

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

**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1863/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO-20(1)(5) R. No.121 1 <sup>st</sup> Floor Piramal Chambers Lalbaug Parel, Mumbai-400012.	<b>बनाम/</b> Vs.	Harsha D. Shah 3 <sup>rd</sup> Floor Vincent Chamber 165/A, Dr. B. A. Road, Dadar, Mumbai-400014.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQPS7212L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Rajeev Harit (DR)	
Assessee by:	Shri Nishit Gandhi	

सुनवाई की तारीख / Date of Hearing: 09/07/2020

घोषणा की तारीख /Date of Pronouncement: 07/08/2020

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 31.01.2019 passed by the Commissioner of Income Tax (Appeals) -32, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The revenue has raised the following grounds: -

"1) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the notice issued u/s 148 as invalid and bad in law without considering the fact that the AO has tangible material to believe that assessee's income chargeable to tax has escaped assessment.*



2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the notice issued u/s 148 as invalid and bad in law without appreciating the fact that the provisions of sec. 143(1)(i) was applicable to the case of Suman V ITO ward (1), Nagpur for the A.Y. 1999-2000, however the amended provisions u/s 143(1) is applicable to this case as the case pertain to A.Y.2014-15.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the notice issued u/s 148 as invalid and bad in law without appreciating the fact that this case is covered by the main provisions of the amended section 147.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in treating the notice issued u/s 148 as invalid and bad in law ignoring the ratio of decision of the Hon'ble Supreme Court held in the case of Assessment. Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 161 Taxman 316 (SC), wherein it was held that the AO has rightly invoked the provisions of Section 147 of the Act in view of the information received from DGIT(Inv.).*

3. The brief facts of the case are that the assessee filed its return of income on 26.03.2016 declaring total income to the tune of Rs.11,35,770/-. A notice u/s 148 of the I. T. Act, 1961 was issued and served upon the assessee on 29.09.2016. Notices u/s 143(2) & 142(1) of the I. T. Act, 1961 were issued and served upon the assessee. As per computation of income filed by the assessee, the assessee has income under the head of house property, capital gain (long term) and income from other sources. The assessee has earned long term capital gain of Rs.10,45,91,427/- on purchase and sale of shares of Global Infratech & Finance Ltd. (Formerly known as Asianlak Capital & Finance Ltd.). During the year under consideration, the assessee has claimed exempt u/s 10(38) of the Act. The claim of the assessee has declined. The total income of the assessee was assessed to the



tune of Rs.11,08,67,440/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“4.0 I have considered the AO’s order dated 27.12.2017, submission made by the appellant and the details filed. I find that there is no dispute that the return of income for A.Y.2014-15 was filed on 26.03.2016 declaring total income of Rs. 11,35,770/-. This has been noted by the AO in the reasons recorded for issue of notice u/s 148 of the Act on 28.09.2016-. It -is further noted that the notice u/s 148 was issued on 28.09.2016 and served upon the assessee on 29.09.2016 although the time was available to issue notice u/s 143(2) of the Act upto 30.09.2016, i.e. upto six months from the end of the financial year in which the return is furnished.*

*4.2.1 The action of the AO is found to be bad in law in view of the decision of the High Court of Bombay in the case of Smt. Suman Vs. ITO Ward-1(1) Nagpur dated July 12th 2017. In the said case, the following substantial question of law was admitted - "Whether AO can proceed with extraordinary power u/s 147, particularly when normal procedure of assessment u/s 143(3) are available which are otherwise within time?". In this case, the return was filed for A.Y. 1999-2000 on 14.12.1999 and return was processed on 07.01.2000 and notice u/s 148 was issued on 25.0 1.2000. In these facts, the Hon'ble High Court held - "Therefore, we are clear that in view of the provisions of section 143(l)(i) of the Act enforce at the relevant time no notice u/s 148 of the Act can be issued, till the period to issue notice u/s 143(2) of the Act has expired. The Hon'ble Court answered the substantial question of law in favour of*



*the appellant/assessee and against the respondent/ revenue. Similar view has been taken in other decisions cited by the appellant and noted in para. 4. 1. 1 above.*

*4.2.2 In view of the above discussion, the notice issued u/s 148 of the Act dated 28.09.2016 is held to be invalid and bad in law and the order u/s 143(3) r.w. s 147 of the Act dated 27.12.2017 is accordingly quashed. Ground No.1 is allowed.*

*5.0 Since, the notice dated 28.09.20 16 has been held to be invalid and bad in law and the assessment order dated 27.12.20 17 has been quashed in para 4.2.2 above, decision on the grounds no.2 to 12 of the appellant has become academic and are as such not adjudicated."*

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee on the basis of return of income for A.Y.2014-15 filed on 26.03.2016 declaring total income of Rs.11,35,770/-. The Action of the AO was illegal and contrary in view of the decision of the Hon'ble High Court of Bombay in the case of **Suman Vs. ITO Ward-1(1) Nagpur dated 12.07.2017**. Taking into account all the fact and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide all the issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 07/08/2020

Sd/-  
**(PRAMOD KUMAR)**  
VICE PRESIDENT  
मुंबई Mumbai; दिनांक Dated : 07/08/2020  
Vijay Pal Singh/Sr. PS

Sd/-/-  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER



ITA No. 1863/M/2019  
A.Y.2014-15

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**