IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 145 to 149/Bang/2017
Assessment Years :2005-06 to 2009-10

Shri M. Ramaswamy Reddy (HUF), Chandapura Village, AttibeleHobli, Anekal Taluk, Bangalore – 560 081. **PAN: AALHM3509D**	vs.	The Assistant Commissioner of Income Tax, Circle – 10 (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K. Gangadhara Sastry
Respondent by	:	Shri M. Vijay Kumar, Addl. CIT (DR)

Date of hearing	:	01.01.2019
Date of Pronouncement	:	02.01.2019

O R D E R

Per Shri A.K. Garodia, Accountant Member

All these five appeals are filed by the assessee which are directed against a combined order of ld. CIT (A)-7, Bangalore dated 11.11.2016 for Assessment Years 2005-06 to 2009-10. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2005-06 in ITA No. 145/Bang/2017 are as under.

> "*1. Commissioner of IT(A) order is opposed to the law and facts of the case.*
>
> *2. CIT(A) failed to notice that Assessment can be made u/s. 144 only if there is no compliance u/s.143(3) .When Assessing officer intends do assessment it is only u/s.143(3) and as such notice u/s.143(2) is mandatory as required u/s.143(2)(ii). As CIT(A) has held notice u/s.143(2) is not served hence assessment is bad is law. Hon'ble ITAT may kindly declare assessment as bad in law.*
>
> *3. The CIT(A) erred in concluding that Assessment u/s.144 will not require notice u/s.143(2). It is evident that CIT(A) in Para 5.2 has brought out section 144 (c) which explicit that issue of notice u/s.143(2) is necessary. Hence Hon'ble ITAT may declare Assessment as bad in law.*

4. The CIT(A) decision that Assessing officer action in initiating proceedings u/s.147 of the IT Act'61 for these Assessment years in Question is reasonable and therefore upheld is not proper. As the CIT(A) has not examined appellants facts and case laws mentioned hence appellants grounds. Hence Assessment is bad in law hence ITAT may declare Assessment as bad in law.

5. Appellant craves to add or delete any grounds of appeal at the time hearing."

3. The grounds raised by the assessee for Assessment Year 2006-07 in ITA No. 146/Bang/2017 are as under.

"*1. Commissioner of IT(A) order is opposed to the law and facts of the case.*

2. CIT(A) failed to notice that Assessment can be made u/s. 144 only if there is no compliance u/s.143(3) .When Assessing officer intends do assessment it is only u/s.143(3) and as such notice u/s.143(2) is mandatory as required u/s.143(2)(ii). As CIT(A) has held notice u/s.143(2) is not served hence assessment is bad is law. Hon'ble ITAT may kindly declare assessment as bad in law.

3. The CIT(A) erred in concluding that Assessment u/s.144 will not require notice u/s.143(2). It is evident that CIT(A) in Para 5.2 has brought out section 144 (c) which explicit that issue of notice u/s.143(2) is necessary. Hence Hon'ble ITAT may declare Assessment as bad in law.

4. The CIT(A) decision that Assessing officer action in initiating proceedings u/s.147 of the IT Act'61 for these Assessment years in Question is reasonable and therefore upheld is not proper. As the CIT(A) has not examined appellants facts and case laws mentioned hence appellants grounds. Hence Assessment is bad in law hence ITAT may declare Assessment as bad in law.

5. Appellant craves to add or delete any grounds of appeal at the time hearing."

4. The grounds raised by the assessee for Assessment Year 2007-08 in ITA No. 147/Bang/2017 are as under.

"*1. Commissioner of IT(A) order is opposed to the law and facts of the case.*

2. CIT(A) failed to notice that Assessment can be made u/s. 144 only if there is no compliance u/s.143(3) .When Assessing officer intends do assessment it is only u/s.143(3) and as such notice u/s.143(2) is mandatory as required u/s.143(2)(ii). As CIT(A) has held notice u/s.143(2) is not served hence assessment is bad is law. Hon'ble ITAT may kindly declare assessment as bad in law.

3. The CIT(A) erred in concluding that Assessment u/s.144 will not require notice u/s.143(2). It is evident that CIT(A) in Para 5.2 has brought out section 144 (c) which explicit that issue of notice u/s.143(2) is necessary. Hence Hon'ble ITAT may declare Assessment as bad in law.

4. The CIT(A) decision that Assessing officer action in initiating proceedings u/s.147 of the IT Act'61 for these Assessment years in Question is reasonable and therefore upheld is not proper. As the CIT(A) has not examined appellants facts and case laws mentioned hence appellants grounds. Hence Assessment is bad in law hence ITAT may declare Assessment as bad in law.

5. Appellant craves to add or delete any grounds of appeal at the time hearing."

5. The grounds raised by the assessee for Assessment Year 2008-09 in ITA No. 148/Bang/2017 are as under.

"*1. Commissioner of IT(A) order is opposed to the law and facts of the case.*

2. CIT(A) failed to notice that Assessment can be made u/s. 144 only if there is no compliance u/s.143(3) .When Assessing officer intends do assessment it is only u/s.143(3) and as such notice u/s.143(2) is mandatory as required u/s.143(2)(ii). As CIT(A) has held notice u/s.143(2) is not served hence assessment is bad is law. Hon'ble ITAT may kindly declare assessment as bad in law.

3. The CIT(A) erred in concluding that Assessment u/s.144 will not require notice u/s.143(2). It is evident that CIT(A) in Para 5.2 has brought out section 144 (c) which explicit that issue of notice u/s.143(2) is necessary. Hence Hon'ble ITAT may declare Assessment as bad in law.

4. The CIT(A) decision that Assessing officer action in initiating proceedings u/s.147 of the IT Act'61 for these Assessment years in Question is reasonable and therefore upheld is not proper. As the CIT(A) has not examined appellants facts and case laws mentioned hence appellants grounds. Hence Assessment is bad in law hence ITAT may declare Assessment as bad in law.

5. Appellant craves to add or delete any grounds of appeal at the time hearing."

6. The grounds raised by the assessee for Assessment Year 2009-10 in ITA No. 149/Bang/2017 are as under.

"*1. Commissioner of IT(A) order is opposed to the law and facts of the case.*

2. CIT(A) failed to notice that Assessment can be made u/s. 144 only if there is no compliance u/s.143(3) .When Assessing officer intends do assessment it is only u/s.143(3) and as such notice u/s.143(2) is mandatory as required u/s.143(2)(ii). As CIT(A) has held notice u/s.143(2) is not served hence assessment is bad is law. Hon'ble ITAT may kindly declare assessment as bad in law.

3. The CIT(A) erred in concluding that Assessment u/s.144 will not require notice u/s.143(2). It is evident that CIT(A) in Para 5.2 has brought out section 144 (c) which explicit that issue of notice u/s.143(2) is necessary. Hence Hon'ble ITAT may declare Assessment as bad in law.

4. The CIT(A) decision that Assessing officer action in initiating proceedings u/s.147 of the IT Act'61 for these Assessment years in Question is reasonable and therefore upheld is not proper. As the CIT(A) has not examined appellants facts and case laws mentioned hence appellants grounds. Hence Assessment is bad in law hence ITAT may declare Assessment as bad in law.

5. Appellant craves to add or delete any grounds of appeal at the time hearing."

7. At the very outset, it was submitted by ld. AR of assessee that in Assessment Years 2005-06 and 2006-07, there are two issues being non-issue of notice u/s. 143(2) of IT Act and validity of reassessment proceedings u/s. 147 of IT Act. He submitted that in these two years, he is not pressing ground nos. 2 and 3 in respect of non-issue of notice by the AO u/s. 143(2) of IT Act. Accordingly these two grounds in these two years are rejected as not pressed.

8. Regarding the second issue in respect of validity of reassessment proceedings u/s. 147, he submitted that this issue was discussed and decided by CIT (A) as per para nos. 4.4 to 4.7 of his order. For ready reference, these paras are reproduced hereinbelow from the order of CIT (A).

"*4.4 The technical issues raised by the Appellant that the reasons recorded for reopening of the case u/s 148 of the Act were not provided does not stand as the Appellant has not filed the return of income and has never asked for the reasons. In the case of GKN Drivershaft (India) Ltd 259 ITR 19, the Hon'ble Apex Court has held that " However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the notices is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to*

issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.' In the instant cases, the Appellant has not brought any material on record that the reasons recorded were asked for.

4.5 The power of assessment or reassessment of any income chargeable to tax that have escaped assessment has been provided under section 147 rws 148 of Income Tax Act of 1961. If the assessing officer has the reason to believe that any income chargeable to tax has escaped assessment then the assessing officer may subject to The provisions of section 147 to 153 assess or reassess such income. Before issuing any notice U/S 148 the assessing officer must have reason to believe that any income chargeable to tax has escaped assessment. To constitute a valid reason to believe there must be some new material coming into light with the assessing officer, merely a change of opinion cannot constitute a reason to believe. If the assessee has disclosed basic and all the true facts during the course of assessment and the assessment is completed. Later on notice u/s 148 cannot be issued merely because there is another inference possible from the same documents and-the facts placed before the assessing officer during the course of assessment as it will amount to change of opinion. There must be some new material coming into light for action u/s 147/148. But if the assessee has suppressed some relevant facts which leads to concealment of income and later those facts come before the assessing officer the notice u/s 147/48 can be issued validly.

4.6 The apex court in the case of ACIT vs Rajesh Jhavery Stock Brokers P. Ltd. reported in (2007) 291 ITR 500 after considering various decisions rendered by it in the past, construed the words 'reason to believe' ;n section 147 of the Act and held that, if the AO has cause or justification to know or suppose that any income has escaped assessment, then it could be said that the AO had reason to believe that the income chargeable to tax has escaped assessment. The apex court further held that the expression 'reason to believe' in section 147 of the Act cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The apex court also Acid that, at the stage of issue of notice u/s 148 of the Act, the only question to be considered is, whether there was relevant material on which a reasonable person could, have formed a requisite belief and not whether the materials would conclusively prove escapement of income.

