

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BENGALURU**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.896/Bang/2018  
(Assessment year: 2008-09)

Smt. Uma Nitesh Bera,  
No.25/1, 3<sup>rd</sup> floor, K.R.Shettypet,  
Anandppa Lane, Avenue Road,  
Bengaluru-560002.  
*PAN: AHZPB 5658 B*

Vs.

... Appellant

Asst. Commissioner of Income-tax,  
Circle 5(2)(1),  
Bengaluru.

... Respondent

Appellant by : Shri S.V.Ravishankar, Advocate.  
Respondent by : Shri K.N.Dhandapani, JCIT(DR)

Date of hearing : 10/06/2019  
Date of pronouncement : 21/06/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM:**

The assessee has filed appeals against different orders of the CIT(A)-5, Bengaluru, passed u/s 143(3) r.w.s. 147 and 250 of the Income-tax Act,1961 ['the Act' for short].

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

1. "The order of the learned Commissioner of Income-tax [Appeals] in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.

2. The appellant denies itself liable to be assessed to total income of Rs. 66,31,968/--as against the returned income of Rs. 27,98,029/- on the facts and circumstances of the case.

**I) Legal Grounds**

**3. Grounds on re-opening**

- a. The learned CIT(A) was not justified in appreciating that the notice issued under section 148 of the Act, was bad in law.
- b. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order of assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction under section 148 of the Act did not exist and have not been complied with and consequently the entire assessment is bad and unsustainable in law and thus the assessments requires to be cancelled on the facts and circumstance of the case.
- c. The learned Commissioner of Income-tax [Appeals] was not justified in law, in not setting aside the order of assessment as bad in law, as the notice U/s 148 has stated to "assess" the income, when an assessment has already been done under section 143(3) of the Act, hence demonstrating lack of application of mind on the part of the assessing officer thus vitiating the assessment proceedings on the facts and circumstances of the case.
- d. The learned Commissioner of Income-tax [Appeals] was not justified in law in appreciating that the appellant has disclosed fully and truly all material facts necessary for the assessment, on the facts and circumstances of the case.

**4. Grounds on reason to believe**

- a. The learned CIT(A) was not justified in appreciating that reopening the case of the appellant merely on oral statement of Mr. Mukesh Choksi which are nothing but sweeping generalisation and the information received from DDIT (Investigation) and in the absence of any cogent material to pinpoint that the appellant has indulged in any bogus transaction amounts to only reason to suspect and not reason to believe on the facts and circumstances of the case.
- b. The learned Commissioner of Income-tax [Appeals] has not appreciated the. fact that the learned assessing officer was not

justified in reopening the case of the appellant u/s 147 of the act since there was no new material which has come to the hands of the learned assessing officer, to form an opinion that income had escaped assessment and hence was a mere change of opinion, which was not a permissible cause to issue a notice under section 148 of the Act.

**5. Grounds on sanction**

- a. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order of assessment is void ab initio as proper sanction has not been obtained as contemplated under section 151(1) of the Act and hence the entire proceedings are without jurisdiction and liable to be quashed.
- b. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order of assessment is bad in law as the assessing officer has not provided the details and documents regarding the obtaining of approval and hence the entire order of assessment is vitiated, bad in law and liable to be cancelled on the facts and circumstance of the case,

**6. Grounds on issue of notice u/s 143(2)**

- a. The learned Commissioner of Income-tax [Appeals] was not justified in law in not setting aside the order of assessment, as no notice under section 143(2) of the Act, was issued, as admitted by the AO in the order passed, on the facts and circumstance of the case.
- b. The learned CIT(A) was not justified in law in appreciating the fact that the assessing officer has not assumed proper jurisdiction to make an assessment in the instant case as the mandatory notice u/s 143(2) of the act was neither issued nor served in the accordance within the stipulated time in accordance with law on the facts and circumstances of the case.

**7. Grounds on assessment u/s 153C**

The learned Commissioner of Income-tax [Appeals] was not justified in law in appreciating that the assessing officer ought to have passed the order of assessment u/s 153C of the Act, since documents purported to the appellant have been found consequent to search u/s 132 of the Act, on the facts and circumstances of the case.

**8. Grounds on validity of the order**

The learned Commissioner of Income-tax [Appeals] was not justified in not setting aside the order dated 22.03.2016 passed u/s 143(3) r.w.s. 147 of the Act and the notice of demand u/s 156 of the Act which were served by hand on the appellant on 30.03.2016, as not valid in law and are non-est as these are not signed by the assessing officer and consequently there was no valid order passed within the period of limitation on the facts and circumstances of the case.

**9. Grounds on violation of principles of natural justice**

- a. The learned Commissioner of Income-tax [Appeals] was not justified in not setting aside the order as the cross examination of Mr. Mukesh Choksi was not provided to the appellant for rebuttal, hence vitiating the assessment proceedings as the sole reason of re-opening remained unverified on the facts and circumstances of the case.
- b. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the order is vitiated on account of violation of principles of natural justice in as much as the appellant was not afforded opportunity of cross-examination of the person relying on whose statement the case of the appellant was re-opened and the additions were sought to be made in the assessment, even though such opportunity was specifically requested for by\_ the appellant on the facts and circumstances of the case.

**10. Grounds on Merit**

- a. Without prejudice, the learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the assessing officer is not justified in taking the total income at Rs. 39,68,978/- instead of Rs. 35,08,670 on the facts and circumstances of the case.
- b. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the appellant has already accounted for the above transaction and declared short term capital gain arising therein in the return of income on the facts and circumstances of the case.

- c. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the assessing officer failed to take into consideration that the transactions entered into by the appellant are all genuine transactions which are duly reflected in the demat account and hence it could not have been branded as bogus and accommodation entries on the facts and circumstances of the case.
- d. The learned Commissioner of Income-tax [Appeals] was not justified in law in appreciating the fact that the learned assessing officer also failed to take into consideration that by the very admission of Mr. Mukesh Choksi, the companies operated by him were genuine up to 2008 when the appellant has actually engaged in the transactions with those entities on the facts and circumstances of the case.
- e. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the assessing officer is not justified in terming the transactions as bogus on the basis of conjectures, surmises and presumptions and without establishing the same with cogent material and completely disregarding the material placed on record by the appellant in the facts and circumstances of the case.
- f. Without prejudice, if at all the entries are held to be only accommodation entries, the entire sale consideration could not have been brought to tax, but the capital gain offered to tax at lower rate of tax 10% could have only been taxed at the regular rate of tax on the facts and circumstances of the case.
- g. Without prejudice, the learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the assessing officer ought to have reduced income already offered to tax under short term capital gain from the sale consideration and brought to tax only the balance amount which is not offered to tax on the facts and circumstances of the case.
- h. Without prejudice, the learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the assessing officer ought to have allowed the purchase cost incurred by the appellant against the sale consideration brought to tax on the facts and circumstances of the case.
- i. The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance

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with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.

- j. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
- k. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

3. We find that the grounds of appeal, facts and circumstances of the case and the arguments of the Id.AR are identical to the facts and circumstances discussed in ITA No.897/Bang/2018 in the case of *Nitesh Bera (HUF)* at para.6 which reads as under:

*“6. We heard the rival submissions and perused material on record. Ld. AR submitted that the assessee has filed objections to the issue of notice u/s 148 and objections were disposed of by the AO referred at page 53 of the paper book. The main contention of the Id. AR is that there is no service of notice u/s 143(2) of the Act. When a query was raised to Id. AR whether a ground was raised before the CIT(A) on this issue, Id. AR referred to ground No.9 as under:*

*“9 The learned Assessing Officer has not assumed proper jurisdiction to make an assessment in the instant case as the mandatory notice /s 143(2) of the Act was neither issued nor served on the appellant within the stipulated time in accordance with law on the facts and circumstances of the case.”*

*The Id. AR emphasized that the CIT(A) has not given a finding on the issue of notice u/s 143(2) and he read the order of the CIT(A). Nowhere we find that the CIT(A) has dealt on disputed issue and gave his observations or specific findings in respect of issue of notice u/s 143(2) of the Act. Therefore,*

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*considering the overall facts and circumstances and other details filed in the course of hearing, we are of th substantive opinion that the CIT(A) has not given decision/adjudicated the ground raised before him and Id.AR has not argued other grounds of appeal. Therefore, in the interests of substantial justice, we restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh and pass a speaking and reasoned order and allow the grounds of appeal for statistical purposes."*

We follow the ratio of decision and restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh and pass a speaking and reasoned order and allow the ground of appeal of the assessee for statistical purposes.

4. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced in the open court on 21<sup>st</sup> June, 2019.*

*Sd/-*  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Dated : 21/06/2019  
*srinivasulu, sps*

**Copy to :**

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

*Sd/-*  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore