

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.2365/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2009-10

Pro-Arc Welding & Cutting Systems Pvt. Ltd.,  
Gat No.246, Chimbali,  
Khed, Pune – 412501

.... अपीलार्थी/Appellant

PAN: AAECP1289M

Vs.

The Dy. Commissioner of Income Tax,  
Circle 10, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishor Phadke  
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 27.12.2018	घोषणा की तारीख / Date of Pronouncement: 20.02.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by assessee is against order of CIT(A)-6, Pune, dated 04.07.2017 relating to assessment year 2009-10 against order passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A) erred in law and on facts in sustaining the addition of Rs.3,35,516/- made by the learned AO on account of alleged bogus purchases, and thereby sustaining the assessed income at Rs.42,38,350/-, instead of returned income of Rs.39,02,830/-.*

2. *The learned CIT(A) erred in law and on facts in sustaining the addition made in the hands of the appellant company, without appreciating that the notice u/s 148 of the IT Act, 1961 was issued mechanically, on a wrong PAN and by also by AO not having Jurisdiction over the assessee and particulars of returns filed available with him for any validation.*
3. *The learned CIT(A) erred in law and on facts-in sustaining the addition made, despite the fact that the notice u/s 148 was issued without obtaining sanction of the appropriate authority as mandated u/s 151 of the IT Act, 1961.*
4. *The learned CIT(A) erred in law and on facts in sustaining the addition made by the learned AO despite the technical lapse on the part of the learned AO regarding non-disposal of the objections raised by the appellant against the reasons recorded for re-opening the assessment u/s 148 of the IT Act, 1961.*
5. *The learned CIT(A) erred in law and on facts in sustaining the addition made by the learned AO without granting the opportunity of cross examination to the appellant and further without sharing the information received from Sales Tax department, and thereby violating the principles of natural justice.*
6. *The learned CIT(A) erred in law and on facts in sustaining the addition made by the learned AO without appreciating that the learned AO had proceeded only on the basis of information received from Sales Tax Department and without conducting any independent enquiries.*
7. *Without prejudice to ground no.1 to 6 above, the learned AO erred in law and on facts in not restricting the amount of addition to the extent of gross profit.*

3. The assessee has raised various grounds of appeal but the first issue raised in the present set of grounds of appeal is against addition made on account of bogus purchases and secondly, the assessee has also challenged the invoking of jurisdiction under section 147 / 148 of the Act.

4. Briefly, in the facts of the case, the assessee had furnished original return of income on 30.09.2009 declaring total income of ₹ 39,02,830/-. Thereafter, the Assessing Officer received information from the Sales Tax Department regarding purchases made from bogus parties. Consequent thereto, reasons for reopening the assessment were recorded and notice under section 148 of the Act was issued to the assessee. The copy of reasons

recorded for reopening the assessment was provided to the assessee. The assessee was found to have entered into transactions relating to bogus bills / non genuine bills amounting to ₹ 3,35,516/-. The reasons recorded for reopening the assessment were supplied to the assessee. Thereafter, considering various submissions made by the assessee, the Assessing Officer made addition on account of bogus purchases of ₹ 3,35,516/-.

5. The CIT(A) noted that the assessee had not furnished return of income in response to notice issued under section 148 of the Act and hence, any objections raised by assessee against recording of reasons or issue of notice under section 148 of the Act and thereafter under section 142(1) of the Act, do not stand. The CIT(A) further noted that purchases of ₹ 3,35,516/- were made from M/s. Asian Metal Industries in the months of July, August, September, 2008 and the amount was paid in the month of July, 2011. The CIT(A) was of the view that since it was an accommodation entry availed by the assessee, hence the supplier was not seeking payment of the said amount and only after the matters relating to bogus claims were unearthed by the Sales Tax Department, the assessee thought it to be safe to make the payments. Hence, the addition made by the Assessing Officer was upheld by the CIT(A).

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee pointed out that the Assessing Officer recording reasons for reopening the assessment under section 147 of the Act and issuing notice under section 148 of the Act was ITO, Ward 8(3), Pune. He further pointed out that jurisdiction of the assessee's case

was with DCIT/ACIT, Circle 10, Pune and not with the ITO; hence invoking of jurisdiction itself was bad in law. In this regard, he referred to the returns of income filed for various years before the DCIT / ACIT, Circle 10 and also assessment order for assessment year 2010-11 completed under section 143(3) of the Act.

8. The learned Departmental Representative for the Revenue on the other hand, pointed out that the assessee did not object to the issue of notice under section 148 of the Act within period of one month and for the first time, letter was issued on 27.01.2015. In this regard, reliance was placed on the ratio laid down by the Hon'ble High Court of Delhi in *Abhishek Jain Vs. ITO* (2018) 405 ITR 1 (Delhi).

9. The learned Authorized Representative for the assessee in rejoinder pointed out that notice for the first time was received by hand on a later date as is clear from the reply filed dated 27.01.2015.

10. On perusal of record and after hearing both the learned Authorized Representatives, the preliminary issue which arises in the present appeal is invoking of jurisdiction under section 147 / 148 of the Act. The assessee was regular income tax filer. For assessment year 2007-08, the return of income was filed on 30.10.2007 with ACIT, Circle 10, Pune. Thereafter, for assessment year 2008-09, it was filed with Circle 10 on 10.10.2008; for assessment year 2009-10, it was filed on 30.09.2009 again with Circle 10. Even for later years, returns of income/s have been filed with the same jurisdiction. The necessary evidence is placed at pages 28 to 33 of Paper

Book. Further, the case of assessee for assessment year 2010-11 was picked up for scrutiny and the notice under section 143(2) of the Act was issued on 30.08.2011 by ACIT, Circle 10, Akurdi, Pune; copy of which is placed at page 37 of Paper Book. Another notice dated 22.11.2011 was received from ACIT, Circle 10 under section 148(3) r.w.s. 221 of the Act for assessment year 2011-12, for which reply was also given on 28.11.2011. Both these communications are placed at pages 38 and 39 of Paper Book. The assessment for assessment year 2010-11 was completed under section 143(3) of the Act vide order dated 15.03.2013 by the DCIT; Circle 10, copy of which is placed at pages 47 to 56 of Paper Book. At page 46 of Paper Book is placed reply to notice issued under section 142(1) of the Act for assessment years 2010-11 to 2012-13, wherein the ITO, Ward 10(1) was informed that the assessee company was regularly assessed with ACIT, Circle 10, Akurdi, Pune and it was filing the returns of income regularly with the said Circle.

11. Now, coming to the reasons recorded for reopening the assessment, copy of which is placed at pages 21 and 22 of Paper Book, which are dated 28.10.2013 and copy of notice under section 148 of the Act, dated 13.11.2013, which is placed at page 20 of Paper Book. Both these documents are issued by the ITO, Ward 8(3), Pune. The assessee claims that the said notice issued under section 148 of the Act was never received in time by the assessee and the copy of same was collected on 03.11.2014. This is mentioned in the communication dated 27.01.2015 addressed to the DCIT, Circle 10, Akurdi, Pune. The assessee had also received reasons recorded for reopening the said assessment. The assessment under section 143(3) r.w.s. 147 of the Act has been completed by the DCIT, Circle 10, Pune.

12. The issue which arises is whether in such circumstances, where the assessee was regularly being assessed by the DCIT / ACIT, Circle 10, Pune, then re-assessment proceedings initiated by the ITO, Ward 8(3) were correctly initiated i.e. did he have jurisdiction to record reasons for reopening the assessment and thereafter, issue notice under section 148 of the Act. I may again refer to the communication dated 25.12.2012, which was notice issued under section 142(1) of the Act by the ITO, Ward 10(1), wherein he was clearly intimated that the assessee was regular assessee with ACIT, Circle 10. In such facts and circumstances, the reasons recorded and the issue of notice under section 148 of the Act, dated 13.11.2013 suffers from infirmity, since the Assessing Officer initiating the same had no jurisdiction over the assessee. Once the person is regularly assessed with a particular Officer, then the jurisdiction of assessee will only change in case there are any orders issued by higher authorities and in the absence of the same, no other Assessing Officer except the Assessing Officer with whom the assessee was regularly filing the return of income has any jurisdiction, to assess or re-assess the income in the hands of assessee. In such circumstances, the issue of notice under section 148 of the Act, dated 13.11.2013 suffers from infirmity. The said notice was not served upon the assessee and it was the DCIT, Circle 10, who eventually started proceedings against the assessee by giving copy of reasons recorded for issue of notice under section 148 of the Act, along with notice under section 148 of the Act. The said information was collected on 03.11.2014 and the assessee filed objections against the same on 27.01.2015. In such circumstances, the assessee cannot be held at default in not furnishing the information within time. The ratio laid down by the Hon'ble High Court of Delhi in *Abhishek Jain Vs. ITO (supra)* is thus, not applicable to the facts of present

case. Since the re-assessment proceedings are without any jurisdiction, consequent order passed under section 143(3) r.w.s. 147 of the Act do not stand. The grounds of appeal raised by assessee are thus, allowed.

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

Order pronounced on this 20<sup>th</sup> day of February, 2019.

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

पुणे / Pune; दिनांक Dated : 20<sup>th</sup> February, 2019.  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-6, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', 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