

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.18/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT Non-Corporate Circle-8(1) Chennai.	बनाम/ Vs.	M/s. Thulasi & Others 32, (Old No.43), 2 nd floor, K.Bharathidasan Salai, SIET College Road Alwarpet, Chennai-600 018.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAOFM-9784-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri D. Hema Bhupal (JCIT)- Ld. DR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri S. Sridhar (Advocate)-Ld.AR

सुनवाईकी तारीख/ Date of Hearing	:	21-06-2023
घोषणाकी तारीख / Date of Pronouncement	:	08-09-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-9, Chennai [CIT(A)] dated 31-07-2020 in the matter of an assessment framed by Ld. Deputy Commissioner of Income Tax, Non-corporate Circle 8(1), Chennai. [AO] u/s.144 r.w.s. 147 of the Act on 02-12-2019. The grounds taken by the revenue read as under:-

1. The order of the CIT(A) is contrary to law and facts of the case.
2. The CIT(A) erred in annulling the reassessment u/s.144 r.w.s 147 made by the AO for the instant Assessment Year .

2.1 The CIT(A) erred in holding that the action of the AO in assuming jurisdiction and in reopening the assessment and the consequent reassessment made u/s.144 r.w.s.147 of the Act is held to be without valid jurisdiction.

2.2. The CIT(A) failed to note that as per sub-section (3) of Section 124, the assessee is not entitled to question the jurisdiction of the AO, since he has not raised the question within the time allowed for filing of return u/s.148 or within the period allowed for reply to show cause u/s.144. Therefore, the determination of the question of territorial jurisdiction of the AO in appeal is not legal.

2.3. Having regard to the Hon'ble Calcutta High Court's decision in the case of Elite Pharmaceuticals Vs. ITO (2016) 242 Taxman 345, where in it was held that since the objection to territorial jurisdiction of AO was not raised by assessee within 30 days even from the date of issuance of Notice under section 148, assessee had lost right to raise objection by efflux of time, the CIT(A) ought to have upheld the action of the AO in reopening the assessment.

2.4. The CIT(A) failed to note that in the instant case, Notice u/s.148 was issued on 31.03.2018 and the assessee raised objection to territorial jurisdiction during the appellate proceedings only and hence the assessee has no right to raise objection on territorial jurisdiction by efflux of time.

2.5. The CIT(A) erred in ignoring the fact that the assessee had been taking contradictory stand before the Income tax authorities regarding its address. Previously it was claimed that its address was Porur and not Alwarpet address which it claims now. However, in the Form 35 filed by the assessee for the instant assessment year address was mentioned as Porur. From the record it emerges that the assessee has been taking contradictory stand regarding its address.

2.6. The CIT(A) ought to have verified the correctness of the assessee's claim towards its address or else the CIT(A) ought to have provided an opportunity to the AO to verify the same since the objection regarding territorial jurisdiction was not at all raised by the assessee during the course of reassessment proceedings.

2. The Registry has noted delay of 98 days in the appeal which stand condoned considering lockdown situation arising out of Covid-19 Pandemic.

3. The Ld. Sr. DR advanced arguments supporting the case of the revenue and cited various judicial decisions to support the assessment framed by Ld. AO. The Ld. AR controverted the same and referred to the findings rendered in the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as follows.

Assessment Proceedings

4.1 The assessee being resident firm was assessed in scrutiny assessment u/s 143(3). However, the case was reopened on the ground that the assessee firm was taken over by M/s Thulasi Mohan Construction Private Limited on 01-11-2010. The assessee received sale consideration of Rs.2995.60 Lacs and the transaction did not fall within the purview of Sec.47(xiii). Since the assessee did not admit any capital gains, the case was reopened and notice u/s 148 was issued on 31-03-2018.

4.2 It transpired that the net asset value was Rs.2396.88 Lacs as against sale consideration of Rs.2995.60 Lacs leaving a gap of Rs.668.71 Lacs which was assessable as short-term capital gains. In the absence of any return of income or any response from the assessee, Ld. AO assessed short term capital gains for Rs.568.71 Lacs and completed the assessment on best judgment basis u/s 144.

First Appellate proceedings

5.1 During appellate proceedings, the assessee objected to reopening and assailed the jurisdiction of Ld. AO. Considering the same, Ld. CIT(A) noted that assessment u/s 143(3) was completed on 27-03-2014 and the only discussion in that order was qua the jurisdiction of AO. It was mentioned that the jurisdiction of the assessee vests with ITO, Business Ward XV (4), Chennai as the address of the assessee was Alwarpet, Chennai. Subsequently, present AO received information from ACIT, Corp. Circle 3(1) and issued notice u/s 148 at Porur address as against the fact that in assessment order u/s 143(3), the address of the assessee was mentioned as Alwarpet, Chennai. In spite of that, AO

mentioned in the proposal seeking approval for issuance of notice u/s 148 that there was no PAN, no return of income filed by the assessee and no scrutiny assessment had taken place. Further, the address was mentioned as Porur address which was no longer the address of the assessee. Considering the restructuring of the department w.e.f. 15-11-2014, the jurisdiction of assessee lies with Non-Corporate Range 3. In spite of that, present AO i.e., DCIT, NCC 8(1) issued notice u/s 148 at old Porur address and completed the assessment. Therefore, AO mechanically issued notice merely on the basis of information supplied by ACIT, Corporate Circle 3(1) without applying his mind. The facts mentioned in the approval proposal were not correct. Thus, even the basic details were not verified by Ld. AO before issuing notice u/s 148 and the reopening was merely on the basis of information received from ACIT, Corporate Circle 3(1), Chennai. As per records, the jurisdiction of the assessee vest only with ITO, NCW 3(4), Chennai and DCIT, NCC 8(1) had no jurisdiction over the assessee.

5.2 In the light of above stated facts, Ld. CIT(A) concurred with assessee' submissions and held as under: -

5.2.14. FINDINGS:

The ACIT, Corp Cir 3(1) vide letter dt. 23/3/2018 (it appears that there is a typographical mistake in year as 2017) has informed the present A.O to reopen the assessment of the appellant for taxing the short term capital gain while he had already reopened the assessment of the company M/s Thulasi Mohan Construction P.Ltd for the year under consideration for taxing the same capital gain. The appellant has pointed out that the Department was not clear on whose hands the income is to be taxed and had proceeded to tax in the hands of both the company and the firm which is not legally tenable. As on 23/3/2018, the assessment of the company was already reopened and simultaneously the A.O has also been requested to reopen the assessment in the case of the firm. The A.O could have sought a clarification from ACIT, Corp Cir 3(1), as to in whose hands the income is assessable and thereafter proceeded accordingly. Instead the AO has mechanically issued the notice in the case of the appellant as well.

Therefore, as on that date, the Department wanted to tax the same income in the hands of both the assessee, that too substantially. Therefore, I am in agreement with the appellant that the A.O has mechanically issued the notice without even seeking clarification from the ACIT, Corp Cir 3(1) as to in whose hands the income is assessable. The appellant has submitted that the Department has filed an appeal before the Hon'ble ITAT in ITA No. 3268/Chny/2019 against the order of the Learned CIT(A) in the case of M/s Thulasi Mohan Constructions P.Ltd. for A.Y 2011-12 and in their grounds it has taken a stand that the addition should be made in the hands of the company u/s.147. This also determined the stand of the Department that the short term capital gains is to be taxed in the hands of the company and not in the hands of the appellant firm.

The original scrutiny assessment u/s 143(3) in the case of the appellant was completed on 27/3/2014 accepting the returned income of the appellant and the sole issue in the assessment order was the jurisdiction of the appellant and in the said assessment order, the A.O has given a categorical finding that the jurisdictional A.O is ITO, Business Ward XV(4), Chennai. As per the said assessment order, the then A.O, had reproduced the necessary documentary evidence. In the said assessment order including the Form No. 26AS of the appellant for the year under consideration which categorically states the address of the appellant as Alwarpet, Chennai 600018 and finally concluded that for the said address, the Jurisdiction lies with Business Range XV. As per the scrutiny assessment order u/s 143(3) dt. 27/3/2014, the A.O has mentioned inter alia the PAN as AAOFM9784F and the address of the appellant as Alwarpet, Chennai 600018 in the first page of the assessment order. In spite of that, the present AO has mentioned in the proposal for the issuance of Notice u/s 148 that there is no PAN, there was no return and there was no scrutiny assessment and further the address is mentioned as Porur address, which was no longer the address of the appellant. Consequent to the Cadre Restructuring of the Department w.e.f 15/11/2014, the jurisdiction of the appellant for Alwarpet, Chennai 600018 address lies With Non Corp Range 3. In spite of that, the present A.O, DCIT, NCC 8(1) had issued the notice u/s 148 to the appellant, to the Porur address. Moreover, the A.O has wrongly invoked the provision of clause (a) of Explanation 2 of Section 147, which applies only where no return of income has been furnished by the assessee. However, in the case of the appellant, the return of income was filed and the scrutiny assessment u/s 143(3) was completed by the jurisdictional A.O accepting the returned Income of the appellant. Therefore, I am in agreement with the appellant that the present A.O has wrongly invoked the provisions of Clause (a) of Explanation 2 of Section 147, which applies only where no return of income has been furnished by the assessee. The A.O has not perused the original assessment records and had proceeded to issue the notice u/s 148 without verification of the documents on record. Further, the A.O has also wrongly recorded that there is no PAN, there is no return and there was no scrutiny assessment, which were all factually Incorrect. Therefore, I am In agreement with the appellant that the A.O has not appreciated the entire documents available on record and there was no proper application of mind before the issuance of Notice u/s 148.

The appellant has submitted that the assessment was reopened beyond four years and there was no fresh material available on record for reopening the assessment. I have perused the original assessment records, as well as the present assessment records. As per the information received from ACIT, Corp Cir, 3(1), Chennai, along with the letter dated 23/3/2018, the takeover agreement was also forwarded to the present A.O. During the original assessment proceedings, neither the A.O sought the takeover agreement nor had the appellant furnished the takeover agreement, Further, there is no discussion with respect to this issue in the original assessment order as well. Therefore, I am of the considered opinion that fresh material has come on record before the A.O and therefore, the A.O is competent to proceed with the issuance of Notice u/s 148 subject to the satisfaction of other provisions of the Act like jurisdiction etc.

During the appellate proceedings, the appellant vehemently objected to the issuance of notice u/s 148 by the present A.O, DCIT, NCC 8(1), Chennai. It was repeatedly reiterated that consequent to the cadre restructuring of the Department, as per the Notification issued by the Department, it is only Non Corporate Range 3, which has jurisdiction over the appellant. To support the contention of the appellant, the following documents were also submitted:

- a) Transfer Memo Dated 3/9/2013 from the ITO Ward 1(1) Vellore transferring the file to Income Tax Officer Business Ward XV(4) (Now redesignated as ITO Non Corporate Ward 3(4).
- b) Copy of the Scrutiny Asst Order for the Asst Year 2011-12 dated 27/03/2014 passed by the ITO Business Ward XV(4).
- c) copy of the Letter dated 29/1/2016 addressed to the assessee from the Income Tax Officer NCW 3(4) requesting the assessee, the Appellant herein to file the returns of income for the asst Years 2012-13 to 2015-16 based on the return of income filed for the asst year 2011-12.
- d) Copy of the letter dated 27/10/2017 addressed to the assessee from the ITO NCW 3(4) requiring the assessee to pay the balance tax for the Asst Year 2011-12.
- e) Copy of the Notification of the Income Department dated 15/11/2014 redesignating the Business Range XV to Non Corporate Range 3.

I have examined all the documentary evidence furnished by the appellant with respect to jurisdiction and also perused the judicial decisions relied upon by the appellant. As stated earlier, in the original scrutiny assessment order u/s 143(3) dated 27/3/2014, the then A.O has given a categorical finding with the necessary documentary evidence in the assessment order that the jurisdiction of the appellant lies with Business Ward XV (4) for the address at Alwarpet, Chennai 600018. As per the latest Jurisdiction order, consequent to the Cadre Restructuring of the Department, the present jurisdiction of the appellant lies with Non Corp Range 3, Chennai. Thereafter, the ITO, NCW 3(4) had also issued letter dated 29/1/2016 to the appellant for furnishing return and letter dated 27/10/2017 to pay the balance tax for the A. Y 2011-12. Therefore, consistently, the Department had issued the assessment order dt. 27/3/2014 by the ITO, Business Range XV(4) (predecessor jurisdictional AO) and issued further letters / notices to the appellant i.e on 29/1/2016 and thereafter on 27/10/2017, all issued by the ITO, NCW 3(4),

corresponding to erstwhile Business Range XV(4). However, all of a sudden, the present A.O i.e the DCIT, NCC 8(1) had issued the Notice u/s 148, who does not have valid jurisdiction. The documentary evidence submitted by the appellant categorically establishes that the jurisdiction of the appellant vests with ITO, NCW 3(4) and therefore, It Is held the jurisdiction over the appellant lies only with NCR (3) as per the latest jurisdictional order of the Department. Therefore, I am in agreement with the appellant that the present A.O DCIT, NCC 8(1) did not have valid jurisdiction over the appellant and he has wrongly exercised jurisdiction over the appellant by the issuance of Notice u/s 148.

The question therefore arises for consideration is as to whether Notice u/s 148 was issued in conformity with the provisions of the Act. In this regard, it is stated that a Notice u/s 148 is a jurisdictional notice and existence of a valid notice u/s 148 is a condition precedent for the exercise of jurisdiction by the A.O to assess or reassess u/s 147 of the Act. The want of a valid notice affects the Jurisdiction of the A.O to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice Issued u/s 148 of the Act by a non-jurisdictional A.O cannot be held to be valid. Only the jurisdictional A.O would assume valid jurisdiction under a notice u/s 148. In the case under consideration, as stated herein, the notice u/s 148 of the Act, which is a jurisdictional notice has been issued by a non-jurisdictional A.O as per the jurisdictional order of the Department and the provisions of the Act. The present A.O in the present case has erred by Issuing notice u/s 148 In the case of the appellant, in spite of the fact that the jurisdiction was decided in the original scrutiny assessment order In the case of the appellant u/s 143(3), Therefore, it is held that the Notice u/s 148 issued by the non-jurisdictional A.O in the present case is held to be invalid and therefore not legally tenable. Further, the present A.O has also invoked the provisions of Clause (a) of Explanation 2 of Section 147 which is both factually incorrect as well as legally not tenable. In the absence of a valid jurisdiction, the A.O has no authority to assume jurisdiction u/s 147 of the Act and hence continuation of the proceedings u/s 147 or the Act pursuant to such notice which lacked jurisdiction is without the authority of law and cannot be sustained. Further, the judicial decisions relied upon by the appellant are also squarely applicable for the case under consideration.

In view of the facts and legal position stated herein and also respectfully following the decisions of the Hon'ble Courts cited supra, the action of the A.O in assuming jurisdiction and in reopening the assessment and the consequent reassessment made u/s 144 r.w.s 147 of the Act is held to be without valid jurisdiction and thus annulled. As the Notice u/s 148 is not a valid notice and the consequent reassessment u/s 144 r.w.s 147 has been held to be without valid jurisdiction and annulled, I do not find it necessary to adjudicate the other objections raised by the appellant as it would only be academical. Therefore, these grounds of appeal are partly allowed.

Thus, the assessment order was held to be without jurisdiction and therefore, annulled. Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

6. From the findings rendered in the impugned order, it could very well be seen that reopening has been done merely at the behest of communication received from ACIT, Corp. Cir 3(1) vide letter dt. 23/3/2018 to reopen the case of the present assessee to tax short term capital gains while he had already reopened the assessment of payer assessee. Considering the same, present AO mechanically issued notice u/s 148. In the proposal seeking approval of reopening, it was mentioned that the assessee did not file the return of income and it did not have any PAN. However, the original scrutiny assessment u/s 143(3) was already carried out in the case of the assessee on 27-03-2014 and in that order, the sole issue was the jurisdiction of the assessee. In that order, a categorical finding has been rendered that the jurisdictional AO of the assessee would be ITO, Business Ward XV(4), Chennai. The address of the assessee was also mentioned as Alwarpet, Chennai. Despite that, present AO recorded contrary finding that there was no PAN and no return of income was filed by the assessee and the address of the assessee was mentioned as Porur address, which was no longer the address of the assessee. Consequent to the Cadre Restructuring of the Department w.e.f. 15-11-2014, the jurisdiction of the appellant for Alwarpet, Chennai 600018 address lie with Non-Corporate Range 3 whereas notice has been issued by present AO i.e., DCIT, NCC 8(1) at Porur address. It could also be seen that AO has wrongly invoked the

provision of clause (a) of Explanation 2 of Section 147, which applies only where no return of income has been furnished by the assessee. However, in the case of the assessee, the return of income was filed and the scrutiny assessment u/s 143(3) was completed by the jurisdictional AO accepting the returned Income of the assessee. Therefore, present AO has wrongly invoked the provisions of Clause (a) of Explanation 2 of Section 147, which applies only where no return of income has been furnished by the assessee. The AO has not perused the original assessment records and had proceeded to issue the notice u/s 148 without verification of the documents on record. Accordingly, the conclusion that notice u/s 148 was issued mechanically without due application of mind could not be faulted with.

7. The Ld. Sr. DR has referred to the decision of Hon'ble High Court of Delhi in the case of **Abhishek Jain vs. ITO (94 Taxmann.com 355)** which held that in terms of Sec. 124(3)(b), the assessee could not call in question the jurisdiction of an Assessing Officer after expiry of one month from date of service of reassessment notice. However, in the present case, the reassessment notice has been issued at old address and the assessment order is an ex-parte order. The assessee has challenged the jurisdiction of Ld. AO at the first instance before first appellate authority. Another decision cited is the decision of Hon'ble High Court of Allahabad in **CIT vs. All India Children Care & Educational Development Society (41 Taxmann.com 2013)**. In that case, the assessee questioned the jurisdiction during second appeal. Further, this was a case of transfer of case from one AO to another AO. The Hon'ble Court held that the question of jurisdiction could have been raised before

AO within the period of one month but it was not raised. This plea was not put forward even during first appellate proceedings. The same is not the case here. Another decision of same court in **Bal Chand Jain & Sons vs. DCIT (41 Taxmann.com 254)** is a case of transfer of jurisdiction from one AO to another. The same is not the case here. In the present case, there is no transfer of case but the jurisdiction, at the outset, has been assumed by incorrect AO. Therefore, these case laws as cited before us are distinguishable on facts and not applicable.

8. Considering the facts and circumstances of the case, we find no reason to interfere in the impugned order.

9. The appeal stands dismissed.

Order pronounced on 8th September, 2023

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :08-09-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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