> *"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income*

had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces in Central Provinces Manganese Ore Co. Ltd. v ITO (1991) 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is 'reason to believe', but not the established fact or escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is also because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction [see ITO v Selected Dalurband Coal Co. P. Ltd. (1996) 2171TR 597 (SC); Raymond Woollen Mills Ltd. v ITO [(1999) 236 34(SC)].

17. The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 ore substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied: firstly, the Assessing Officer must have reason to believe that income, profits or gains chargeable to income-tax have escaped assessment, and, secondly, he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words, if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the provision to section 147. The case at hand is covered by the main provision and not the proviso.

18. So long as the ingredients of section are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when

intimation under section 143(1) had been issued."

4.7 Applying the ratio laid down by the apex court in the aforesaid case, it has to be seen in the present cases whether the AO had any cause or justification to form a reasonable belief that income chargeable to tax has escaped assessment. The Appellant has not brought any material in contrary to this. Viewed in this manner, the AO's action in initiating proceedings u/s 147 of the Act for these assessment years in question is reasonable and, therefore, upheld."

9. After going through these paras from the order of CIT(A), it was observed by the bench that a categorical finding has been given by CIT(A) in Para 4.4 of his order that this was the objection of the assessee raised before CIT(A) that AO has not provided the copy of reasons recorded for reopening and in this regard, this is the observation by CIT(A) that the assessee has not filed return of income and has never asked for the reasons and reference was made to the judgement of Hon'ble Apex Court rendered in the case of GKN Driveshafts (India) Ltd. as reported in 259 ITR 19 in which, it was held that after the receipt of notice u/s. 148, the assessee should file the return of income and thereafter, the assessee shall make request to the AO to provide the reasons recorded by him. But in the present case, a categorical finding has been given by CIT (A) that the assessee has not brought any material on record that the reasons recorded were asked for. The bench observed that under these facts, it cannot be said that there is any infirmity in the order of CIT (A) on this issue. In reply, the ld. AR of assessee had nothing to say. The ld. DR of revenue supported the order of CIT(A).
10. We have considered the rival submissions and in view of above discussion, we find no infirmity in the order of CIT(A) in respect of the issue regarding validity of reassessment proceedings also and accordingly ground no. 4 is also rejected in both these years i.e. Assessment Years 2005-06 and 2006-07.
11. In the result, these two appeals of assessee for Assessment Years 2005-06 and 2006-07 are dismissed.
12. In respect of remaining three years i.e. Assessment Years 2007-08 to 2009-10, it was submitted by ld. AR of assessee that there is no dispute in these three years that return of income was filed by the assessee and therefore, AO was required to issue notice u/s. 143(2) of IT Act. He also submitted

that as per page no. 1 of the assessment order in all these three years, although it is observed by the AO that notice u/s. 143(2) was issued but it was submitted by him that this is factually incorrect and no such notice was served on assessee. At this juncture, the bench wanted to know about the finding of CIT (A) on this factual aspect. In reply, it was submitted by ld. AR of assessee that there is no finding given by CIT (A) on this factual aspect and therefore, the matter may be restored back to the file of CIT (A) for fresh decision after examining this factual aspect and after recording categorical finding on this factual aspect. The ld. DR of revenue supported the order of CIT(A).

13. We have considered the rival submissions. We find that on page no. 1 of the assessment order in these three years, the AO has observed that the assessee has filed return of income on 07.12.2011 and notices u/s. 143(2) and 142(1) were issued on 13.07.2012. In para 13 of the statement of facts filed by assessee before CIT(A), it has been submitted by the assessee that the AO mentions that the notice u/s. 143(2) of the Act was issued to the assessee whereas this is the submission of the assessee that there was no notice u/s. 143(2) served on assessee. As per the impugned order of CIT(A), ld. CIT(A) has not given any finding on this factual aspect as to whether notice u/s. 143(2) was issued by the AO for these three years or not. Hence we feel it proper to restore back this matter for all the three years to the file of CIT (A) for fresh decision. Accordingly we set aside the order of CIT (A) and restore the matter back to his file in these three years i.e. Assessment Years 2007-08 to 2009-10 with the direction that he should examine the records and give a categorical finding as to whether any valid notice u/s. 143(2) was issued and served by the AO on the assessee within the prescribed time or not. If it is found that no such notice u/s. 143(2) was issued and served within the prescribed time, then the assessment will not survive and there is no need to decide any other aspect of the matter. But if it is found that notice u/s. 143(2) was issued and served on assessee within the prescribed time then all other aspects of the matter should be examined and decided afresh after providing adequate opportunity of being heard to

both sides. In view of this decision, no adjudication at the present stage is called for on any other aspect of the matter.

14. In the result, these three appeals of the assessee for Assessment Years 2007-08 to 2009-10 are allowed for statistical purposes.

15. In the combined result, the appeals of the assessee for Assessment Years 2005-06 and 2006-07 are dismissed and the remaining three appeals of assessee for Assessment Years 2007-08 to 2009-10 are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 2nd January, 2019.
/MS/

Copy to:

1. Appellant	4. CIT(A)
2. Respondent	5. DR, ITAT, Bangalore
3. CIT	6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.