



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

**आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.698/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Income Tax Officer-1(2)(2)</b> Room No.527, Aaykar Bhavan M.K. Road, Mumbai- 400 020.	<b>बनाम/ Vs.</b>	<b>M/s. Lafit Lighting Private Ltd.</b> Flat No.7, Reay House 3 <sup>rd</sup> Floor, Best Marg Beside Old Taj Colaba, Mumbai-400 001.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AABCL-3265-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Naveen Kumar Mishra-Ld.AR
<b>Revenue by</b>	:	Shri Michael Gerald-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	26/08/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	01/09/2020

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-6, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-6/IT-30/136/2016-17 dated 21/11/2017 on following grounds: -

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the reasons have been recorded on 27/08/2013 and the notice u/s.148 of I.T. Act, 1961 was dispatched on 30/08/2013.



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

Therefore, even if the date mentioned on notice is 21/08/2013, the notice was issued and served after recording the reasons.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee has filed its reply vide letter dated 03/12/2013 wherein the assessee has mentioned the date of notice u/s.148 of I.T. Act, 1961 as 27/08/2013. The copy of the original reply was also produced before the Ld.CIT(A).

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee has received the notice u/s.148 of I.T. Act, 1961 on 30/08/2013 i.e. after recording the reasons of reopening on 27/08/2013. Hence, the assessee's stand that the AO has failed to record the reasons before issue of notice u/s.148 does not hold ground.

4. On the facts and in the circumstances of the case and in law, the Ld. C1T(A) has erred in not appreciating the fact that the AO has mentioned 148 notice dated 27.08.2013 in the assessment order as well as in the rectification order.

5. On the facts and in the circumstances of the case and in law, the Ld. C1T(A) has erred in not appreciating the provisions of section 292B of Income-tax Act, 1961 while allowing the assessee's appeal.

As evident, the revenue is aggrieved by quashing of reassessment proceedings on legal grounds.

2. We have carefully considered the rival submissions put forth before us during the course of hearing and perused relevant material on record. We have also deliberated on the judicial pronouncements as cited during the course of hearing. Our adjudication to the subject matter of appeal would be as given in the succeeding paragraphs.

3.1 Briefly stated, the assessee being resident corporate assessee stated to be engaged as importer / dealer of lighting fixture was assessed for year under consideration u/s 143(3) r.w.s. 147 on 30/03/2015 wherein the income of the assessee was determined at Rs.198.72 Lacs after certain additions as against returned income of Rs.8.76 Lacs filed by the assessee on 30/09/2012 which was processed u/s 143(1).



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

3.2 Thereafter, upon formation of belief that certain income escaped assessment in the hands of the assessee, the case was reopened by issuance of notice u/s 148 dated 27/08/2013 which was duly served on the assessee. The assessee, vide letter dated 03/12/2013 offered original return of income. The statutory notices u/s 143(2) & 142(1) were issued in due course of assessment proceedings.

3.3 The reassessment proceedings were triggered pursuant to receipt of certain information from DGIT (Investigation) that the assessee received accommodation purchase bills aggregating to Rs.188.85 Lacs from as many as 7 parties, the details of which have been extracted in para-4 of the quantum assessment order. A survey action was also conducted u/s 133A on the premises of the assessee on 13/02/2013. During the course of survey proceedings, statement of director of the assessee was recorded. The assessee failed to produce stock register during survey proceedings.

3.4 Accordingly, during the course of assessment proceedings, the assessee was directed to substantiate the purchase transactions. Although the assessee defended the purchases vide submissions dated 26/03/2015 but notices issued u/s 133(6) to confirm the transactions were returned back unserved. The assessee also failed to produce any of the suppliers to confirm the transactions. It was noted that the payments against these suppliers were long outstanding for which no plausible explanation could be furnished by the assessee. It also transpired that the assessee made VAT payments on behalf of the stated hawala parties.



3.5 The aforesaid factual matrix led Ld. AO to form a belief that the said purchases were bogus purchases brought into books to inflate the purchase thereby reducing the profits earned by the assessee. Therefore, these purchases were treated as non-genuine and added to the income of the assessee.

4.1 Before Ld. CIT(A), besides challenging quantum additions, the assessee took a legal ground challenging the validity of reassessment proceedings. The assessee, *inter-alia*, raised additional ground wherein it was asserted that recording of reasons for reopening before issuance of notice u/s 148 was mandatory requirement and a prerequisite to the assumption of jurisdiction for initiating reassessment proceedings against the assessee. Therefore, reassessment order was liable to be cancelled for want of compliance with mandatory provisions of Sec.148(2) of the Act. Since the legal ground challenged the very assumption of jurisdiction, Ld. CIT(A) proceeded to adjudicate the same at the threshold.

4.2 The assessee, in the context of additional ground, submitted that notice u/s 148 was dated 21/08/2013 whereas reasons were recorded on 27/08/2013 which run contrary to Section 148(2) of the Act. The provisions would read as under: -

*(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.*

As per the express provisions, it was incumbent on the part of Ld. AO to record the reasons before issuing any notice. Drawing attention to the factual matrix, it was alleged that reasons were recorded 6 days after issue of notice u/s 148 which would vitiate the reassessment



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

proceedings in terms of decision of Hon'ble Supreme Court rendered in **Y.Narayan Chetty V/s ITO (1959 35 ITR 388)** and **CIT V/s Kurban Hussaain Ibrahmiji Mithiborwala (1973 82 ITR 821)**. Reliance was also placed on the decision of this Tribunal in **ACIT V/s Blue Star Ltd. (40 ITR-Trib. 35)** and **ITO V/s Jolly Makers Pvt. Ltd. (20 ITJ 262)**. Therefore, it was submitted that AO did not comply with mandatory requirement of recording of reasons before issuance of notice. Therefore, the reassessment proceedings were liable to be quashed since the language of Sec. 148(2) does not permit recording of reasons between the date of issuance of notice and service of notice. Another plea raised was that validity of reopening of assessment could only be tested by the reasons recorded at the time of issuing the notice for reopening the assessment.

4.3 The additional ground raised by the assessee was subjected to remand proceedings and the copy of notice issued u/s 148 was forwarded to Ld. AO for comments. The Ld. AO appeared before Ld. CIT(A) with case records and vide remand report dated 27/09/2017 confirmed that the notice issued to the assessee u/s 148 vis-à-vis original notice found in the case record had similar handwriting. It was also reported that the date written in the notice of the assessee was written twice and could clearly be read as 21/08/2013. It was also confirmed that there was only one notice u/s 148 on records. However, Ld.AO submitted that the notices for AYs 2009-10 & 2010-11 were dispatched on 30/08/2013 and the assessee filed response vide letter dated 03/12/2013 wherein the date of notice u/s 148 was mentioned as



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

27/08/2013. It was also submitted that the assessee received notices u/s 148 on 30/08/2013 i.e. after the recording of reasons for reopening. Therefore, the said plea could not be accepted. Along with remand report, the copies of reasons record for AYs 2009-10 & 2010-11, copy of notice issued u/s 148, copy of speed post register showing the entry of dispatch, acknowledgement of notice served u/s 148 and assessee's reply dated 03/12/2013 were enclosed.

4.4 The assessee confronted the remand report vide submissions dated 02/10/2017, the relevant contents of which have already been reproduced in para-9 of the impugned order. The assessee maintained that the order was passed without assuming proper jurisdiction and therefore the order was liable to be quashed.

4.5 The Ld. CIT(A), after considering the material on record, concurred with assessee's submissions by observing as under: -

10. I have carefully considered the facts of the case, oral contentions and written submissions of the Ld. AR of the appellant and submission of the AO in the remand report and material available on record, it is seen that the additional ground raised by the appellant is purely a legal issue, and the appellant has also contended it to be so. The AO in the remand report has though objected to raising such issue at the appellate stage, however, his objection cannot be sustained in view of decision of Hon'ble Supreme Court in the case of NTPC Ltd, v/s. CIT. 229 ITR 383. Accordingly the additional ground raised is admitted for decision.

11. In this case two facts are not disputed either by the AO or the appellant, first being that the reasons for reopening assessment u/s 147 of the Act have been recorded on 27.08.2013 and second being that dispatch of the notice u/s 148 and receipt thereof by the appellant has been after 27.08.2013. The AO submitted that the notices were dispatched on 30.08.2013. The only disputed fact is regarding date of issue of the notice under section 148 of the Act. As per the appellant it is 21.08.2013. The AO in his remand report has submitted as under:

The copies of the notice u/s. 148 of I.T. Act 1961, filed by the assesses vide paper book have been provided for A.Y. 2009-10 & 2010-11 by your honour on 21.09.2017. The copies of the notices u/s.148 of I.T. Act, 1961 have been compared with the original notices u/s.148 of I.T. Act, 1961 issued by this office and it is seen that both the copies have similar handwriting. It is further noticed that the dates mentioned on the notices for A.Y.2009-10 & 2010-11 provided by the assesses to the CIT(Appeal) has dates written twice on the same notice. The date written in the notice of the assessee can be clearly read as 21.08.2013 for both the A.Yrs.



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

The case records have been verified and it is found that there is only one notice u/s.148 of IT. Act, 1961 as mentioned above available for each assessment years i.e. A.Y.2009-10 & 2010-11. I have not found any other notice beside the notices available on record.

From the above submissions of the AO in the remand report it is clear that there is only one notice issued to the appellant u/s 148 of the Act and that the notice which has been received and copy thereof which was submitted during the instant proceedings by the Ld. AR of the appellant bears dates of issue of notice written twice but the date can be clearly read as 21.08.2013. It appears that the date of notice written second time was for the reason that on the first date written, rubber stamp of the office address was put, which was making the legibility of the date mentioned there little unclear. The date written second time is clearly 21.08.2013. Copy of the notice submitted by the Ld. AR of the appellant is Annexed as **Annexure 1** forming part of this order. Copy of the notice submitted by the AO is Annexed as **Annexure 2** forming part of this order. From the perusal of these notices, one can make out that the actual date of issue of notice is 21.08.2013.

12. The AO in the remand report has mentioned that in response to the notice issued, the assessee has filed its reply vide letter dated 03.12.2013, wherein the assessee has mentioned the date of notice u/s 148 of the I. T. Act as 27.08.2013. In this regard it is observed that the letter dated 03/12/2013 has been written by one Mr. Chetan Jain C. A. which is typed letter on his letter head but for the dates which have been hand written. The date of the letter of Shri Chetan Jain is 03.12.2013 and date of notice u/s 148 referred there in on the copy submitted by the AO appears to be 27.08.2013. However the copy of same letter submitted by the appellant clearly shows the date as 21.08.2013. Copy of letter of Shri Chetan Jain C. A. submitted by the appellant is marked and annexed as **Annexure 3** of this order forming part of the order. Further copy of letter of Shri Chetan Jain C. A. submitted by the AO is marked and annexed as **Annexure 4** of this order forming part of the order. Further, the appellant has submitted copy of an order passed u/s 154 by the AO in the case of the appellant for A. Y. 2010-11 on 10.04.2017, where the questioned facts are pari material same. Incidentally this order u/s 154 has been passed by the current AO has submitted the above referred remand report. It is seen from the page 2 which starts with the fourth para (though paragraphs are not numbered) that it contains a mention that "Notice under section 148 was issued on 21/08/2013 and assessee replied on 03.12.2013 .....". Thus it can be seen that the AO himself in order u/s 154 passed as late as on 10.04.2017 mentions the date of issue of notice as 21.08.2013. Copy of the order passed by the AO u/s 154 dated 10.04.2017 is annexed with order as **Annexure 5** forming part of this order. In the facts as mentioned above, what comes out is that the notice issued u/s 148 bears the date as 21.08.2013.

13. The AO has further submitted that notice was received by the appellant on 30.08.2013, which is after date of recording the reasons for reopening and therefore the contention of the appellant that the AO failed to record reasons before issue of notice u/s 148 of the I. T. Act does not hold good. In this regard it is worthwhile to look at the provisions of section 148(2) of the Act, which is as under:

"The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

It can be seen from the provisions of section 148(2) of the Act that the AO has to record his reasons before issuing of notice under section 148 of the Act. In the facts of the case and as have been brought out above, there is little doubt that the notice issued to the assessee in this case is dated 21.08.2013 and the reasons have been undisputedly recorded on 27.08.2013. Therefore, to the extent of date mentioned on the notice as date of the notice being 21.08.2013, the same is before the date of recording the reasons by the AO. The contention of the AO that the notice u/s 148 was dispatched and served on the assessee after 27.08.2013 i.e. 30.08.2013 is not found to be of any consequence for the reason that



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

what the provision of section 148(2) mandates is recording of reason 'before issuing any notice under this section'. The provisions of section 148(2) do not speak of either date of dispatch or date of service of notice u/s 148 of the Act. Accordingly, what is important and is of consequence is 'date of issue of notice' which cannot precede 'recording of reasons' by the AO. Accordingly, in the facts and circumstances of the case and discussion, it is seen that there is clear violation of the provisions of section 148(2) of the Act. The appellant has further relied upon the decision of the Hon'ble Jurisdictional ITAT in the case of ACIT vs. Blue Star Ltd. 40 ITR (Trib) 0035 (Mumbai). In the facts of that case the reasons were recorded on 31.03.2010 and notice was dated 30.03.2010. The Hon'ble ITAT in such facts declared the impugned notice u/s 148 and, consequently, the assessment proceedings initiated thereby, as bad in law and the quashing of the assessment was consequently upheld. The case of the appellant clearly gets covered by the aforesaid decision of the Hon'ble ITAT.

14. The AO in his remand report has also contended that the issue raised by the appellant by way of filing this additional ground of appeal was not raised before the AO and that no objection in this regard was filed before the AO during the assessment proceedings and therefore the issue raised now in appellate proceedings should be rejected. Such submissions of the AO in the remand report cannot be accepted as the ground raised by the appellant now is purely a legal issue and after such issue was raised, the AO has been given an opportunity and the AO has filed his remand report which is being taken into consideration, while deciding the issue. Further the additional ground of appeal filed is purely legal and goes to the root of the matter, therefore, the ground has to be admitted in view of the decision of Hon'ble S. C. in the case of National Thermal Power Corporation Ltd. vs. CIT, 229 ITR 383.

15. The service of a valid notice for reassessment is a precondition for the validity of the proceedings and order of reassessment because in the absence of a valid notice there can be no valid reassessment. It is well settled by the Supreme Court in Y. Narayana Chetty vs. ITO (1959) 35 ITR 388 (SC) that the initiation of proceedings for reassessment must in every case be judged by reference to the notice for reassessment to determine the validity thereof so, however, that if the notice is found to be invalid the order of reassessment and proceedings conducted for the purpose would be illegal and void ab initio. This has also been reiterated by the Supreme Court in CIT vs. Kurban Hussain Ibrahimji Mithiborwala 1973 CTR (SC) 454: (1971) 82 ITR 821 (SC).

16. In the facts and circumstances of the case and discussion here in above, it is seen that the notice issued in this case being on 21.08.2013 was before the date of recording the reasons which in this case was on 27.08.2013 and therefore there is clear violation of the provisions of section 148(2) of the Act. Accordingly the notice 148 issued in this case is held to be invalid being issued in violation on the provision of section 148(2) of the Act. As in this case the notice for assuming jurisdiction to reassess the income has been held to be invalid, the consequent proceedings and consequent assessment order passed is also held to be without jurisdiction. This ground of appeal is accordingly allowed.

17. As the assessment order passed itself has been held to be without jurisdiction, the other grounds raised by the appellant become inconsequential and therefore are not being decided on merits. For statistical purposes, all other grounds are treated as dismissed.

18. In the result the appeal is partly allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us.



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

5. Upon careful consideration of impugned order as extracted above, it is quite evident that clear findings have been rendered by Ld. CIT(A) that date of issue of notice was 21/08/2013 whereas the reasons were recorded on 27/08/2013 which was in violation of express provisions of Sec.148(2). The logic is simple. The recording of reasons would be an essential pre-requisite before triggering reassessment proceedings against the assessee. The case could be re-opened only in case Ld. AO had reasons to believe that certain income escaped assessment in the hands of the assessee. The formation of that belief is *sine qua non* before reopening the case of the assessee and therefore the same should precede the issue of notice u/s 148. The notice u/s 148 could not predate the reasons recorded by Ld. AO since the same would defeat the jurisdictional requirement of satisfaction on the part of Ld. AO before reopening the case of the assessee. This jurisdictional requirement is mandatory one and the same could not be overcome by mere fact that the assessee did not object to the same or participated in the assessment proceedings. The case law of Tribunal in **ACIT V/s Blue Star Ltd. (6a Taxmann.com 248)** clearly supports the case of the assessee wherein reassessments proceedings were held to be bad under similar factual matrix. The Hon'ble Gujarat High Court in the case of **Rajoo Engineers Ltd. V/s DCIT (218 CTR 53)** quashed notice u/s 148 since mandatory requirements of recording of reasons before issuance of notice were not complied with.
6. Therefore, considering the facts of the case, no infirmity could be found in the impugned order.



ITA No.698/Mum/2018  
M/s. Lafit Lighting Private Limited  
Assessment Year :2009-10

7. The appeal stands dismissed.

*Order pronounced in the open court on 01<sup>st</sup> September, 2020.*

**Sd/-**  
**(Mahavir Singh)**

उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/09/2020  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.