceedings was on 17.01.2013 and the assessment order was passed on 30.03.2013. Also, no reliable evidence to prove the service of the A.O.'s letter dated 14.02.2013 before the completion of the impugned proceedings could be located in the assessment record.

However, it needs mention that the appellant's argument that the first proviso to section 147 had been ignored by the A.O., is not based on true facts because the notice under section 148 in this case was issued prior to the expiry of four years from the end of the impugned A.Y.

In view of the above facts and judicial precedents cited by the appellant, I would be in agreement with the appellant's argument that the re-assessment proceedings in her case are legally invalid. The impugned proceedings are held to be void and the additions made to the appellant's returned income vide this order are deleted. Accordingly, Grounds no. 1(i), 2, 3, 4(a) & 4(b) are decided in favor of the appellant."

8. The Ld. DR placed reliance on the assessment order and submitted that the CIT(A) has erred in law and on fact in deleting the entire additions on technical grounds, without appreciating the facts of the case. He further submitted that the Ld. CIT(A) has erred in law by deleting the impugned

additions even though the A.O. validly issued notice u/s142(1) which was not complied by the assessee; that in compliance to notice u/s 148 neither return was filed nor books of accounts & documents/papers were produced by the assessee, rather the Assessee filed objection dated 17.01.2013 challenging the validity of notice/proceedings u/s148.The A.O. disposed of the assessee's'objection' dated 17.01.2013 before completion of assessment which is in conformity with the judicial pronouncement in the case of GKN Drishaft [India] Ltd. V/s DCIT [2003] 259 [SC], hence this case relied upon by the assessee is not applicable in his case.

8.1 The Ld. DR concluded his argument with that disposal of objection have been furnished to the assessee and the Hon'ble Allahabad High Court on examination of the record did not accede to the assessee's plea.

9. The counsel for the assessee has placed strong reliance on the impugned order. He has submitted a synopsis to support the finding of the Ld. CIT(A) which is extracted hereunder:

"The Ld.CIT(A) has given a finding of fact which is not controverted by Revenue that" A perusal of the order sheet (page-no.3) of the [assessment folder indicates that the last date of hearing during the impugned proceedings was on 17/01/2013 and the assessment order was passed on 30/03/2013. Also, no reliable evidence to prove the service of the A.O.'s letter dated 14/02/2013 before the completion of the impugned proceedings could be located in the assessment record.

The assessee places reliance on the decision of Hon'ble ITAT(SMC), Agra Bench dated 21/03/2018 in the case of Abhishek Sharma Vs. ITO-Range 2(1), Gwalior (copy enclosed) wherein the Hon'ble Bench in Para 12 has held as under;

"In the above view of the matter, this grievance of the assessee is found justified and it is accepted. The AO having not disposed of the assessee's objections to the reasons recorded, by passing a separate speaking order before proceedings with the assessment, the assessee has been illegally debarred from exercising a legally enforceable, right which would have become available to him.

Also the Hon'ble Bench in Para 13 has held that " For, this reason, the assessment order is null and void and it is quashed as such, Nothing further survives for adjudication."

The Hon'ble Agra Bench relied on the order of General Motor (India) Private Limited Vs DCIT reported in 354 ITR 244(Guj.), M/s Haryana Acrylic Manufacturing Co. Vs CIT reported in 308 ITR 38(Del.), GKN Drivshaft Vs ITO-259 ITR 19(SC), KSS Petron Private Limited Vs ACIT order dated 03/10/2016, ITA No 224 OF 2014(Bombay High Court).

In Para 9 of the ITAT order, the Bench has quoted the operating part of General Motors(supra) as under :

" The Assessing Officer is mandated to decide the objections to the notice under section 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in writ petition. Thereafter, the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide the objection to notice under section 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection filed under section 148 and serve a copy of the order on the assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under section 148 and the assessment order passed under the Act deserves to be quashed."

Thus the Cross Objector was deprived of his legal right to challenge the order deciding objections filed by the appellant before Ld. AO before completion of assessment order. Hence the Ld.CIT(A) is right in holding impugned proceedings are held to be void."

10. We have heard both the sides and perused the relevant material on records.

11. It is undisputed fact that no reliable evidence was brought on record to prove the service of the A.O.'s letter dated 14.02.2013 before the completion of the impugned assessment proceedings u/s 143(3)/147 of the Act on or before 30.03.2013 as recorded by the Ld. CIT(A), vide para 7.1 of the impugned order. The Ld. Counsel for the assessee contended that assessee has never received the order dated 14.2.2013 passed on the objections raised by the petitioner dated 17.01.2013 rather she came to know about the disposal of the objection from the perusal of the reassessment order dated 30.03.2013 although the assessee had made a request vide application dated 08.04.2013 to supply the copy of the order dated 14.02.2013 along with the evidence of dispatch of the order dated 14.02.2013 (APB, 5).

12. The Hon'ble Allahabad High Court in the case of Smt. Mamta Singh vs. ITO in Writ Tax No. 477 of 2013 held that if the petitioner approaches, the authority concerned, who shall supply the copy of the order dated 14.02.2013 to the petitioner, within three days. However, the same was not supplied to the assessee as contended by the counsel for the assessee.

13. The assessee has rightly placed reliance on the judgment of the Hon'ble Supreme Court in the case of 'G K N Driveshaft (India) Ltd Vs DCIT',

(2003) 259 ITR 19(SC), which is applicable to the facts of the case since no new information had come to the notice of the A.O. and the audited books of accounts and documents were examined in detail by him during the original assessment proceedings. Further, the Ld. CIT(A) has noted that on the perusal of the order sheet (page no. 3) of the assessment folder the last date of hearing during the impugned proceedings was 17.01.2013 and the assessment order was passed on 30.03.2013.

14. Under the above facts and circumstances, the order dated 14.2.2013 on the disposal of objections raised by the petitioner dated 17.01.2013 as claimed by the Revenue is not established because the proceedings have already been closed on 17.01.2013 itself by the AO as per the office record.

15. In the above view, the order on the objection u/s 148 of the Act and the assessment order passed by AO under the Act deserves to be quashed. Accordingly, we hold that the Ld. CIT(A) has been justified in law and on facts in deleting the entire impugned additions.

16. Even otherwise, vide CBDT circular dated 11th July 2018, the income tax department has announced its policy decision not to file, or press, the appeals, before this Tribunal, against the appellate orders favorable to the assessee in the cases in which overall tax effect, including surcharge but

excluding interest, is Rs 20,00,000 or less. This monetary limit, which was Rs 3,00,000 till 10th July 2014, has been in effect enhanced by almost 700% in the last four years, and the relief is retrospective in nature inasmuch as it not only applies to future appeals but also to be pending appeals.

16.1 In the light of the above discussions, and in the light of the CBDT Circular dated 11th July 2018, Revenue appeal, involving tax effect of or less than Rs 20 lakhs, is dismissed. As the appeal filed by the Revenue is found to be non-maintainable and the cross-objection of the assessee arise only as a result of Revenue appeal and merely support the order of the CIT(A), the cross objection filed by the assessee are also dismissed as infructuous.

17. With the above observations, the appeal and cross objection are dismissed.

(order pronounced in the open court on 14/08/2018)

Sd/-
(A.D. Jain)
Judicial member

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Dated: 14/08/2018
Aks

Copy of order forwarded to:

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|--|---------------------------|
| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) CIT(A)</i> |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i> |

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra*

		Date		
1.	Draft dictated / (DNS)	30.07.2018		PS
2.	Draft placed before author	03.08.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on	14.08.2018		PS
7.	File sent to the Bench Clerk	24.08.2018		PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			