

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.1582/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

Avinash R. Mahamuni,
203, Chintamani Apts.,
1478, Sadashiv Peth,
Tilak Road, Pune - 411030

.... अपीलार्थी/Appellant

PAN: AGUPM4753E

Vs.

The Income Tax Officer,
Wad 5(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Suhas Bora
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 14.03.2019	घोषणा की तारीख / Date of Pronouncement: 30.04.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A), Pune-5, Pune, dated 13.06.2018 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 assessee has raised the following grounds of appeal:-

On the facts and in the circumstances of the case: -

1. *The learned CIT(Appeals) failed to consider the contention of the appellant that the assessment order passed by the learned A.O. u/s 143(3) r.w.s 147 is bad in law and void ab-initio as the same has been passed: -*
 - a. *Without passing a speaking order rejecting the objections taken by the appellant on the ground that the contention of the appellant that, the assessment order is bad in law and devoid of merits.*
 - b. *Without appreciating the fact that no opportunity was given for cross examination of the person whose statement was relied up on the ground the appellant had not requested for any cross examination and the same was only an afterthought without appreciating the submissions given by the appellant.*
2. *The learned CIT (Appeals) erred in confirming the addition of Rs.6,00,000/- made on account of unexplained investment u/s 69 on the basis of statement given by the third party and the documents found during the course of search on Pinnacle Group and the fact being admitted by Shri Gajendra Pawar in the statement recorded on 11.02.2011 that Rs.6 lakhs were received in cash from the appellant is sufficient evidence as per Evidence Act. Thus, the contention of the appellant that the addition is made on assumptions and surmises is devoid of merits, without appreciating the submissions given by the appellant.*
3. *The id CIT(A) erred in confirming the addition of Rs.4,33,420/- u/s 69A made on account of difference in the value of assets recorded in books and actual investment made in new clinic on the ground that the accounting treatment given in the later year i.e. in A.Y. 2012-13 is of no relevance to the year under consideration as the stamp duty, registration charges were also paid on the year 2009-10 and receipts to that effect were issued by the registering authority without bringing on record any cogent material while rejecting explanation of the appellant.*

3. The issue raised in the present appeal is against reopening of assessment under section 147/148 of the Act.

4. The learned Authorized Representative for the assessee pointed out that ground of appeal No.1 raised by assessee against invoking of jurisdiction by the Assessing Officer under section 147 of the Act is challenged and the same be decided first. The plea of assessee is that where the objections raised by it

were not disposed of by speaking order by the Assessing Officer, then the assessment order passed in the case was bad in law and *devoid* on merits.

5. Briefly, in the facts of the case, the assessee had filed original return of income on 24.02.2012 declaring income of ₹ 7,78,120/-. During the course of search action under section 132 of the Act in the case of Pinnacle group cases, statement of Shri Gajendra D. Pawar was recorded on 11.02.2011, in which he admitted that ₹ 6 lakhs was received in cash from the assessee. The Assessing Officer thus, recorded reasons for reopening the assessment and issued notice under section 148 of the Act. The assessee in response vide letter dated 28.03.2013 pointed out that there was no reason to re-assess his income; but he was participating in the re-assessment proceedings under protest and also pointed out that return filed by him on 24.02.2012 be treated as return in response to notice under section 148 of the Act. Vide the same letter, the assessee asked the Assessing Officer to provide copy of reasons and documents relied upon for issuance of notice under section 148 of the Act, so that the assessee could file its objections. In view thereof, the Assessing Officer provided reasons recorded for issue of notice vide letter dated 25.02.2014 and asked the assessee to take inspection of documents and statement recorded of Shri Gajendra D. Pawar. He stated that the copy cannot be provided to him as there was information relating to other persons which were not related to assessee. The Assessing Officer thereafter completed the assessment proceedings.

6. Before the CIT(A), the assessee challenged 148 proceedings which were dismissed by the CIT(A).

7. The assessee is in appeal against the order of CIT(A) in this regard.

8. The limited issue which arises before us is against re-assessment proceedings initiated against assessee and objections raised by the assessee. Once the assessee filed its objections against reopening of assessment, then the assessment proceedings cannot be proceeded with before disposing of objections raised by assessee against reopening. For this, there is need to look at the dates and events of the case, which are as under:-

<i>Sl. No.</i>	<i>Events</i>	<i>Date</i>
1	<i>Notice u/s 148</i>	<i>22.03.2013</i>
2	<i>Asking of the reasons for reopening by the assessee</i>	<i>28.03.2013</i>
3	<i>Reasons for reopening the assessment supplied by the Assessing Officer</i>	<i>25.02.2014</i>
4	<i>Objections filed by the assessee against reopening of the assessment</i>	<i>25.02.2014</i>
5	<i>Objections decided by the Assessing Officer</i>	<i>NIL</i>
6	<i>Service of order deciding objections</i>	<i>NIL</i>
7	<i>Assessment order</i>	<i>28.03.2014</i>

9. From the above, it is clear that though the assessee had raised objections against reopening of assessment but the Assessing Officer proceeded to complete assessment proceedings against the assessee without disposing of objections raised by assessee.

10. We find that the issue raised in the present appeal is squarely covered by the order of Tribunal in the case of DCIT Vs. P3 Properties in ITA Nos.391 & 392/PUN/2016, relating to assessment years 2008-09 and 2009-10, order dated 04.05.2018, wherein it was held as under:-

“6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Revenue in appeal for both the assessment years has assailed the action of Commissioner of Income Tax (Appeals) in holding the reassessment proceedings as bad in law on the ground that the objections filed by the assessee against reopening are not disposed of. From the perusal of documents on record we observe that the Commissioner of Income Tax (Appeals) has failed to take note of the fact that the objections filed by the assessee against reopening of assessment u/s. 147 were disposed of by the Assessing Officer vide order dated 21-03-2014. Therefore, we are of considered view that the reason given by the Commissioner of Income Tax (Appeals) for setting aside the assessment orders is against the facts.

7. However, we observe that the Assessing Officer has violated the time line laid down by the Hon'ble Jurisdictional High Court in passing the assessment orders. Before proceeding further it would be relevant to have glance at the date and events necessary for the adjudication of the issue in hand :

Sl. No.	Events	Date
1	Notice u/s 148	22-03-2013
2	Asking of the reasons for reopening by the assessee	30-03-2013
3	Reasons for reopening the assessment supplied by the Assessing Officer	26-08-2013
4	Objections filed by the assessee against reopening of the assessment	10-09-2013
5	Objections decided by the Assessing Officer	21-03-2014
6	Service of order deciding objections	25-03-2014
7	Assessment order	26-03-2014

8. The Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra) has held that when a notice u/s. 148 of the Act is issued, the proper course of action for the assessee is to file return and if he so desires seek reasons for issuing notice. The Assessing Officer is duty bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee 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.

9. In the present case, we observe that the assessee, as well as the Assessing Officer have complied with the necessary course as set out by the Hon'ble Apex Court in performing their respective parts starting from issuance of notice u/s. 148 to disposal of reasons. However, we observe that the Assessing Officer has violated the directions of Hon'ble Jurisdictional High Court in the case of Asian Paints Ltd. Vs. Deputy Commissioner of Income Tax & Anr. (supra) in not allowing four weeks time to the assessee before passing the assessment order after rejecting the objections. The time line set out by the Hon'ble Bombay High Court in allowing four weeks time to the assessee is binding on the Assessing Officer. The violation of the directions of the Hon'ble Jurisdictional High Court would make the assessment order bad in law. The Hon'ble Bombay High Court in the case of Aroni Commercial Ltd. Vs. Deputy Commissioner of Income Tax (supra) in similar circumstances where the assessment order was passed in undue haste has condemned the action of

Assessing Officer and has set aside the assessment order. The observations of the Hon'ble High Court are as under :

“6. It is axiomatic that the law declared by this Court is binding on all authorities functioning within the jurisdiction of this Court. It is not open to the Assessing Officer to feign ignorance of the law declared by this Court and pass orders in defiance of the law laid down by this Court. We do not accept this submission made on behalf of the revenue that the Assessing Officer was not aware of the decision of this Court in Asian Paints (supra). On the contrary, it appears that the order dated 19 December 2013 was passed only to make the entire proceeding pending before this Court redundant and to present the Court with a fait accompli. This is particularly so as the petitioner had on 18 December 2013 informed the Commissioner of Income Tax that a writ petition has been filed challenging the order dated 20 November 2013 in respect of A. Y. 2008-09 and is posted for admission on 23 December 2013. It is averred in the petition that the Assessing Officer was informed at the hearing held on 10 December 2013, that it is preparing a petition to challenge the re-opening for A. Y. 2008-09 on identical grounds as done in earlier Assessment Year namely A. Y. 2007-08 which is pending in this Court and ad interim relief has also been granted, restraining the revenue from proceeding with the assessment for A. Y. 2007-08. The passing of an order on 19 December 2013 by the Assessing Officer in undue haste and thereafter contending that in view of alternative remedy, the writ petition should not be entertained, does not appear bonafide. This undue haste in passing the impugned order dated 19 December 2013 is an attempt to overreach the Court and to thwart the petitioner's challenge to the impugned order dated 20 November 2013 pending before this Court.

7. In the above circumstances, we set aside the order dated 19 December 2013 passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act for A. Y. 2008-09.”

10. In the present case we observe that objections against reopening were disposed of by the Assessing Officer on 21-03-2014. The said order was served on the assessee on 25-03-2014. The Assessing Officer passed the assessment order on 26-03-2014 i.e. on the very next day of service of the order rejecting objections. There was no time with the assessee to avail appropriate remedy against rejection of objections. Thus, there was clear violation of principle of natural justice and the law laid down by the Hon'ble Jurisdictional High Court. Since, the Assessing Officer has violated the time line in passing the assessment order, the assessment order is liable to be set aside. We hold and direct accordingly. Thus, the appeals filed by the Revenue are liable to be dismissed being devoid of any merit.”

11. In view of the issue being decided by Pune Bench of Tribunal in DCIT Vs. P3 Properties (supra) and following the same parity of reasoning, we hold that where the objections raised by assessee have not been disposed of by the Assessing Officer before proceeding with assessment proceedings, the

assessment order passed in the case is both null and void. Accordingly, we hold so. The ground of appeal No.1 raised by assessee is thus, allowed. Since we have decided jurisdictional issue, the other grounds of appeal become academic.

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

Order pronounced on this 30th day of April, 2019.

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

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

पुणे / Pune; दिनांक Dated : 30th April, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-5, Pune;
4. The Pr.CIT, Pune-4, 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