

IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, “E COURT” AT KOLKATA

(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)

[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. Nos. 4 & 5/Gau/2019
Assessment Years: 2009-10 & 2010-11**

M/s. Amolakshaya Trade & Credit Pvt. Ltd. (AAECA2485J)	Vs.	Income-tax Officer, Ward-4(1), Guwahati
Appellant		Respondent
Date of Hearing		08.06.2020
Date of Pronouncement		12.06.2020
For the Appellant		Shri Sanjay Modi, FCA
For the Respondent		Shri M. K. Das, Addl. CIT, Sr. DR

ORDER**Per Shri A.T.Varkey, JM**

Both these appeals preferred by the assessee are against the separate orders of the Ld. CIT(A), Guwahati-2, Guwahati dated 29.10.2018 for AYs 2009-10 and 2010-11.

2. Though the assessee has raised ten grounds of appeal, at the outset the assessee's ld. AR brought to our notice that it has challenged the legal validity/jurisdiction of the AO [ITO, Ward-4 (1)] to pass the impugned assessment order u/s. 147 read with sec. 143(3)(a) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") without issuing notice u/s. 148 of the Act and also without recording the reasons for re-opening the assessment for both assessment years. According to him, another AO i.e. [ITO, Ward-1(1)] had issued section 148 notice and had recorded reasons for re-opening and thereafter only transferred the case to ITO, Ward-4(1) who neither issued the notice u/s. 148 of the Act nor had recorded reasons for re-opening has passed the impugned reassessment order, which action is without jurisdiction. It was also brought to our notice that similar action has been taken by the AO for AY 2010-11. So, according to him that re-assessment order for AY 2010-11 was also without jurisdiction Therefore, both the legal issues raised for AYs 2010-11 and 2011-12

are taken together for adjudication and we will adjudicate the legal issue for AY 2009-10, the result of which will be followed in the AY 2010-11.

3. After having heard both the parties the undisputed facts relating to the legal issue raised by the assessee is as follows:

For AY 2009-10, the ITO, Ward-1(1), Guwahati has recorded reasons for reopening u/s. 147 of the Act on 24.03.2016 (paper book page1) and thereafter issued notice u/s. 148 of the Act on 29.03.2016 (paper book page 2). Thereafter, on 01.06.2016 he transferred the reassessment of the assessee to the ITO, Ward-4(1), Guwahati and by stating as under:

“Sub: Transfer of Reassessment u/s 147 cases – assessment records – Regarding Sir,

Kindly find enclosed herewith assessment folders of the following cases, being sent as the territorial jurisdiction over the cases are lying with you. The cases have been reopened for assessment u/s. 147 of Income Tax Act, 1961 and a notice u/s. 148 in these cases have already been issued and served on the assessee.”(Emphasis given by)

4. From a perusal of the aforesaid letter dated 01.06.2016 transferring the reassessment of the assessee to ITO, Ward-4(1), the ITO, Ward-1(1), Guwahati has clearly admitted that he does not have territorial jurisdiction over the case and has transferred it to the ITO, Ward-4(1) (page 13 of paper book). A perusal of the order sheet (copy annexed at pages 4 to 6 of the paper book) in the case of assessee reveals that on 24.03.2016 the ITO, Ward-1(1), Guwahati had recorded the reasons for reopening assessee's case for AY 2009-10 and thereafter had transferred the re-assessment to the ITO, Ward-4(1), Guwahati on 20.06.2016. Thereafter, we note that on 21.09.2016, ITO, Ward-4(1) issued notice u/s. 143(2) of the Act and has later passed the impugned order on 27.12.2016 i.e by [ITO, Ward-4(1)]. According to the Ld. Counsel, the AO gets vested with the jurisdiction to reopen an assessment only if he satisfies the condition precedent as stipulated in section 147 of the Act and after issuing notice u/s. 148 of the Act he can assume jurisdiction to reassess the assessee. According to him, the reasons were recorded for reopening as well as notice u/s. 148 of the Act was issued by ITO, Ward-1(1) and once he realized the mistake that he did not had territorial jurisdiction of the assessee has transferred the matter to the ITO, Ward-

4(1) who did not neither care to issue notice u/s. 148 of the Act nor recorded the reasons for reopening, has passed the impugned order which action / omission is without jurisdiction and has to be quashed and he cited the following case laws in support of his legal challenge discussed supra.

- i) ACIT Vs. Resham Petrotech Ltd. (2012 21 taxmann.com 161 (Ahd)
- ii) Coronation Agro Industries ltd. Vs. DCIT (2017) 82 taxmann.com 75 (Bom.)
- iii) Dr. Mrs. K. B. Kumar Vs. ITO (2011) 12 taxmann.com 318 (Del.)

5. The ld. Addl. CIT appearing for the revenue vehemently opposed the contention of the assessee and contended that as per section 124(2) of the Act, when a question arises in respect of jurisdiction as to whether the AO has jurisdiction to assess any person, then the question shall be determined by the jurisdictional Commissioner; and, since in this case both the ITOs were under the same Commissioner, question of dispute in respect of jurisdiction does not arise; and he also drew our attention to sec. 127(4) of the Act and contended that the AO to whom the assessment has been transferred need not reissue any notice already issued by the earlier AO and, therefore, he does not want us to interfere with the re-assessment order passed by the AO.

6. We have heard rival submissions and have gone through the facts and circumstances of the case. We note that it is an ex parte order passed by the Ld. CIT(A) without adjudicating the legal issue as well as merits of the case. However, we note that the legal issue which has been raised before us is whether the AO ie ITO Ward (4) (1) had jurisdiction to frame the re-assessment order without satisfying the condition precedent as stipulated in section 147 of the Act [i.e., *without recording reason for re-opening the assessment and not issuing notice u/s. 148 of the Act*]. For adjudicating this legal challenge we note that relevant material/documents are filed before us, therefore, we are inclined to adjudicate this issue. We note that the impugned order of the AO is a reassessment order passed u/s. 147 read with section 143(3) of the Act. Quietness to assessment proceedings subject to limitation is the rule. Exception to this rule is only if the law permits AO to do so. Once an assessment order u/s. 143(3) of the Act or even an intimation u/s. 143(1) has been passed, then also after the limitation period is over, the same cannot be disturbed or

reopened without satisfying the condition precedent as laid in the statute. For reopening an assessment of an assessee, the condition precedent prescribed u/s. 147 of the Act is that the AO should have “**reason to believe escapement of income**” which means there should be foundation based on information and belief based on reason. Therefore, the jurisdictional AO of the assessee has to record reasons as to how he forms the belief that income chargeable to tax has escaped assessment. This is the condition precedent which he should satisfy before he ventures to reopen the assessment within four years. Here in this case of the assessee, ITO, Ward-1(1), Guwahati on 24.03.2016 has recorded the reasons for reopening and thereafter has issued section 148 notice on 29.03.2016. Thereafter he transferred the case to the ITO, Ward-4(1) by letter dated 01.06.2016. And the ITO, Ward-4(1) neither issued any notice u/s. 148 of the Act nor recorded the reasons for reopening the assessment has straight away issued notice under section 143(2) of the Act and has framed the re-assessment on 27.12.2016, which action according to us, is without jurisdiction. For coming to such a conclusion, we rely on the order of the ITAT “D” Bench in Dr. Mrs. K. V. Kumar Vs. ITO (2011) 12 taxmann.com 318 (Del.), ACIT Vs. Resham Petrotech Ltd. (2012) 21 taxmann.com 161 (Ahd) and Coronation Agro Industries Ltd. Vs. DCIT (2017) 82 taxmann.com 75 (Bom.). We also note that Hon’ble Calcutta High court in the case of Kusum Goel Vs. ITO 319 ITR 283 has held that-

“one AO cannot transfer the case to another AO without order u/s. 127 of the Act.”

7. Coming to the contention of ld. DR, we note that section 124(2) or section 127(4) of the Act does not come to the rescue of the department. Coming to section 124(2) of the Act, we note is in respect of transfer of cases within the jurisdictional CIT as well as if there is a dispute between two AOs falling under the jurisdiction of different Commissioner, the procedure that has to be followed is spelt out. In the present case admittedly there is no order passed by the jurisdictional Commissioner transferring this case from ITO, Ward-1(1) to the ITO, Ward-4(1); and moreover the ITO, Ward-1 while transferring the re-assessment to ITO, Ward-4(1) admits that he does not have territorial jurisdiction over the assessee. And the Ld. DR’s contention justifying the action of ITO-4(1) in not again issuing notice u/s. 148 nor recording reasons by pointing out section 127(4) of the Act, we clarify that sec. 127(4) of the Act comes into operation only when the transfer of assessment is ordered

by the Commissioner u/s. (1) and (2) of the section 127 of the Act and not otherwise. It is not the case of the revenue that there has been an order passed by the Commissioner u/s. 127 of the Act transferring the assessment of assessee from ITO ward (1) (1) to ITO-ward 4(1); and it is not the case of the revenue that ITO, Ward-4(1) who passed the impugned reassessment order had issued notice u/s. 148 and has recorded the reasons for reopening as required under section 147 of the Act. In the light of the undisputed facts stated above, we hold that ITO, Ward 4(1) has usurped the jurisdiction without satisfying the condition precedent as prescribed u/s. 147 of the Act resulting in the impugned order being null in the eyes of law and, therefore, we quash the impugned reassessment order passed by the ITO, Ward-4(1) in this case. Since both the appeals are on the same facts and the Id.DR was not able to point out any change in facts or law, the assessee succeeds on the legal issue in both the appeals.

8. In the result, both the appeals of assessee are allowed.

Order is pronounced in the open court on 12th June, 2020.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :12th June, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Amolakshaya Trade & Credit Pvt. Ltd., Room No. 2006, Ramkumar Acrade, Chatribari Road, Guwahati-781 001.
- 2 Respondent – ITO, Ward-4(1), Guwahati
3. CIT(A), Guwahati-2, Guwahati
4. CIT-, Guwahati
5. DR, ITAT, Guwahati.

/True Copy,

By order,

Senior Pvt. Secy.