

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A' LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.379 /Lkw/2020

A.Y. 2016-17

Vikram Chaudhary HUF M-12, Paper Mill Colony, Nishat Ganj, Lucknow 226001 PAN : AAJHV6378M	Vs.	ACIT-2, Lucknow
(Appellant)		(Respondent)

ITA No.380 /Lkw/2020

A.Y. 2016-17

Vikram Chaudhary, M-12, Paper Mill Colony, Nishat Ganj, Lucknow 226001 PAN : AEZPC7491L	Vs.	ACIT-2, Lucknow
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Ajay Kumar, DR
Date of hearing	13/09/2021
Date of pronouncement	20/10/2021

ORDER

PER T.S. KAPOOR, A.M.:

These are two appeals filed by the assessee against the order of Id. CIT(A)-1, Lucknow both dated 21.09.2020.

2. The assessee has taken various grounds of appeals, however, the crux of grounds of appeal is the observation of Id. CIT(A) by which he has observed that the Assessing Officer may take remedial action if the

Assessing Officer deems fit. Explaining the facts of the cases, the Id. AR of the assessee submitted that cases of the assessee were selected for limited scrutiny whereas the Assessing Officer had made the additions by resorting to complete scrutiny without necessary approval from the higher authorities and therefore the Id. CIT(A) allowed relief to the assessee. However, while allowing relief to the assessee, the Id. CIT(A) vide para 15 observed that since the assessee had failed to justify closing cash in hand declared in ITR, therefore, Assessing Officer if deemed fit may take remedial measures as per the provisions of the Act. The Id. AR submitted that when the Id. CIT(A) had allowed relief to the assessee the directions given by him were neither part of appeal filed by the assessee and nor Id. CIT(A) was entitled to issue such directions. Reliance in this respect was placed on the following case laws:

1. CIT Vs. Rakesh Goyal, ITA No. 189 of 2004, dtd. 11.03.2015 (All)
2. ITO vs. Kohinoor Foods Ltd., ITA No. 4014, 4015/Del/2012.
3. The Allahabad Bank Karamchari Cooperative Credit Society Ltd., vs. ITA No. 327/Lkw/2019 order dtd. 14.06.2019.
4. Bothra Financial Services vs. ITO, ITA No. 2023/Del/2019, dtd. 02.03.2020.
5. ITO vs. Ambitious Pens (P) Ltd. ITA No.4261/Del/2012, dtd. 12.10.2012.

3. In view of the aforesaid judgments and in view of the facts and circumstances , it was prayed that the such observations made by the Id. CIT(A) by expunged from the orders.

4. The Id. DR, on the other hand submitted that the Id. CIT(A) has given just passing observations and even in the absence of these observations the Assessing Officer can take any action as permitted

under the law, therefore, no substantial benefit will occur by expunging these observation of Id. CIT(A).

5. We have heard the rival parties and have gone through the material placed on record. It is undisputed fact that the cases of the assessee were selected for limited scrutiny for the purpose of verifying cash in hand as claimed in the income tax return. The Assessing Officer while completing the assessment did not make any addition on account of cash in hand but made addition of the total receipt declared by the assessee in the return of income. Ld. CIT(A) has deleted the additions by holding as under:

“13. In view of the above binding judgments it is held that the action of the Assessing Officer in making addition on issue not mentioned in the “Limited Scrutiny CASS Reasons” is not justified and the Assessing Officer is asked to delete the above additions. It is however clarified that the Assessing Officer did not travel beyond the scope of CASS Reasons while conducting inquiries, as evident from the assessment record, but erred in making addition of entire receipts of Rs.81,95,505/- u/s. 69A instead of restricting the addition to the cash in hand claimed by the appellant.”

5.1 However, while allowing relief to the assessee he further held vide para 15 as under:

“15. However, it is evident that the appellant has failed to justify the closing cash-in-hand claimed in the ITR as evident from the perusal of the assessment record, hence, the Assessing Officer if deemed fit may take remedial measures as per the provision of the Act.”

6. The grievance of the assessee is that once he has allowed relief to the assessee such further observations, which were not subject matter of appeal were not required to be made and reliance has been placed on a number of case laws. We find that the grievance of the assessee is

justified specially keeping in view the case laws relied on by the assessee. In 'Allahabad Bank Karamchari Cooperative Credit Society Ltd.' (Supra) vide order dated 14.06.2019 the Lucknow bench of the Tribunal vide para 11 to 17 expunged similar observation of Id CIT(A). For the sake of completeness para 11 to 17 of such order is reproduced below:

"11. Heard. The Id. CIT(A) has annulled the assessment order, holding the issuance of the notice under section 148 of the Act as bad in law for want of jurisdiction of the A.O to do so. The Department is not in appeal. Thus, the assessment stands annulled for all intents and purposes. The Id. CIT(A), while annulling the assessment, has directed the jurisdictional the A.O to execute remedial action under section 148 of the Act, since in his (the Id. CIT(A)'s) view, the assessee's income of Rs.26,38,000/- is chargeable to tax in view of the Supreme Court judgments in 'Citizen Co-operative Society' (supra) and 'Totgars Cooperative Sale Society Limited vs. Income Tax Officer' (supra). The question is whether this action of the Id. CIT(A) is correct as per law.

12. The assessment year in question is assessment year 2008-09. The order passed by the Id. CIT(A) is dated 2/5/2019. Section 150 of the Act relates to cases where assessment is in pursuance of an order on appeal, etc. According to section 150(1) of the Act, a notice under section 148 may be issued at any time for the purpose of making an assessment in consequence of or to give effect to any finding or direction contained in an order passed on appeal. Section 150(2) of the Act, however, provides that the provisions of section 150(1) of the Act shall not apply in any case where any such assessment, made in consequence of an appellate order relates to an assessment year in respect of which an assessment could not have been made at the time the order, which was the subject matter of the appeal, was made, by reason of any other provision limiting the time within which any action for assessment may be taken. Section 149 of the Act lays down the time limit for issuance of notice under section 148 of the Act. In accordance with section 149(1)(b) of the Act, if four years, but not more than six years have elapsed from the end of the relevant assessment year, and if the income chargeable to tax which has escaped assessment amounts to one lakh rupees or more for that year, notice under section 148 of the Act for the relevant assessment year shall be issued. In other words, in such a case, a notice under

section 148 of the Act can be issued upto a maximum period of six years from the end of the relevant assessment year.

13. In the present case, the impugned order was passed on 2/5/2019. The assessment year involved is assessment year 2008-09. Thus, in accordance with the provisions of section 149(1)(b) of the Act, notice under section 148 of the Act could have issued by the end of assessment year 2015-16. This period had already elapsed when the impugned order came to be passed. Therefore, the law not permitting initiation of proceedings under section 147 when the order under appeal was passed, the direction of the Id. CIT(A) is not in accordance with law. It is a non est direction.

14. It is well settled that an appellate authority cannot confer jurisdiction which the A.O does not have, e.g., as in the case of an assessment being barred by limitation. This has been held by the Hon'ble Gauhati High Court in the case of 'Bengal Tea And Fabrics Ltd. vs. ACIT', 223 ITR 729 (Gau).

15. Reference may also be had to 'CIT vs. Rameshwardas Ram Narain', 107 ITR 710 (All.) and 'CIT vs. Estate Of Late Sri N. Veeraswamy Chettiar', 49 ITR 13 (Mad.).

16. In 'CIT vs. Rameshwardas Ram Narain' (supra), the penalty was imposed by the ITO without obtaining the prior approval of the IAC. The Hon'ble Allahabad High Court held that the AAC was not justified in directing the ITO to proceed in accordance with law. In 'CIT vs. Estate Of Late Sri N. Veeraswamy Chettiar' (supra), the Hon'ble Madras High Court has held that conferment of jurisdiction on the ITO, which he is not lawfully seized of, is not within the scope of the appellate powers of the AAC.

17. In view of the above, finding the grievance of the assessee to be justified, the same is accepted. The direction in question, i.e., the direction issued by the Id. CIT(A) vide para 5.5 of the impugned order, as reproduced in para 7 of this order, is hereby ordered to be expunged."

7. Similarly we find that 'Hon'ble Allahabd High Court in the case of CIT vs. Rakesh Goyal' (Supra) on a writ filed by the assessee for expunging observations of the Tribunal held as under:

"31. By these writ petitions the assessee has made a request that the notice dated 18.6.2002 and 13.9.2002 may kindly be quashed.

32. In the appeal filed by the department the Tribunal has deleted the addition of Rs.42,15,000/- and Rs.20,00,000/- respectively by observing that "however, the A.O. is free to consider this view in the regular assessment proceedings." pursuant to observation the A.O. has issued notice under sections 148/147 for the assessment year 1996-97 in the hands of the each assessee.

33. After hearing both the parties and on perusal of record, it appears that when the addition is deleted on merit and we uphold the same, then there is no question to issue any further notice for re-opening of the assessment under section 148/147. Therefore, we expunge the above mentioned directions and quash the impugned notice for the assessment year under consideration. The assessee will get the relief, accordingly.

34. Consequently, both the writ petitions are allowed."

8. In view of above facts and circumstances and in view of judicial precedents we expunge para 15 of Id. CIT(A)'s order..

9. In the result both the appeals filed by the assessee are allowed.

(Order pronounced in the open court on 20/10/2021)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks -
Dtd. 20/10/2021

Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Assistant Registrar