

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

आयकर अपील सं. / ITA No.977/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

Ramdas Bhausahab Barne,  
Krantiveer Nagar,  
Near Datta Mandir,  
Thergaon Road,  
Pune – 411033

.... अपीलार्थी/Appellant

PAN: AGCPB5041Q

Vs.

The Income Tax Officer,  
Wad 10(3), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri S.N. Puranik

प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 05.03.2019	घोषणा की तारीख / Date of Pronouncement: 07.03.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-6, Pune, dated 31.01.2018 relating to assessment year 2011-12 against order passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The learned Authorized Representative for the assessee at the outset pointed out that jurisdictional issue is raised vide ground of appeal No.2, which may be addressed first. The ground of appeal No.2 reads as under:-

2. *Without prejudice to Ground No. 1 above, proceedings u/s 147/148 and Assessment Proceedings u/s 143(3) r.w.s 148 are Bad in Law, same may please be cancelled.*

3. The plea of assessee before us is that the Assessing Officer claims to have received certain information, on the basis of which the Assessing Officer formed an opinion that there is an escapement of income in the hands of assessee and consequently, notice under section 148 of the Act was issued on 12.02.2014, which was received on 12.02.2014 itself. However, the sanction from the JCIT, Range-10, Pune was received after issue of notice under section 148 of the Act. In this regard, the learned Authorized Representative for the assessee referred to letter dated 19.03.2014 of the JCIT, Range-10, Pune, placed at page 4 of Paper Book. The learned Authorized Representative for the assessee in this regard placed reliance on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Smt. Suman Waman Chaudhary (2010) 321 ITR 495 (Bom). The learned Authorized Representative for the assessee also pointed out original assessment in the case was completed under section 143(3) of the Act vide order dated 19.07.2013.

4. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the ratio laid down by Mumbai Bench of Tribunal in Laxminarayan Agarwal (HUF) Vs. ITO (2012) 24 taxmann.com 81 (Mumbai – Trib.).

5. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal is against jurisdiction invoked by the Assessing Officer by issuing notice under section 148 of the Act and whether the same has been validly invoked. The original assessment in the

case was completed under section 143(3) of the Act. Thereafter, the Assessing Officer recorded reasons for reopening the assessment and consequent thereto, issued notice under section 148 of the Act. The said notice was issued on 12.02.2014 and was served on the assessee on 12.02.2014 itself. The copy of said notice is placed at page 3 of Paper Book. The JCIT, Range-10, Pune vide letter dated 19.03.2014 approved the proposal for issue of notice under section 148 of the Act in response to Assessing Officer's proposal dated 14.03.2014. Without going into merits of the case, we propose to deal with the jurisdictional issue first.

6. As per pre-amended provisions of section 151(1) of the Act, where the assessment order has been passed under section 143(3) of the Act, then no notice shall be issued under section 148 of the Act by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice. The proviso lays down that after expiry of four years from the end of relevant assessment year, satisfaction is to be obtained from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. The assessment in the case was completed on 19.07.2013 under section 143(3) of the Act. The Assessing Officer issuing the notice under section 148 of the Act is Income Tax Officer, Ward 10(3), Pune. Hence, under the provisions of section 151(1) of the Act, no notice under section 148 of the Act would be issued before obtaining the approval of JCIT, which in the present case was received after issue / receipt of the notice under section 148 of the Act. Such a notice issued under section 148 of the Act is thus, invalid in law.

7. The Hon'ble Bombay High Court in CIT Vs. Smt. Suman Waman Chaudhary (supra) had laid down that under section 151(2) of the Act, prior approval of the concerned authority was required to be taken before issue of notice under section 148 of the Act. Section 151(2) of the Act deals with cases where the assessment has not been completed under section 143(3) of the Act.

8. Applying the said ratio to the facts of present case, we hold that issue of notice under section 148 of the Act in the present case is annulled and consequent order passed under section 143(3) r.w.s. 147 of the Act cannot stand. The learned Departmental Representative for the Revenue had placed reliance on the order of Mumbai Bench of Tribunal in Laxminarayan Agarwal (HUF) Vs. ITO (supra), wherein the jurisdiction of notice issued under section 148 of the Act was challenged after expiry of eight years from the date of notice, which is not the case before us and hence, not applicable. The ground of appeal No.2 raised by assessee is thus, allowed. All the other grounds of appeal would become academic.

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

Order pronounced on this 7<sup>th</sup> day of March, 2019.

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

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

पुणे / Pune; दिनांक Dated : 7<sup>th</sup> March, 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