

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 1081 &amp; 1082/Bang/2015</b>
<b>Assessment Years : 2006-07 &amp; 2008-09</b>

The Assistant Commissioner of Income Tax, Circle – 1 (1), Mysuru.	<b>Vs.</b>	Shri Mahalingam, No. 1161, 1 <sup>st</sup> Main, 1 <sup>st</sup> Cross, II Stage, Srirampura, Mysuru – 570 023. PAN: ADEPM1686R
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Shri Pradeep Kumar, CIT DR

Date of Hearing	:	21-04-2022
Date of Pronouncement	:	01-06-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been remanded by *Hon'ble High Court* vide order dated 21.12.2020 in ITA Nos. 377 & 378 of 2016 for AYs. 2007-08 and 2008-09 respectively. *Hon'ble High Court* while considering the appeals admitted the following questions of law.

*“Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the disallowance under [Section 40\(a\)\(ia\)](#) of the Act ought to be restricted to the amounts remaining outstanding, on which TDS was not made during the relevant previous year and not on the amounts which were actually paid during the previous year?”*

2. The above question of law is also identically admitted for A.Y. 2008-09.

After considering various submissions, the *Hon'ble High Court* observed and held as under:

*"5. We have considered the submissions made by learned counsel for the parties. From a perusal of the order passed by the Tribunal, it is evident that the issues which arose for consideration before the Tribunal have not been dealt with on merits and the Tribunal has dealt with the appeal on a technical issue. Therefore, in the peculiar fact situation of the case, we deem it appropriate to quash the order passed by the Tribunal. Therefore, the order dated 04.12.2015 passed by the Tribunal is set aside and the Tribunal is directed to adjudicate the appeal on the aforesaid three issues. Therefore, it is not necessary for us to answer the substantial questions of law framed in this appeal.*

*6. Needless to state that all other issues are kept open for both the parties, which could be canvassed before the Tribunal. In the result, the appeal is disposed of."*

3. At the time of arguing the appeals before this *Tribunal*, the Ld.AR submitted that, *Hon'ble Court* kept all the issues open to be decided by this *Tribunal*, apart from the issue that stands admitted, as reproduced hereinabove on merits. The Ld.AR thus submitted that, an order challenging the reopening of the assessment wherein the reasons recorded were not furnished to assessee also needs to be adjudicated as per the open remand by the *Hon'ble High Court*. He placed reliance on page 3 of the paper book wherein assessee is requesting the Ld.AO to provide a copy of the reasons recorded vide letter dated 11.03.2013 for both the years under consideration. Placing reliance on page 2 of the paper book, the Ld.AR submitted that, following were the notices issued u/s. 148 of the Act, intimating the assessment being reopened for A.Ys. 2006-07 and 2008-09 which is scanned and reproduced as under:

Received on 25/2/2013

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**NOTICE U/S 148 OF THE INCOME TAX ACT 1961**

Office of the Deputy Commissioner of Income-tax, Circle 2(1), No. 55/1, Shilpashree Building,  
Opp: Sterling Theatre, Industrial Suburb, Mysore 570 008 (Phone: 0821-2481253 & 2486499).

No: ADEPM1686 R/DCIT-2(1)/Mys/12-13

Dated: 18<sup>TH</sup> February 2013

To


Sri Mahalingam,  
No. 1161, 1<sup>st</sup> Main, 1<sup>st</sup> Cross,  
Srirampura, Mysore 57008

Whereas I have reason to believe that your income chargeable to tax for the assessment year 2006-07 has escaped assessment within the meaning of Section 147 of the Income tax Act.

I, therefore, propose to assess / reassess the income / recompute loss / depreciation allowance under section 147 for the said assessment year and hereby require you to deliver to me a return of your income in the prescribed form for the said assessment year within 7 days from the date of service of this notice.

*pro approval of the commissioner of Income tax, Mysore has been obtained for issue of notice u/s 147 & u/s 148* Yours faithfully,



  
(K. Gireesha)  
Deputy Commissioner of Income-tax,  
Circle-2(1), Mysore

Received on 25/2/2013

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**NOTICE U/S 148 OF THE INCOME TAX ACT 1961**

Office of the Deputy Commissioner of Income-tax, Circle 2(1), No. 55/1, Shilpashree Building,  
Opp: Sterling Theatre, Industrial Suburb, Mysore 570 008( Phone: 0821-2481253 & 2486499).

No. ADEPM1686 R/DCIT-2(1)/Mys/12-13

Dated: 18<sup>TH</sup> February 2013

To

Sri Mahalingam,  
No. 1161, 1<sup>st</sup> Main, 1<sup>st</sup> Cross,  
Srirampura, Mysore 57008

Whereas I have reason to believe that your income chargeable to tax for the assessment year 2008-09 has escaped assessment within the meaning of Section 147 of the Income tax Act.

I, therefore, propose to assess / reassess the income / recompute loss / depreciation allowance under section 147 for the said assessment year and hereby require you to deliver to me a return of your income in the prescribed form for the said assessment year within 7 days from the date of service of this notice.



Yours faithfully,

(K Gireesha)  
Deputy-Commissioner of Income-tax,  
Circle-2(1), Mysore

4. Ld.AR thus prayed for quashing of the assessment order by relying on the decision of *Hon'ble Karnataka High Court* in case of *Pr.CIT vs. V. Ramaiah* reported in (2019) 103 taxmann.com 201. He submitted that SLP against this decision has been dismissed

by the *Hon'ble Supreme Court* in case of *Pr.CIT vs. V. Ramaiah* reported in (2019) 103 *taxmann.com* 202.

5. On the contrary, the Ld.DR submitted that originally before this *Tribunal* appeals were filed by the revenue alone and against the order passed by this *Tribunal* on merits, the revenue preferred appeal before *Hon'ble High Court* wherein the question of law on merit alone was admitted. He submitted that *Hon'ble High Court* while passing the order of remand to this *Tribunal*, in para 6 kept all other issues open for both the parties.

The Ld.DR submitted that, based on the orders passed by *Hon'ble High Court*, this appeal is placed before this *Tribunal* for reconsideration of the issues alleged. Referring to the grounds of appeal filed by the revenue, the Ld.DR submitted that, the revenue had never challenged the issue of reopening, or the assessee had ever filed a cross objection before this *Tribunal* in respect of the same. He submitted that the assessee also had not filed any appeal u/s. 260A before *Hon'ble High Court* challenging the legal issues. He submitted that now at this juncture, when the *High Court* remanded the issue to this *Tribunal*, assessee is precluded from filing any application, alleging the legal issue argued as above. The assessee is therefore cannot argue the legal issue before this *Tribunal* at this juncture, as it has never been challenged by the assessee by way of either cross objection or cross appeal originally. He submitted that the assessee accepted the decision of Ld.CIT(A) by not challenging the issue before any of the forum subsequently.

6. We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that the objections raised by the revenue on the legal issue alleged by the Ld.AR before this *Tribunal* under the garb of the directions by *Hon'ble High Court* in para 6 cannot be ignored.

We note that in para 4, *Hon'ble High Court* records the arguments raised by the assessee, as having not dealt with by this *Tribunal* in its order dated 04.12.2015 which are as under:

*"4. On the other hand, learned Senior Counsel for the assessee submitted that the following issues, which arose for consideration before the Tribunal have not been dealt with by the Tribunal:- a. The payment of Stall fees is not in the nature of rent.*

*b. The proceedings are bad in law in view of the fact that the reasons recorded have not been furnished inspite of written requests made by the Respondent Assessee in letter dated 11.03.2013.*

*c. No proceedings u/s. 147/148 can be issued on the basis of audit objection."*

8. We note that *Hon'ble High Court* has been misled by the assessee that the legal issue in respect of reasons recorded having not furnished to assessee were in challenge before this *Tribunal*. As we verify this submissions of assessee before *Hon'ble High Court*. We find this statement to be false.

We have verified the records at the time of original proceedings. It is an admitted fact that before this *Tribunal*, it was only the Revenue who challenged the order passed by the Ld.CIT(A). It is very much clear from the order dated 04.12.2015, as well as, the grounds of appeal filed by the revenue before this *Tribunal* that, there was no legal issue that was raised by assessee in any manner whatsoever. There is no record of assessee having filed any cross objection or cross appeal, as has been rightly argued by the Ld.DR.

9. We note that, the assessee is trying to take advantage by misleading *Hon'ble High Court*, which is not consciously agreeable to us.

We have perused the grounds raised by the assessee before Ld.CIT(A), wherein, the legal issue was challenged by the assessee. On going through the order passed by Ld.CIT(A), we note that, this legal issue was not decided by the Ld.CIT(A) and Ld.CIT(A) decided the issue on merits alone, which was decided in favour of the assessee.

The assessee at that time had option to file either cross objection in the revenue's appeal or cross appeal against the order of the Ld.CIT(A) for not adjudicating the legal ground. This *Tribunal* while passing the order dated 04.12.2015 therefore only dealt with the issues on merits raised by the revenue.

10. Considering the fact that *Hon'ble High Court* in para 6 left all the issues kept open for both parties which has been canvassed by the Ld.AR, we are of the opinion that, the assessee at this point of time, after lapse of six years, cannot raise the issue challenging the reopening of the assessment for the years under consideration. Even Rule 27 cannot come to rescue of the assessee for the simple reason that, Rule 27 is available to the respondent, on an issue, which has been decided in favour of the respondent.

The issue of reopening has not been decided by the Ld.CIT(A) and was never raised by the assessee before this *Tribunal*. Therefore this issue cannot be decided by this *Tribunal* under any provisions of IT Rules at this point of time.

11. However in the interest of justice, we remand this issue to be decided by the Ld.CIT(A). The Ld.CIT(A) is directed to dispose off Ground No. 3 raised in Form 35 in accordance with law.

As we have remanded the legal issue to the Ld.CIT(A), we keep the issue on merits open at this stage.

**In the result, both the revenue's appeals are partly allowed for statistical purposes.**

Order pronounced in open court on 01<sup>st</sup> June, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 01<sup>st</sup> June, 2022.  
/MS /

**Copy to:**

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore