

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B-SMC" KOLKATA**

Before Shri Rajpal Yadav, Hon'ble Vice President (KZ) and
Shri Manish Borad, Hon'ble Accountant Member

आयकर अपील सं.य/
ITA No.248/Kol/2022
Assessment Year: 2012-13
And
आयकर अपील सं.य/
ITA No.249/Kol/2022
Assessment Year: 2013-14

Ravi Choudhury C/o Ravi R. Choudhary & Co.(L/H Lt.Sushila Choudhari), 7 th Fl., Room No. 25, Fortuna Tower, 23A N.S Road, Kolkata-700 001.	<u>बनाम</u> V/s.	I.T.O. Ward 36(2), Kolkata Aaykar Bhawan Poorva, 8 th Fl., 110 Shantipally, Kolkata-107.
PAN: ADLPC9393E		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		Shri S.K.Pransukha, Ld.AR
प्रत्यर्थी की ओर से/ By Respondent/Department		Shri Anindya Kumar Bandopadhyay, Addl. CIT/Ld.DR
सुनवाई की तारीख/Date of Hearing		19-07-2022
घोषणा की तारीख/ Date of Pronouncement		21-07 -2022

आदेश / O R D E R

PER MANISH BORAD, AM.

Both the appeals of the assessee for the assessment years 2012-13 & 2013-14 are directed against the order(s) both dt. 05-04-2022 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter, referred to as 'the Act'] by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A), National Faceless Appeal Centre(NFAC), Delhi, which are arisen from the assessment order(s) dt. 13-12-2018/14-12-2018 passed u/s. 143 r.w.s 147 of the Income-tax Act by the Assessing Officer (AO), I.T.O., ward 36(2), Kol.

2. The assessee has raised the following common grounds of appeal for the AYs 2012-13 & 2013-14 respectively:-

Legal issues:

A. For that on the facts and circumstances of the case the reopening of Assessment is bad in law and liable to be quashed

1. That CIT(A)-NFAC erred in confirming the assessment without appreciating that reopening is bad in law, invalid in as much as

a. That Reasons recorded for reopening are reasons to suspect and not reasons to believe;

b. That reopening of the assessment is on the basis of information from investigation wing which is only an opinion and not a tangible material which is sine qua non for reopening and reopening is on change of opinion;

2.

c. That Reasons recorded are not having live nexus and assessment framed is without application of mind;

d. That quantum of addition by A.O is larger than recorded in reasons which had been done by A.O by substituting the reasons.

2. That CIT (A) erred in not holding the notice u/s 148 as invalid ab initio as was served on dead person which was not legitimate.

Without prejudice to above

PRINCIPLES OF NATURAL JUSTICE

3. That CIT(A) failed to appreciate that Appellant was not confronted with any adverse material, statement of third party to rebut or cross examine by AO.

Without prejudice to above on merit

4. That CIT(A) erred in confirming the addition of Rs. 1725180/- on account of alleged bogus long term gain inspite of providing all documents to AO and making full disclosure in the return;

5. That the Appellant craves leave to add, delete and modify any of the grounds of appeal.”

3. At the outset, the Ld. Counsel for the assessee referring to the legal issue raised commonly in both the appeals stated that the same has been decided in assessee's own case for the assessment year 2011-12 by this Tribunal in ITA No. 1934/Kol/2019 dt. 18-03-2020. It was further submitted that the assessee namely late Smt. Sushila Choudhury

expired on 10-09-2012 and due intimation was given to the revenue authorities, but still notice u/s. 148 of the Act dt. 21-3-2018 was issued in the name of the deceased person i.e Smt. Sushila Choudhari.

4. Per contra the Ld. Departmental Representative supported the orders of the lower authorities, but could not controvert the fact that similar issue stands adjudicated by this Tribunal in assessee's own case for the A.Y 2011-12 (supra).

5. We have heard the rival submissions and perused the records placed before us. In the instant appeal for the AY 2012-13 the legal issue is commonly raised by the assessee for both the AYs claiming that re-opening of assessment is bad in law and liable to be quashed as notice u/s. 148 of the Act was issued in the name of deceased person i.e Smt. Sushila Choudhari. On perusal of assessment order, we note that the case was re-opened by issuance of notice u/s. 148 of the Act. The Id. AO was well aware that late Smt. Sushila Choudhary expired on 10-09-2012 and notice to be issued in the name of legal representative, Shri Ravi Choudhury, Legal Heir of deceased person i.e Late Smt. Sushila Choudhari. However, the notice u/s. 148 of the Act for the AY 2012-13 placed at page-1 of the paper book and similar type of notice for the AY 2013-14 is also issued in the name of late Smt. Sushila Choudhari.

