

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1161/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 2010-11

Smt. K. Suganthi,
16/3, Seethammal Colony,
1st Main Road,
Alwarpet,
Chennai – 600 018.

The ACIT,
v. Circle 1,
Salem.

PAN: AHXPS 4310D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Smt. T.V. Muthu Abirami, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2023

घोषणा की तारीख/Date of Pronouncement

: 30.08.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Salem vide Appeal No.133/2017-18 dated 20.02.2019. The assessment was framed by the ACIT, Circle-1, Salem for the assessment years 2010-11 u/s.

143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2017.

2. At the outset, the Id.counsel for the assessee drew our attention to the additional grounds raised in regard to assumption of jurisdiction for reopening of assessment and issuance of notice u/s.148 of the Act and consequently, assessment order passed u/s.143(3) r.w.s. 147 of the Act is without jurisdiction, bad in law and illegal. For this, assessee has raised the following issue:- notice issued u/s.148 of the Act by the AO other than the jurisdictional AO on the assessee and subsequent transfer of assessee's case without following the provisions of section 147 of the Act. For this, assessee has raised following ground Nos.2.1 to 2.4 :-

“2.1 The transfer of appellant's case from Circle 1(1), Salem to Non-Corporate Circle 10(1), Chennai on 08.01.2010 and the subsequent transfer from Non-Corporate Circle 10(1), Chennai to Circle 1(1), Salem on 12.12.2017 is bad in law, as the said transfers does not follow the provisions of section 127. As a consequence, the reassessment order passed u/s.143(3) r.w.s.147 is without jurisdiction, bad in law and illegal.

2.2 When the appellant's address as per PAN is in Salem and when the appellant's jurisdictional Assessing Officer is ACIT, Circle 1, Salem, the notice u/s.148 dated 31.03.2017 issued by the ACIT, Non-Corporate Circle 10(1), Chennai lacks jurisdiction and is bad in law. As a consequence, the reassessment order passed u/s.143(3) r.w.s. 147 is bad in law and illegal.

2.3 The order of reassessment passed u/s.143(3) r.w.s 147 by the ACIT, Circle-1, Salem is bad in law, illegal and lacks jurisdiction, since the same is passed without issuing notice u/s.148. The reassessment order is passed solely on the basis of notice u/s.148 issued by a non-jurisdictional Officer.

2.4 The jurisdictional Assessing Officer, ACIT, Circle-1, Salem, having admitted in the assessment order that the jurisdiction vests with him, since the files were sent to him on 11.09.2017, failed to issue notice u/s.148 and consequently the reassessment order passed by him is bad in law, illegal and lacks jurisdiction.

3. Brief facts are that the assessee is a non filer and no income-tax returns were filed ever. But the assessee obtained PAN and the Revenue has provided the jurisdictional history details of assessee's PAN as under:-

Sl. No.	PAN	Transfer From	Transfer To	Transfer Order No.	Transfer Date
1	AHXPS4310D	Non Corp Circle 10(1) CHE	Circle 1(1), Salem	20000417749	12/12/2017
2	AHXPS4310D	Circle 1(1), Salem	Non Corp Circle 10(1) CHE	104001166870	08/01/2010
3	AHXPS4310D	Old-Ward 1(4), Salem	Circle 1(1), Salem	103400001217	09/12/2002
4	AHXPS4310D	Old W I(4), SLM	Old-Ward 1(4), Salem	103400000048	17/08/2000

The AO i.e, the ACIT, Non-Corporate Circle 10(1) received information that the assessee has traded in shares during the financial year 2009-10 relevant to this assessment year 2010-11 and had a total turnover of both purchase and sales amounting to Rs.17,26,43,833/-. Accordingly, the ACIT, Non-Corporate Circle

10(1), Chennai recorded the reasons for reopening of assessment, dated 31.03.2017 and the relevant reasons recorded by the AO and supplied to the assessee reads as under:-

“Reasons for re-opening the assessment for A.Y.2010-11.

As verified from the records the assessee has not filed his return of income for A.Y. 2010-11. Further information available on record, is that the assessee has traded in shares during the year and had a total turn-over in both purchase/sales amounting to Rs.17,26,43,833/-.

In light of the above, it is clear that though the assessee had income chargeable to tax for A.Y.2010-11 no ROI has been filed by him.

In light of the above, I therefore have reason to believe that the income chargeable to tax has escaped assessment and it is a fit case for re-opening of the assessment.”

Accordingly, notice u/s.148 of the Act dated 31.03.2017 was issued and served on the assessee on 03.04.2017. As per the assessment order, the case records were transferred to ACIT,Circle-1, Salem on 11.09.2017 and this fact is recorded by the AO in his assessment passed by ACIT, Circle-1, Salem vide order passed vide para 1.2 as under:-

“1.2 The case records in the above case is received on transfer from Assistant Commissioner of Income-tax, Non-Corporate Circle-10(1), Chennai on 11/09/2017 as the Jurisdiction over the case vests with this office.”

As there was no response to the notice u/s.148 of the Act, the assessee was again given opportunity by ACIT, Circle-1, Salem vide

letter dated 12.09.2017 to file her return of income for the relevant assessment year 2010-11. According to AO, the letter was served on the assessee on 14.09.2017 and there was no response. Again one more letter was issued for filing of return of income vide dated 27.09.2017 but no response. Hence, the AO i.e., ACIT, Circle-1, Salem proceeded to complete the assessment ex-parte u/s.144 of the Act on the basis of information available and data collected. Accordingly, the assessment was completed by the ACIT, Circle-1, Salem u/s.143(3) r.w.s. 147 of the Act vide order dated 27.12.2017 for the relevant assessment year 2010-11. The assessee not challenged the reopening before CIT(A) but before Tribunal for the first time, the assessee challenged the reopening vide Ground No.1 to 3 i.e., regular grounds raised. But now, the assessee has raised the above issue of jurisdiction by wrong AO or notice u/s.148 of the Act by the AO who has no jurisdiction and consequent transfer of assessee's case vide additional Ground Nos.2.1 to 2.4 as reproduced above.

4. The assessee before us prayed for admission of additional grounds and adjudication of the same. The Id.counsel stated failure to raise the above jurisdictional ground was due to the fact that the

documents related to the grounds of appeal were available with the assessee only after filing of appeal before this Tribunal. It was contended by Id.counsel that these grounds are purely legal and jurisdiction in nature and goes to the root of the matter and further, facts relating to the above additional grounds are very much available on record of the AO and hence, no new fact needs to be investigated. Therefore, she requested that the additional grounds be admitted and adjudicated in the light of the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., vs. CIT, (1998) 229 ITR 383. When these admissibility of additional grounds was confronted to Id.Senior DR, he contested admissibility of additional grounds but could not counter or contradict the above fact situation that these are purely jurisdictional and legal grounds and facts related to these are very much available on record. Hence, we admit these grounds and adjudicate upon.

5. Brief facts relating to the above issue are that admittedly reasons were recorded by the ACIT, Non-Corporate Circle 10(1), Chennai and notice u/s.148 of the Act was issued dated 31.03.2017 by the Chennai AO. Admittedly, the assessee is having PAN number with Circle 1(1), Salem from 17.08.2000 but the same was

transferred to Non-Corporate Circle 10(1), Chennai on 08.01.2010. Again this PAN data was transferred from Non-Corporate Circle 10(1), Chennai to Circle 1(1), Salem vide dated 12.12.2017. We noted that the AO i.e., ACIT, Circle 1(1), Salem admitted that jurisdiction over this case vests with his office and the above case records is received on transfer from ACIT, Non-Corporate Circle 10(1), Chennai on 11.09.2017. During the course of hearing before us, the Department has filed a report/comments on the additional ground and the relevant facts given by the Department reads as under:-

2.1 Assessee did not file the original return of income for the A.Y. 2010-11, despite having share transaction of Rs.17,26,43,833/- with National Stock Exchange.

3.1 Notice u/s. 148 of the I.T.Act, 1961 dated 31.03.2017 issued by the ACIT, Non-Corporate Circle-10(1), Chennai was received by the assessee on 03.04.2017. Thus, the assessee has not objected for the notice u/s. 148 and agreed for the assessment proceedings u/s. 147 for the A. Y.2010-11.

4.1 Vide notice dated 12.09.2017, assessee was informed that there is change in jurisdiction and afforded opportunity to file the return of income. Assessee has received this notice on 14.09.2017. Assessee has not raised any objection for this notice also. Hence, it is concluded that the assessee does not have any objection for the assessment proceedings u/s. 147.

5.1 Vide notice dated 27.09.2017, another opportunity was afforded to the assessee to file the return of income in response to notice u/s. 148. The notice was duly served on the assessee on 29.09.2017. Assessee not filed any objection for this notice also.

6.1 Notice u/s. 142(1) of the I.T.Act, 1961 was issued to the assessee on 20.11.2017 which was duly served on the assessee on 22.11.2017. Assessee filed return of income in response to notice u/s. 148 on 28.11.2017 and subsequently, filed revised return on 14.12.2017. In response to notice u/s.142(1), assessee filed reply on 29.11.2017. In the reply, assessee has not objected for the proposed assessment proceedings u/s. 147 and furnished reply for the details

called for in the notice dated 20.11.2017. Thus, the assessee agreed for the assessment proceedings u/s.147 and complied with reassessment proceedings.

7.1 Further., notice u/s. 142(1) dated 30.11.2017 was issued and served on the assessee on 01.12.2017. In response, assessee's Authorised Representative Shri K. Swaminathan appeared on 07. 12.2017 and filed details called for. The case was discussed and adjourned to 11.12.2017. Subsequently, assessee filed reply on 14.12.2017 and 22.12.2017 in response to the queries raised during the personal hearing.

8.1 Accordingly, assessment order u/s.143(3) I.W.s. 147 of the I.T.Act, 1961 was passed on 27.12.2017 determining the total income at Rs.36,72,090/- thereby raising a demand of Rs.26,69,200/-.

9.1 In view of the above, assessee at any stage (i) at the time of issue of notice u/s.148. (ii) issue of notices u/s.142(1) and during the course of assessment proceedings did not raise any objection with regard to jurisdiction for issue of notice u/s.148 and assessment proceedings. On contrary, assessee assessee cooperated in the completion of assessment proceedings and never raised the jurisdictional issue.

6. Admittedly, the assessee is a resident of Chennai with having address as per return filed by the assessee in response to notice u/s.142(1) of the Act dated 22.11.2017 as No.73, Londons Road, Kilpauk, Chennai – 600 010. This fact is admitted by Revenue in its comments submitted before the Bench vide letter dated 05.06.2023. Whether in such circumstances notice issued u/s.148 of the Act by the ACIT, Non-Corporate Circle 10(1), Chennai and assessment framed by ACIT, Circle (1), Salem is a valid jurisdiction assumed by AO or not. The Id.counsel for the assessee relied on the decision of Hon'ble Madras High Court in the case of Charu K Bagadia vs. ACIT in writ appeal No.2493 of 2021, wherein the Hon'ble High Court has incorporated the provisions of section 148 of the Act and finally held that the AO should record the reasons for

reopening the assessment u/s.148 of the Act has no jurisdiction over the assessee to issue notice u/s.148 of the Act and although the files pertaining to the reassessment proceedings of the assessee were transferred, the second AO has also no authority to continue the assessment proceedings u/s.129 of the Act and hence, notice u/s.148 of the Act was held to be invalid. The Hon'ble High Court considered the entire legal position and finally held in para 14 to 16 as under:-

14. Applying the provisions of law as well as the legal proposition laid down in the aforesaid decisions to the facts of the present case, wherein, admittedly, the appellant is an assessee on the file of the second respondent and hence, the first respondent has no jurisdiction over the appellant to issue notice under section 148 for reopening the assessment for the relevant assessment year, after recording the reasons to believe that some of the income of the appellant has escaped assessment, this court is of the opinion that the notice dated 28.03.2018 issued by the first respondent under section 148 of the Act, without jurisdiction, lacks legal sanctity and hence, the same is held to be invalid. As a sequitur, the continuation of the reassessment proceedings by the second respondent, who is the jurisdictional assessing officer, without issuing any fresh notice as contemplated under section 148, but issuing notice dated 14.12.2018 under section 143(2) r/w 129 of the Act, which applies only for change in incumbent within the same jurisdiction, is also held to be invalid.

15. Pertinently, it is to be pointed out at this stage that if an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside the order passed by the authority or forum having no jurisdiction [Refer: State of Gujarat v. Rajesh Kumar Chimanlal Barot and another, AIR 1996 SC 2664]. Therefore, the notice issued by the first respondent under section 148 as well as the consequential notice issued by the second respondent under section 143(2) r/w 129, cannot be allowed to be sustained. However,

the learned Judge erred in directing the second respondent to continue the reassessment proceedings and granting liberty to the appellant to file objections and avail the opportunity of personal hearing to be provided, by the order impugned herein, which is liable to be set aside, in the considered view of this court.

16. As already held by this court, the first respondent, who recorded the reasons for reopening the assessment under section 148(2), has no jurisdiction over the appellant, to issue notice dated 28.03.2018 under section 148(1). Though the files pertaining to the reassessment proceedings of the appellant were transferred, the second respondent has no authority to continue the reassessment proceedings under section 129 and hence, the notice dated 14.12.2018 issued by him is also held to be invalid. The invalid notices so issued by the respondents vitiate the entire reassessment proceedings initiated against the appellant. Admittedly, no notice under section 148 was issued by the second respondent, who is the jurisdictional assessing officer, for reassessment of the return of income of the appellant, within the time frame stipulated under the Act. In this case, the limitation period of six years for reopening the assessment for the year 2011~12 under section 147 of the Act, came to an end on 31.03.2018. In such circumstances, there is no requirement for this court to go into the other issue based on the factual matrix projected by the appellant i.e., whether the appellant has disclosed fully and truly all the material particulars that are necessary for assessment for the relevant assessment year.

7. On the other hand, the Id.Senior DR heavily relied on the decision of Hon'ble Delhi High Court in the case of Abhishek Jain vs. ITO, [2018] 405 ITR 1(Delhi).

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the ACIT, Non-Corporate Circle-10(1), Chennai issued notice u/s.148 of the Act (copy of

which is available in the assessee's paper-book at page 4) dated 31.03.2017 and the relevant address of noticee u/s.148 of the Act reads as under:-

*Smt. Karunanithi Suganthi,
No.327/1-C, Brindavan Road,
AVK Nagar,
Salem – 636 004.*

Subsequently, this file was transferred as admitted by AO i.e., ACIT, Circle-1, Salem that the case records in the above case was transferred from ACIT, Non-Corporate Circle 10(1), Chennai on 11.09.2017 as the jurisdiction over this case vests with Salem office of Income-tax Department. It means that the jurisdiction vests with Salem office and even PAN number as reported by the Income-tax Department vest with the jurisdiction of Income-tax Department at Salem. Primary issue of assumption of jurisdiction for issuance of notice u/s.148 of the Act dated 31.03.2017 by the ACIT, Non-Corporate Circle 10(1), Chennai is without any basis and he has issued this notice for reopening the assessment of the assessee at the address given in the notice at Salem. It means that the notice issued u/s.148 of the Act which is primary notice for starting reassessment proceedings is bad in law and hence, consequently,

the entire reassessment proceedings has become bad and without jurisdiction. Hence, we quash the reopening and consequently reassessment order has also become bad and quashed. As regards to other issues of jurisdiction and on merits, we need not go into, because we have already quashed the reopening of assessment and hence, all other have become academic. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th August, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 30th August, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |