

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "H" : DELHI ]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1046/Del/2021

निर्धारणवर्ष/Assessment Years: 2010-11

Shri Deepak Garg, House No. 43-44, Gandhi Mandi, Panipat Haryana - 132103.	बनाम Vs.	DCIT, Central Circle, Karnal.
PAN No. AIRPG6737B		
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by :	Shri Pulkit Saini, Advocate;
राजस्वकीओरसे / Department by :	Shri Sanjay Tripathi, Sr. D. R.

सुनवाईकीतारीख/ Date of hearing :	15/02/2023
उद्घोषणाकीतारीख/Pronouncement on :	04/05/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-3 [hereinafter referred

to CIT (Appeals)] Gurgaon, dated 30.06.2021 for assessment year 2010-11.

2. The assessee in its appeal has raised the following grounds of appeal:-

“1. Because the appellant denies its liability to be reassessed at total income of Rs. 24,11,720/- and accordingly denies its liability to pay tax, cess and interest demanded thereon.

2. Because having regard the facts and to circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the impugned reassessment order passed by Ld. AO u/s and that too without assuming 143(3)/147 jurisdiction as per law and without complying the mandatory conditions of section 147 to 151 of the Income Tax Act, 1961.

3. Because in any case and in any view of the matter, action of Ld. CIT (Appeals) in upholding the impugned order is bad in law and against the facts and circumstances of the case and beyond the scope and jurisdiction of the impugned proceedings.

4. Because having regard the facts and to circumstances of the case, Ld. CIT(A) has erred in not considering the facts that Ld. AO has not provided the certified copy of reasons recorded and thus impugned reopening and reassessment order are bad in law.

5. Because without prejudice to the above, Ld. CIT (Appeals) has erred in not considering the facts that the reasons claimed to be reproduced by the AO in his letter dated 16.11.2017 are factually incorrect and self-contradictory and not sustainable on various legal and factual grounds and objection in this regard was raised by the assessee vide its reply dated 07.12.2017 and Ld. AO has erred in not disposing these objections in accordance with law and thus the impugned reassessment order is bad in law on these grounds.

6. Because having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in

sustaining the impugned assessment order passed by Ld. AO without assuming jurisdiction as per law and without serving the mandatory notice u/s 143(2) of the Income Tax Act, 1961.

7. Because having regard to the facts and circumstances of the case, Ld. CIT(A), has erred in law and on facts in confirming the addition of Rs19,35,001/- on account of investment in jewellery by treating it as alleged investment from undisclosed source u/s 69, more so when no such jewellery was purchased/acquired by the assessee and there was no adverse material to prove the allegations made against the assessee and the impugned reassessment was made after recording incorrect facts and findings and without providing entire adverse material on record and without providing opportunity of cross examination and without providing adequate opportunity of being heard and in violation of principles of natural justice.

8. Because having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in Law and on facts that the copy of alleged invoice of jewellery on the basis of which addition was made not provided to the appellant during the proceeding. The said invoice was not found from the appellant's possession or premises and further it is also stated by appellant that he did not purchase any jewellery in A.Y. 2010-11.

9. Because having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in Law and on facts in not considering the fact that as per statement given by Sh. H.K. Goel, CA that invoice was sent to their office for calculation of capital gain. However, if a person acquired jewellery from unaccounted source then why the invoices would be sent to anyone for calculation of capital gain and why the appellant would pay tax on sale of unaccounted jewellery.

10. Because having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts that copy of statement given by Sh. H. K. Goel, CA was not provided to the appellant during the course of proceeding.

11. Because having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts that no

opportunity of cross examination of Sh. H. K. Goel, CA was provided by Ld. AO.

12. Because having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in Laws and Facts on relying the statement given by Sh. H. K. Goel, CA which is contradictory as first he named Sh. Sushil Garg as the owner of the alleged jewellery and later contended that the alleged invoice was related to Sh. Deepak Garg. Therefore, an addition made entirely on the basis of the statement of third party is not valid in the eyes of Law.

13. Because having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in Laws and Facts in the case of statement given by Sh. H.K. Goel, CA, that if part statement is true then the remaining part of the statement about purchase of jewellery is also true. The finding of Ld. CIT (A) is not correct due to the following reason:

i) That there is no guarantee that if part of a statement is true then the other part of the statement will also true. Equity and fair play is denied in this case.

ii) It is admitted by Sh. H. K. Goel that he provided accommodation entries in the various companies of the appellant and appellant had moved to Kar Vivad Samadhan Scheme, 1998 for settlement of issues relating to accommodation entries. However, in income tax every issue is a separate issue and should be examine on the merit of the case. And it should not be presumed that appellant had any intention to conceal income by not disclosing source of acquisition of alleged jewellery.

iii) That if appellant had availed the Kar Vivad Samadhan Scheme, 1998, it does not mean that he accepts the allegation that he concealed income. It is possible that he availed the scheme with a view to end the litigation and remain in peace

14. Because in any case and in any view of the matter, action of Ld. CIT (A) in confirming the addition of Rs.19,35,001/- on account of alleged investment from undisclosed source in jewellery u/s 69, is bad in law and against the facts and circumstances of the case.

15. Because in any case and in any view of the matter, action of Ld. CIT (A) in passing the impugned order and sustaining the addition made by Ld. AO is illegal void ab initio, contrary to law and facts, beyond jurisdiction and beyond the scope and jurisdiction of the impugned proceeding and without providing adequate opportunity of hearing and deserves to be quashed

16. Because having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in charging interest u/s 234B and 234D of the Income Tax Act, 1961.”

3. On a query from the bench as to whether ground No. 6 of appeal of the assessee regarding non-service of mandatory notice under section 143(2) of the Income Tax Act, 1961 (the Act) is pressed, the ld. Counsel submits that this ground is not pressed. In view of the submission of the ld. Counsel of the assessee, this ground is not pressed.

4. Briefly stated the facts are that the assessee for the assessment year under consideration i.e. assessment year 2010-11 filed his return of income on 26.07.2010 with Income Tax Officer, Ward-2, Panipat, declaring income of Rs.4,16,715/-. The assessment was completed under section 143(3) of the Act on 27.02.2012 by the Income Tax Officer, Ward-2, Panipat, determining the income of the assessee at Rs.4,76,720/-. Subsequently a search and seizure operation was carried out on 22.06.2016 in the case of M/s. Garg Group of cases and the assessee Shri Deepak Garg was also covered in search. A notice under section 148 of the Act dated 28.03.2017 was issued by the Income Tax Officer, Ward-1, Panipat, stating that income for the assessment year 2010-11 has escaped assessment within the

meaning of section 147 of the Act and the assessee was required to furnish return within 30 days. The assessee submitted that the return filed for the assessment year 2010-11 on 26.07.2010 may be treated as return filed in response to notice under section 148 of the Act. Re-assessment was completed under section 143(3) read with section 147 of the Act on 15.12.2017 determining the income of the assessee at Rs.24,11,721/-. While completing the re-assessment the Assessing Officer made addition of Rs.19,35,001/- under section 69 of the Act representing the undisclosed investment in jewellery.

5. On appeal the Id. CIT (Appeals) sustained the addition made by the Assessing Officer.

6. Before us the Id. Counsel for the assessee arguing ground No. 2 of grounds of appeal i.e. assumption of jurisdiction by the Assessing Officer in re-opening the assessment and passing the assessment order under section 143(3)/147 of the Act submits that notice issued under section 148 of the act is invalid and the re-opening of assessment under section 147 of the Act being without jurisdiction and bad in law the assessment order is void ab initio. The Id. Counsel submits that a search and seizure operation was carried in M/s Garg group of cases u/s 132 of the Act. Thereafter, during the course of survey u/s 133A of the Act at the premises of CA, H. K. Goel certain retail invoices regarding purchase of jewellery were found in the custody of the CA H. K. Goel. In his statement CA H.K. Goel stated that these invoices belong to Sh. Sushil Garg and his family. It is submitted that the assessee was not named in the statement. However, the DDIT (Inv) shared this

information about statement made by Sh. H. K. Goel with the Income Tax Officer, Ward 1, Panipat who based on this information initiated reassessment u/s 147 of the Act by issuing a notice u/s 148 of the Act dated 28.03.2017,

7. Ld. Counsel submitted that the jurisdiction over the assessee rested with Income Tax Officer, Ward 2, Panipat whereas the reassessment has been initiated by the Income Tax Officer, Ward 1, Panipat who did not have jurisdiction over the assessee. It is submitted that as per section 147 and 148 of the Act no assessment/reassessment u/s 147 of the Act can be made unless the jurisdictional Assessing Officer has served a notice on the assessee under section 148 of the Act and before issuing such notice he has recorded his satisfaction and reasons to believe that income pertaining to the relevant assessment year has escaped assessment. It is only thereafter he is empowered to assume the jurisdiction of the case for assessment of income. The failure to issue and serve such notice would lead to the inevitable result of invalidating the assessment proceedings. In the present case, the notice under section 148 was not issued by the jurisdictional Assessing Officer. The initiation of assessment proceedings u/s 147 fails on account of issue of a valid notice u/s 148 and assumption of jurisdiction by the jurisdictional Income Tax Officer, making the reassessment void ab initio. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Y. Narayana Chetty v ITO [1959] 35 ITR 388 (SC) wherein the Hon'ble Apex Court on the requirement of a valid notice u/s 148 of the Act corresponding to section 34 of the Indian Income-tax Act 1922, has held that:

"The notice prescribed by section 34 cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the Income-tax Officer would be justified in taking proceedings against him. If no notice is issued or if the notice issued is shown to be invalid then the validity of the proceedings taken by the Income-tax Officer without a notice or in pursuance of an invalid notice would be illegal and void. That is the view taken by the Bombay and Calcutta High Courts in Commissioner of Income-tax v Namsukh Molilal [1955] 27 ITR 54 and R.K. Das & Co. v Commissioner of Income-tax [1956] 30 ITR 439 and we think that that view is right"

CIT vs. Kurban Hussain Ibrahimji Mithiborwala [1971] 82 ITR 821 (SC)

8. Ld. Counsel without prejudice to the above it is submitted that despite several requests to the Id. AO during the assessment proceedings to provide copy of the sanctioned form of recorded reasons to believe that income has escaped assessment. The same had not been provided to the assessee. Therefore, the date of recording reasons to believe, the sanction received and comments made by PCIT cannot be verified. However the text of reasons to believe has been quoted in the show cause notice dated 16.11.2017.

9.1 It is submitted that the assessment year involved in this case is assessment year 2010-11 and the notice u/s 148 was issued on 28.03.2017 which is beyond a period of 4 years from the end of the relevant assessment year. The original assessment was completed u/s 143(3) and in the reasons recorded there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment. It is a

settled legal position, to initiate assessment proceedings u/s 147 in cases where assessment of income has already been made under section 143(3) and four years have expired from the end of relevant AY the AO must have reasons to believe based on a consideration of tangible material that income pertaining to the relevant assessment year has escaped assessment and there must be a specific allegation in the reasons recorded that the assessee has either failed to file the return or to disclose truly and fully all material facts. Therefore, it is respectfully submitted that since there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, such reassessment proceedings initiated are void ab initio in view of the first proviso to Section 147.

9.2 Reliance in this regard is placed upon the decision of the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. vs CIT [2009] 308 ITR 38 (Del); State Bank of Patiala Vs. CIT reported in [(2015) 375 ITR 109 (P & H)]; JSRS Udyog Ltd. Vs. ITO [313 ITR 321 (Del.)]; CIT Vs. Viniyas Finance & Investment (P) Ltd. [357 ITR 646 (Del)]. Therefore, it is respectfully submitted, in the instant case also, the issue of notice u/s 148 of the Act and consequent assessment proceedings u/s 147 of the Act deserve to be quashed.

10. The ld. DR strongly supported the orders of the authorities below. The ld. DR referring to page 1 of the assessment order submits that it is the finding of the Assessing Officer that there was a search in the case of the assessee on 22.06.2016 and the Dy.

Director of Income Tax (Investigation) forwarded information to Income Tax Officer, Ward-1, Panipat, who had jurisdiction over the case of the assessee at that time. Therefore, the re-assessment made is valid.

11. Heard rival contentions. On perusal of the assessment order we notice that search and seizure operation was carried on 22.06.2016 by the Dy. Director of Income Tax (Investigation) Panipat, in the case of Garg Group of cases including the assessee. It is the finding of the Assessing Officer that Dy. Director of Income Tax (Investigation) Panipat, has forwarded information to Income Tax Officer, Ward-1, Panipat, who is said to be the jurisdictional Assessing Officer at that time. However, we notice that the assessee filed return of income before Income Tax Officer, Ward-2, Panipat and the assessment was also completed under section 143(3) by Income Tax Officer, Ward-2, Panipat. However, a notice under section 148 of the Act was issued by Income Tax Officer, Ward-1, Panipat and there is nothing on record to suggest that the jurisdiction over the assessee was transferred by way of an order under section 127 of the Act transferring the case to Income Tax Officer, Ward-1, Panipat from Income Tax Officer, Ward-2, Panipat. It is further noticed from the assessment order that assessment jurisdiction over the assessee has been transferred to Dy. Commissioner of Income Tax (DCIT) Central Circle, Karnal by Pr. CIT, Karnal, vide F. No. Pr.CIT/KNL/Tech/Juris/2017-18/2672 dated 24-25/10/2017. We further observe that the present re-assessment under section 143(3) read with section 147 of the Act was completed by the DCIT, Central Circle, Karnal. The record before

us suggests that the jurisdiction over the assessee rests with Income Tax Officer, Ward-2, Panipat till the date of completion of the original assessment under section 143(3) of the Act. Since nothing is placed before us on transfer of jurisdiction to IncomeTax Officer, Ward-1, Panipat, issue of notice under section 148 of the Act is bad in law and consequently the re-assessment made under section 143(3) read with section 147 of the Act is void ab initio.

12. The Delhi Bench of the Tribunal considered similar situation in the case of Hari Dass Singla Vs. ITO in ITA. No. 958/Del/2021 dated 23.06.2022 wherein the Tribunal following the co-ordinate bench decision in the case of Mukesh Kumar Vs. ITO in ITA. No. 2358/Del/2012 dated 12.06.2015 decided the issue in favour of the assessee holding that notice issued by the Assessing Officer being without jurisdiction has no legal sanctity observing as under:-

“5. We perused the relevant material on record. In the present case the notice u/s 148 was issued on 2nd March 2009 by ITO Ward-26(4) New Delhi. After receipt of notice the appellant had responded through its authorized Representative and submitted the copy of the return filed under provisions of section 139. After noticing that the jurisdiction over the appellant is vested with ITO Ward-26(3), the file was transferred by ITO Ward-26(4) to ITO Ward -26(3). The ITO Ward-26(3), New Delhi had proceeded with the framing assessment without issuing fresh notice u/s 148. It means that ITO Ward-26(4), New Delhi had no valid jurisdiction over the appellant, at the time of issuing notice u/s 148 of the Act. In such circumstances, it was held by the Hon’ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid. The notice under Section 148 of the Act

issued by the Income Tax Officer, Ward-26(4) is non est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act. Now, the question is whether the action of the Income Tax Officer, Ward-26(3) New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Ward-26(4) who had no valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court in the cases of Y. Narayana Chetty Vs. ITO 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.

6. Since we have quashed the reassessment proceedings, we find it not necessary to adjudicate the grounds relating to the merits of the addition. “

13. In the case of CIT Vs. M.I. Builders Pvt. Ltd. (supra) the Hon'ble Allahabad High Court held as under:-

“Having heard learned counsel for the parties and perusing the records, 17 we are of the view that on March 29, 2004, when the notice under section 148(1) of the Act was issued, ACIT, Range-IV, Lucknow, have no jurisdiction over the assessee on the date of issuance of such notice as the jurisdiction over the assessee was transferred to the Additional CIT, Range-I, Lucknow, vide order dated August 1, 2001, passed under section 120 of the Act by the CCIT, Lucknow. Therefore, it cannot be situation where two Assessing Officer would have simultaneous

jurisdiction over the assessee, one being Additional CIT, Range-I Lucknow, and other being ACIT, Range-IV, Lucknow. In these backgrounds, the Tribunal has rightly held that the issuance of notice under section 148(1) of the Act by the ACIT, Range-IV, Lucknow, was without jurisdiction.“

14. In view of the above we hold that the notice issued under section 148 of the Act by the Income Tax Officer, Ward-1, Panipat, since had no jurisdiction over the assessee when the notice was issued the notice is bad in law and consequently the re-assessment framed under section 143(3) r.w.s. 147 of the Act pursuant to such notice by the DCIT, Central Circle, Karnal, is void ab initio. Therefore, the re-assessment order passed under section 143(3) read with section 147 of the Act is hereby quashed.

15. As we have decided the issue in favour of the assessee on the jurisdictional ground, all other grounds which were raised on various issues on merits are not gone into at this stage as they render only academic.

16. In the result appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on : 04/05/2023.

Sd/-  
( G. S. PANNU )  
PRESIDENT

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 04/05/2023.

\*MEHTA\*

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

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI/  
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	02.05.2023
Date on which the typed draft is placed before the dictating Member	03.05.2023
Date on which the typed draft is placed before the Other Member	04.05.2023
Date on which the approved draft comes to the Sr. PS/PS	04.05.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	04.05.2023
Date on which the fair order comes back to the Sr. PS/PS	04.05.2023
Date on which the final order is uploaded on the website of ITAT	04.05.2023

Date on which the file goes to the Bench Clerk	04.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	