6. Now this is an admitted fact that the case has been reopened by issuance of notice u/s. 148 in the name of deceased person i.e Smt. Sushila Choudhari. This Tribunal in assessee's own case for the AY 2011-12 (supra) has adjudicated the very same legal issue under identical facts quashed the assessment proceedings holding that the notice issued u/s. 148 of the Act was bad in law observing as follows:-

“7. After hearing of both the parties and on perusal of record, I note that the AO has reopened the assessment on the deceased person, Late. Sushila Choudhari, who expired on 10-09-2012, which fact had been intimated to the department and the department had responded to Shri Ravi Choudhari addressed as Legal Heir of Late. Sushila Choudhari, thereby acknowledged that Shri Ravi Choudhari is the legal heir of late Sushila Choudhari. However, it is noted that AO issued notice dt. 21-03-2018 issued u/s. 148 of the Act in the name of Smt.Sushila Choudhari proposing to reopen the assessment for the A.Y 2011-12 and thereafter made additions of Rs. 5,12,240/- u/s. 68 and Rs. 12,806/- u/s. 69C of the Act, totalling to Rs.5,25,046/- vide order passed u/s. 143(3) r.w.s 147 of the Act dt. 11-12-2018. This action of the AO stands confirmed by the Id. CIT(A) by impugned order. Even though it is noted that the reasons recorded by the AO on 13-03-2018 for reopening of assessment shows that the AO received investigation report from the Pr. DIT vide letter dt. 21-09-2015 about the assessee having sold shares to Blueprint Securities Ltd and had obtained capital gain (long term) of Rs. 3,05,800/-, which according to the Investigation Department was a rigged transaction. Based on this information, the AO has reopened without making any preliminary enquiry and recorded the reasons to re-open. The AO before re-opening the assessment should have satisfied the condition precedent required to usurp jurisdiction under section 147 of the Act that is he has the requisite reason to

believe escapement of income. It has to be kept in mind that 'reason to believe' postulates a foundation based on information and belief based on reason. Even if there is foundation based on information, there still must be reason warrant holding a belief that income chargeable to tax has escaped income. According to me, a bare reading of the reasons recorded to reopen reveals that there was non application of mind before reopening the assessment. Based on an information/investigation report, the AO has jumped into the conclusion that the assessee is involved in the activities of penny stock rigging etc. It has to be kept in mind that information from the Investigation Wing(Income-tax Department) can only trigger the reasons to suspect. Then the AO to make some preliminary inquiry and collect some material which would suggest the escapement of income. However, the AO based only on investigation report has recorded his satisfaction without conducting preliminary inquiry, which is nothing but the borrowed satisfaction from the report of Investigation Wing. The condition precedent to reopen an assessment that is 'reason to believe' should be that of the AO not that of the investigation wing, so in the absence of the condition precedent to reopen, the AO lacks jurisdiction to reopen the assessment. Moreover, even though the department was aware as on 09 Jan. 2014 itself about the demise of late Sushila Choudhari, the notice issued u/s. 148 in the name of deceased person is also bad in law. So I find that reason recorded by AO does not satisfy the jurisdictional requirement as per the settled law on the subject and therefore AO lacks jurisdiction to reopen and thereafter notice u/s. 148 is bad in law and therefore, the same cannot be sustained in the eyes of law and therefore, the same is hereby quashed.

8. *In the result, the appeal of assessee is allowed.*

7. On perusal of the above finding of this Tribunal, we find that the same is squarely applicable on the legal issue

raised before us in the instant appeals and the Id. DR also failed to rebut this fact by placing any contrary material on record. We, therefore, respectfully following the decision taken by this tribunal in assessee's own case for the AY 2011-12 hold that the Id.AO has not satisfied the jurisdiction requirement as per the settled law and, thus, AO lacks jurisdiction to re-open and therefore, notice u/s. 148 of the Act is bad in law and cannot sustain in the eyes of law. We, therefore, allow the legal issue raised by the assessee and quash the re-assessment proceedings u/s. 147 r.w.s 143(3) of the Act for the AYs 2012-13 and 2013-14 respectively. Thus, legal issue raised in both the appeals by the assessee for both the AYs 2012-13 and 2013-14 stands allowed.

8. As far as other grounds raised on merit in both the appeals dealing with the same is merely academic in nature, and, we therefore, refrain from adjudicating the same and thus dismiss these grounds as infructuous.

9. Remaining grounds are general in nature, which needs no adjudication.

10. In the result, both the appeals of the assessee are allowed.

The order pronounced in the open Court on 21 .07.2022

Sd/-

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT(KZ)

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :21-07-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Assessee: Ravi Choudhury
C/o Ravi R. Choudhary & Co.(L/H Lt.Sushila Choudhari),
7th Fl., Room No. 25, Fortuna Tower, 23A N.S Road,
Kolkata-700 001.
2. प्रत्यर्थी/Respondent/Department: I.T.O. Ward 36(2), Kolkata
Aaykar Bhawan Poorva, 8th Fl., 110 Shantipally, Kolkata-
107.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT,
Kolkata
- 6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata