

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH
MUMBAI**

**BEFORE SHRI M. BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.4136/Mum/2018
(Assessment Year : 2012-13)**

Income Tax Officer 29(2)(5) Mumbai No.206, Income Tax Offices Pratyakshakar Bhavan Bandra-Kurla Complex Bandra (E) Mumbai – 400 051	Vs.	M/s. Privi Associates LLP Satguru Supreme, Mirani Nagar Valji Ladha Road Mulund (West) Mumbai – 400 080
PAN/GIR No. AALFP7516J		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora
Assessee by	Shri Nimesh Vora
Date of Hearing	28/01/2020
Date of Pronouncement	29/01/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.4136/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-40, Mumbai in appeal No.CIT(A)-40/IT-172/2016-17 dated 01/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2016 by the Id. Income Tax Officer, Ward – 29(2)(5), Mumbai (hereinafter referred to as Id. AO).

2. Revenue has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case and in law the Ld CIT(A) has erred in quashing the order u/s 143(3) r.w.s. 147 on the ground that the notice issued u/s 148 was invalid as the assessment proceedings u/s 143(3) were already in progress on account of issuance of notice u/s 143(2).

2. On the facts and circumstances of the case and in law the CIT(A) has erred in quashing the order passed u/s 143 (3) r.w.s.147 on the ground that the notice issued u/s 148 was invalid by mainly relying upon the Hon'ble Supreme Court decision in the case of the Trustees of H.E.H. the Nizam's Supplemental family Trust Vs CIT reported in 242 ITR 381 without appreciating the fact that the position of law in respect of initiation of proceedings u/s 147 in the aforesaid case for 1962-63 was quite different to that applicable in the case of the assessee for A.Y.2012-13.

3. On the facts and circumstances of the and in law the Ld CIT(A) has erred by holding that the notice issued us 148 was invalid without appreciating that the notice issued u/s 148 was valid even when the notice u/s 143(2) was issued, as has been held by the Hon'ble Patna High Court in the case of Deepak Kumar Poddar Rajendra...Vs Union of India (UO1) And Ors.(1997) 224 ITR 95 (Patna).

3. We have heard rival submissions and perused the materials available on record. We find that the following facts are undisputed:-

- a) Return of income was filed by the assessee for the A.Y.2012-13 on 29/09/2012.
- b) The case was selected for scrutiny by issuance of notice u/s.143(2) of the Act on 23/09/2013.
- c) The assessment was framed pursuant to the said scrutiny notice on 12/03/2015 u/s.143(3) of the Act.
- d) When the said original assessment proceedings were pending, notice u/s.148 of the Act was issued by the Id. AO reopening the assessment on 10/10/2014.
- e) Re-assessment was framed u/s.143(3) r.w.s. 147 of the Act on 31/03/2016.

3.1. From the above narration of facts, it could be safely concluded that the assessment for the A.Y.2012-13 was reopened by the Id. AO when the scrutiny assessment proceedings for the original return filed were pending before him. The law is now well settled by the decision of the Hon'ble Supreme Court in the case of trustees of H.E.H. Nizam's Supplementary Family Trust vs. CIT reported in 242 ITR 381 that when the proceeding is pending, the Id. AO could not have reason to believe that income of the assessee had escaped assessment warranting him to reopen the assessment during the pendency of the scrutiny proceedings. The relevant operative portion of the said judgment is reproduced hereunder:-

“It is settled law that unless the return of income already filed is disposed of notice for reassessments under [Section 148](#) cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.”

3.2. We find that the Id. CIT(A) had placed reliance on the aforesaid decision among others and quashed re-assessment proceedings. We do not find any infirmity in the said action of the Id. CIT(A). Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 29/01/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai