

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1002/Hyd/2019		
Assessment Year:2008-09		
Syed Sarwar, Hyderabad. PAN: AITPS 2120 G	Vs.	Income Tax Officer, Ward-11(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mohd. Afzal	
Revenue by:	Shri K.N. Suresh Babu, DR	
Date of hearing:	07/10/2020	
Date of pronouncement:	12/10/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the ld. CIT (A)-9, Hyderabad in appeal No.10079/CIT(A)-9/Hyd/2018-19, dated 06th March, 2019 passed U/s. 144 r.w.s 147 and U/s. 250(6) of the Act for the AY 2008-09.

2. The assessee has raised six grounds in his appeal which are extracted herein below for reference:-

- "1. The order of the Ld. CIT (A) is against the law, weight of evidence and probabilities of case.*
- 2. The Ld. CIT (A) erred in confirming the order of the AO in the absence of proper service of notice U/s. 148 of the IT Act.*

3. *The Ld. CIT (A) erred in not affording an opportunity to file the Form No. 35 electronically, therefore, further erred in dismissing the appeal filed manually.*
4. *The Ld CIT (A) ought to have appreciated that the notice U/s. 148 is not served on assessee, therefore, the same is an invalid notice, therefore, erred in confirming the order of the AO which is an invalid order.*
5. *The Ld. CIT (A) ought to have appreciated that the second notice served by affixture is also an invalid notice as the assessment is not made on this notice therefore erred in confirming the assessment order.*
6. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”*

3. The assessee has raised the following additional grounds before the Tribunal vide his letter dated 05/10/2020.

- “1. *The Ld. AO erred in issuing notice U/s. 148 without having jurisdiction over the assessee as the assessee is filing his returns of income regularly in the ward 6(4), Hyderabad therefore notice U/s. 148 is without jurisdiction and invalid.*
2. *The Ld. AO erred in completing the assessment and issuing demand notice U/s. 156 without mentioning the PAN of the assessee, the demand notice without PAN is an invalid notice, therefore, order U/s. 144 r.w.s 147 is also invalid.*
3. *The Ld. AO ought to have appreciated that the subject property sold by the assessee is in irregular shape and therefore, defective as per Vashtu Shastra, therefore, the sale consideration of Rs. 6,50,000/- is reasonable.”*

4. At the outset, the Ld. AR submitted before us that the Ld. AO did not have the jurisdiction to invoke the provisions of section 147 and 148 of the Act in the case of the assessee. However, he conceded that these grounds are raised before the Tribunal for the first time. The Ld. AR further conceded that the matter may be remitted back to the file of the Ld. AO for considering the above stated additional grounds raised before the Tribunal for the first time. On the other hand, Ld. DR strongly

objected to the submissions of the Ld. AR and prayed for confirming the order of the Ld. AO.

5. After hearing both the parties and considering the rival submissions, I am of the view that the matter should be remitted back to the file of the Ld. AO to consider the additional grounds raised before the Tribunal for the first time with respect to the reopening of the assessment. It is also apparent that the assessee had not co-operated before the Ld.A.O and hence the Ld. A.O had passed an ex-parte order. Therefore, in the interest of justice, I remit the entire matter back to the file of the Ld. AO for de-novo consideration. At the same breath, I also hereby caution the assessee and his Representative to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

6. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 12th October, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 12th October, 2020.

OKK

Copy to:-

- 1) Syed Sarwar C/o. Mohd Afzal, Advocate, 402, Sherson's Residency, 11-5-465/- Criminal Court Road, Red Hills, Hyderabad-04.
- 2) Income Tax Officer, 11(3), Signature Towers, Kondapur, Hyderabad.
- 3) The CIT(A)-9, Hyderabad.
- 4) The Principal Commissioner of Income Tax-5, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File