



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND  
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No. 413/CTK/2010**

Assessment Year : 2005-2006

Anala Rama Rao, L/H of late Anala Eswar Rao, Karnam Street, Jeypore, Dit: Koraput	Vs.	Income Tax Officer, Ward-1, Jeypore, P.R.Peta, 1 <sup>st</sup> lane, Jeypore.
PAN/GIR No.AEHPR 8400 A		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.C.Sethi, AR

Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 15/10/ 2019**

**Date of Pronouncement : 15 /10/ 2019**

**ORDER**

**Per C.M.Garg,JM**

This is an appeal filed by the assessee against the order of the CIT(A), Berhampur, dated 2.8.2010 for the assessment year 2005-06.

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

"1. For that, on the facts and in the circumstances of the case, the assessment should not have been made basing upon I hi' root section 69A of the Income Tax Act, since it is not the out come of a suppression detected while making a surprise visit or taking a list of the wealth of the assessee, in the course of raid.

2. For that, the Learned Commissioner of Income Tax (Appeals) has not taken into consideration the account of savings which the appellant could have made right from the beginning of his career which includes also agriculture income which he has earned apart from similar income of his wife, earned year after year.

3. The assessee/appellant a senior citizen could have easily made a saving of Rs. 10,00,000/- in cash when the total income inclusive of agricultural income in his case and in the case of his wife could have been calculated, leaving no suspicion for any short fall in the peak amount, as determined by the Learned Commissioner of Income Tax (Appeals)."

3. The assessee has also filed additional grounds of appeal, which read as under:

"i) That the Id CIT(A) has committed a serious error in not appreciating that the issuance of notice by the AO u/s.148 of the income tax Act, 1961 (hereinafter referred as 'the Act') is per se illegal as the assessment u/s 143(3) of the Act in response to return u/s 142(1) of the Act has not expired and for that matter the assessment order, demand notice and penalty notice on the basis of notice u/s 148 of the Act are liable to be quashed and/or annulled.

(ii) That, the learned CIT (A) has committed a serious error by not appreciating the absence of reasons to believe for issuing notice u/s 148 of the Act and for that matter alleged deficiency u/s 139 (9) of the Act cannot be construed the reason for issuing notice u/s 148 of the Act and for that matter assessment order, demand notice and penalty notice based on such erroneous exercise of power by the learned Assessing Officer is liable to be quashed.

(iii) That, the learned CIT (A) has committed a serious error by confirming the addition u/s 69A of the Act to the extent of Rs. 7,08,158/- which is contrary to the provisions of section 69A of the Act and for that matter the addition is liable to be deleted. "

4. We find that the above additional grounds raised by the assessee against (i) issue of notice u/s.148 of the Act (ii) absence of reasons recorded and (iii) confirming the addition u/s.69A of the Act is purely a legal ground which goes to the root of the matter and no new facts are required to be investigated or placed on record for the adjudicating the same. We find that the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 has held as under :

"We do not see any reason to restrict the power of the Tribunal under s. 254 only to decide the grounds which arise from the order of the CIT (A). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

5. In view of the above facts, the additional grounds raised by the assessee are apparently legal in nature which goes to the root of the matter and no new facts are required to be investigated and, therefore, we admit the ground and adjudicate the same.

6. Heard on additional grounds. Ld A.R. of the assessee submitted that no tangible material was in the hands of the Assessing Officer to issue notice u/s.148 of the Act on 21.5.2008, when the reasons were recorded.

7. Replying to above, Id D.R. submitted that the reopening of assessment was initiated by issue of notice u/s.148 of the Act on the basis of AIR information that cash exceeding Rs.14,22,259/- was deposited in the bank account of Indian Overseas bank, Jeypore.

8. In rejoinder, Id A.R. referred to first para of the assessment order, which reveals that on receipt of AIR information, the AO issued notice u/s.142(1) of the Act and the assessee filed return and this AIR information was already on the record and there was no new tangible material with the Assessing Officer on 21.5.2008. Ld A.R. of the assessee referred to the judgment of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator India Ltd. (2010) 310 ITR 561 (SC), wherein newly substituted

provision of [section 147](#) of the Act with effect from 01.04.1989 is interpreted by observing, that [section 147](#) of the Act, as substituted w.e.f. 01.04.1989 does not postulates conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion. Further, if 'reason to believe' of the Assessing Officer is founded on an information which might have been received by the Assessing Officer after the completion of assessment, it may be a sound foundation for exercising the power under [section 147](#) r.w.s. 148 of the Act. It cannot be accepted that only because in the assessment order, detailed reasons have not been recorded, an analysis of the materials on the record by itself may be justifying the Assessing Officer to initiate a proceeding u/s. 147 of the Act. When a regular order of assessment is passed u/s 143(3) of the Act, the presumption can be raised that such an order has been passed on application of mind.

9. On careful consideration of the rival submission, we find that in the reasons recorded dated 21.5.2008, there was no new material on record. We decline to accept the contention of the Id DR that the AIR information was new tangible material as in the first paragraph in the assessment order, the AO himself noted that on the basis of AIR information, notice u/s.142(1) of the Act

was issued to the assessee and in response to the same, the assessee filed return declaring income of Rs.82,720/-. Undisputedly, the AO was empowered to issue notice u/s.143(2) of the Act before 31.12.2007. Since no such notice was issued to the assessee, thus, we safely presume that the assessment was completed u/s.143(1) of the Act. Hence, we also safely presume that the AIR information was already on the record of the AO while issuing notice u/s.142(1) of the Act and on receipt of return of income, it became part of assessment record which was terminated on 31.12.2007 as assessment u/s.143(1) of the Act. Therefore, the AIR information does not constitute new tangible material in the hands of the AO empowering himself for initiating the reassessment proceedings u/s.147 of the Act. Thus, no tangible material was in the hands of the Assessing officer at the time of recording the reasons for initiation of reassessment proceedings u/s.147 of the Act and issue of notice u/s.148 of the Act.

10. Hence, we applying the ratio of decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd (supra) in the present case found that the Assessing Officer has initiated reassessment proceedings on the same facts which were available before him at the time of making assessment u/s.143(3) of the

Act and no new tangible material has come on the basis of which it could be said that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment on account of failure on the part of the assessee to disclose truly and fully material of facts in the assessment. Therefore, we are inclined to set aside the order of the CIT(A) on this ground and quash the reassessment order dated 29.12.2007. Since we have quashed the reassessment order allowing the additional grounds, other grounds taken originally are not taken for adjudication.

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

order pronounced on 15 /10/2019.

Sd/-  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 15 /10/2019  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Anala Rama Rao, L/H of late Anala Eswar Rao, Karnam Steet, Jeypore, Dit: Koraput
2. The Respondent. Income Tax Officer, Ward-1, Jeypore, P.R.Peta, 1<sup>st</sup> lane, Jeypore.
3. The CIT(A) Berhampur
4. Pr.CIT- , Berhampur
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**