



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.137 /CTK/2023

Assessment Year : 2015-16

Sunil Kumar (HUF), K-3, Civil Township, Rourkela.	Vs.	ITO, Ward-1, Rourkela
PAN/GIR No.AAKHS 0609 B		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, Adv
Revenue by : Shri Charan Dass, Sr DR

Date of Hearing : 17/10/2023
Date of Pronouncement : 17/10/2023

ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, dated 20.2.2023 in Appeal No.ITBA/NFAC/S/250/2022-23/104992089(1) for the assessment year 2015-16.

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri Charan Dass, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an HUF engaged in the business of retail trading other than speculative business and specified business. It was the submission that the original return of the assessee had

been filed on 17.8.2015 and the said return was processed u/s.143(1) of the Act. No scrutiny assessment u/s.143(3) had been undertaken. The time limit for issuance of notice u/s.143(2) had also expired. The Assessing Officer issued notice u/s.148 on 31.3.2015 after four years from the end of the relevant assessment year, wherein, the Assessing Officer has mentioned that the notice is being issued after obtaining necessary satisfaction from the JCIT, Range, Rourkela. For better understanding, the copy of the notice issued u/s.148 of the Act is extracted as below:

**"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
ITO, WARD 1, ROURKELA**

To, SUNIL KUMAR AGARWAL K-3 , CIVIL TOWN SHIP CIVIL TOWNSHIP ROURKELA 769004 , Orissa India			
PAN: AAKHS0609B	AY: 2015-16	Dated: 31/03/2021	DIN & Notice No : ITBA/AST/S/148/2020-21 /1032106541 (1)

Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year **2015-16** has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within **30** days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the Jt. CIT, RANGE ROURKELA

PRABHAT KUMAR
ITO, WARD 1, ROURKELA

4. It was the submission that as per the provisions of section 151 as it stood on 31.3.2021, the sanction for issuance of notice is to be given by the Pr. Chief Commissioner of Income Tax, Chief Commissioner of Income Tax, Principal Commissioner of Income Tax and Commissioner of Income tax. As the satisfaction for issuance of notice u/s.148 more specifically, the approval as mentioned in the notice u/s.148 of the Act, is not by the Pr. Chief Commissioner of Income Tax, Chief Commissioner of Income Tax, Principal Commissioner of Income Tax and Commissioner of Income tax but by the JCIT, Range, Rourkela, the satisfaction as obtained by the AO for issuance of notice u/s.148 for the relevant assessment year was bad in law. For this proposition, he placed reliance on the decision of the Hon'ble Jurisdictional High Court of Orissa in the case of M/s. Ambika Iron and Steel Pvt Ltd. in W.P.(C) No.20919 of 2021 and others dated 24.1.2022, wherein, the Hon'ble Jurisdictional High Court has held as follows:

“ 3. In each of these cases, the relevant assessment year (AR) in relation to which such notice has been issued is more than four years prior to the date of reopening i.e. it is beyond four years from the expiry of the AY in question and is clearly therefore, time barred in terms of the first proviso to section 147 of the IT Act.

4. The stand of the Revenue that in view of the notifications issued by the Central Government in terms of the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the said time limits stood extended is clearly untenable as those notifications were issued to deal with the situation arising from the amendment to the IT Act by the Finance Act, 2021 with effect from 1st April, 2021 whereas in these cases the notices were issued prior to 1st April, 2021.

5. This Court had an occasion in similar circumstances to quash an identical notice under Section 148 of the IT Act by its order dated 20th November, 2019 in W.P.(C) No.7618 of 2009 and which order stood confirmed by this Court by the dismissal of the Department's review petition i.e. RVWPET No. 188 of 2020 by the order dated 3rd December, 2021 which reads as under:

"1. Although the point made by the Revenue in this review petition is that this Court in its order dated 20th November, 2019 erred in drawing a distinction between an Additional Commissioner and Commissioner in terms of their authority, the point involved was that for the purpose of Section 151(1) of the Income Tax Act, 1961 since the reopening of the assessment was beyond 4 years, it had to have the prior approval of the Commissioner of Income Tax, and there was no such approval in the present case.

2. Consequently, no ground is made out for reviewing the order dated 20th November, 2019 in W.P.(C) No.7618 of 2009.

3. The review petition is dismissed."

6. Indeed in the notice issued under Section 148 of the IT Act on 31st March, 2021 which has been challenged in W.P.(C) No.41826 of 2021 it has been stated that the notices had been issued after obtaining "necessary satisfaction of the Jt. CIT Range-I, Cuttack" whereas the Officer authorized to record the necessary satisfaction had to be the Chief Commissioner of Income Tax / Commissioner of Income Tax.

7. For all the aforesaid reasons, in each of the above cases, the impugned notice under Section 148 of the IT Act is hereby quashed. The writ petitions are allowed, but in the circumstances, with no order as to costs.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March 2020, modified by Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 and 515 dated 7th January, 2022".

5. Ld AR has also placed reliance on the decision of the Hon'ble Jurisdictional High Court of Orissa in the case of Smt. Saswati Das in W.P.(C) No.7618 of 2009 order dated 20.11.2019, wherein, the Hon'ble Jurisdictional High Court has held as follows:

3. Mr. Ray, learned counsel for the petitioner contended that notice issued by the Assistant Commissioner of Income Tax is in contravention of Section 151 (1) of the Act, which reads as under:

"151. Sanction for issue of notice.-(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice."

4. It is further contended that no satisfaction is recorded by the competent authority as required under Section 151 (1) of the Act, namely, either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. The authority has taken permission of the Additional Commissioner, who is not competent under Section 151(1) of the Act to record such satisfaction. 'Joint Commissioner' is defined under subsection 28-C of Section 2 of the Act, which reads as under:

"28-C. "Joint Commissioner" means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-section (1) of section 117."

Therefore, the Additional Commissioner of Income Tax is not in the rank of Commissioner and recording of satisfaction by him in the impugned notice is in clear contravention of Section 151 (1) of the Act.

5. In support of his contention, Mr. Ray, learned counsel for the petitioner also relied upon various decisions in the cases **of**

Commissioner of Income-Tax -v- Kelvinator of India Ltd. & another, reported in (2010) 320 ITR 561 (SC), **Ghanshyam K. Khabrani -v- Assistant Commissioner of Income-Tax and others**, reported in (2012) 346 ITR 443 (Bom), **Commissioner of Income-Tax -v- SPL's Siddhartha Ltd.**, reported in (2012) 345 ITR 223 (Delhi), **Commissioner of Income-Tax -v- Aquatic Remedies P. Ltd.**, reported in (2018) 406 ITR 545 (Bom) and **Ramballabh Gupta -v- Assistant Commissioner of Income-Tax and others**, reported in (2007) 288 ITR 347 (MP).

6. Mr. Satpathy, learned counsel for the opposite parties tried to justify the impugned notice by relying upon the averments in the counter affidavit which has been filed by the Department pursuant to the notice issued by this Court, wherein it has been stated at paragraph-9 as under:

"9. That in reply to the averments in Para-8 & 8.1 and it is humbly submitted that in this case a search assessment u/s. 153A/143(3) of the IT. Act, 1961, was completed on 31.12.2007 on a total assessed income of Rs.22,91,170/-. The said order was challenged by the assessee before the Ld. CIT(A), BBSR. The Ld. CIT(A), Bhubaneswar vide order passed in IT A No. 0002/2010-11 dated 18.10.2011 has annulled the assessment. Once the original assessment u/s. 153A is annulled, there is no bar to use the findings of the search to initiated proceeding u/s. 147 of the IT. Act, 1961. The approval of the designated authority before issuance of notice u/s. 148 of the Income Tax Act, 1961, that in the case of the assessee, due approval as required u/s. 151(2) of the Income Tax Act, 1961 which was taken from the Additional Commissioner of Income Tax, Range-1, Bhubaneswar. Since the regular assessment made u/s. 153A was annulled by the Ld. CIT (A), Bhubaneswar vide order passed in ITA No. 0002/2010-11 dated 18.10.2011, it was not required to take approval u/s. 151(1) of the Income Tax Act from the Commissioner or the Principal Commissioner of Income Tax. Therefore, the approval with the rank of Additional Commissioner of Income Tax is legal and within the jurisdiction."

7. Admittedly, the impugned notice under Section 148 of the Act was issued in respect of Assessment Year 2002-03, which is clearly after four years from the end of the relevant assessment year.

8. In our considered opinion, the contention of learned counsel for the parties is not acceptable. The Additional Commissioner is not equivalent to the rank of Commissioner or any other designation as defined under Section 151 (1) of the Act. Therefore, the impugned

notice (Annexure-1), which has been issued to the petitioner, is bad in law and is required to be quashed and the same is quashed. Rule is made absolute to the aforesaid extent.

9. This writ petition deserves to be allowed and the same is allowed.”

6. It was the submission that as the notice has been issued by the JCIT and not the persons as mentioned in the provisions of section 151(1), notice issued u/s.148 and consequential assessment is liable to be annulled.

7. In reply, Id Sr DR submitted that on account of Covid, the revenue had issued notification from the Central Government, wherein, the time limit stood extended and it was clear that the JCIT had the power to give sanction on account of the extended time. It was the submission that the appeal of the assessee is liable to be rejected.

8. I have considered the rival submissions. A perusal of the provisions of section 151 clearly shows that the satisfaction before issuance of notice u/s.148 is to be granted by the by the Pr. Chief Commissioner of Income Tax, Chief Commissioner of Income Tax, Principal Commissioner of Income Tax or Commissioner of Income tax, when the reopening is being proposed beyond four years from the end of the relevant assessment year. In the present case, it is categorically mentioned that the notice has been issued after obtaining necessary satisfaction of the JCIT, Range, Rourkela. Under identical circumstances also, the Hon'ble Jurisdictional High Court in the

earlier mentioned writ petitions referred (supra), have categorically quashed the notice issued u/s.148 of the Act. In these circumstances, respectfully following the decisions of the Hon'ble Jurisdictional High Court, as have been extracted extensively (supra), the notice issued u/s.148 in assessee's case stand quashed and consequential assessment order stand quashed.

9. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 17/10/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 17/10/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Sunil Kumar (HUF), K-3,
Civil Township, Rourkela
2. The Respondent: ITO, Ward-1, Rourkela
3. The CIT(A)-,NFAC, Delhi
4. Pr.CIT, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack