

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JABALPUR
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 37/JAB/2023

(A.Y: 2014-15)

Sunil Kumar Pathak 3 rd Floor, A Block, Shilpi Plaza, Pili Kothi, Rewa-486001, Madhya Pradesh.	Vs.	ITO, Ward – 1, Rewa-486001, Madhya Pradesh.
PAN/GIR No. : ARWPP9628A		
Appellant	..	Respondent

Appellant by :	Shri.Dhiraj Ghai.FCA.AR
Respondent by :	Shri.Shiv Kumar. Sr.DR

Date of Hearing	15.09.2023
Date of Pronouncement	10.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) / CIT(A) passed u/sec 144 and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances LD CIT(A) erred in not providing copy of remand report of AO so as to submit re-joinder and hence the order of CIT(A) has been passed was without giving fair opportunity to represent the case and hence is bad in law in lieu of SONA BUILDERS vs. CIT (supra), Rajesh K kaurav*

vs. ITO (ITAT MUMMBAI) MUMMBAI) and BR ENGINEERING CO VS. ACIT (ITAT) and should be quashed or alternatively be restored to CIT (A) on account of natural justice.

2. *On the facts and circumstances of the case Id CIT (A) erred in not considering notice under section 148 issued on 22/3/2018 as defective and resulting assessment order as bad in law on reason that AO has recorded reason for reopening in the name of Shri SUNIL KUMAR PATHAK legal hier of late Ram Karan Pathak while has issued notice under section 148 in the name of Sunil kumar pathak only. Further CIT(A) has also passed appeal order in the name of SUNIL PATHAK ONLY and not in the name of SUNIL PATHAK legal Hier of the of late Ram Karan Pathak.*

3. *On the facts and circumstances of the case Id CIT (A) erred in not considering the ground of assessee viz AO was not justified in re-opening the assessment of assessee under section 147 and deciding same on merits and submissions.*

4. *On the facts and circumstances of the case Id CIT (A) erred in not considering assessment order as bad in law on account of being reason that NOTICE under section 148 was issued on 22/3/2018 in the name of Shri SUNIL KUMAR PATHAK but the assessment under section 148 was passed in the name of the Sunil kumar pathak legal heir of late Ram Karan Pathak. Further CIT(A) has also passed appeal order in the name of SUNIL PATHAK ONLY and not in the name of SUNIL PATHAK legal Heir of the of late Ram Karan Pathak.*

5. *WITH OUT GROUND TO to 4 NUMBER 1 further appeal on ground that on the facts and circumstances of the case Id CIT (A) erred in not considering the fact that assessee (late Ram karan Pathak) was head of family and had huge agricultural land bank in his and his family member names and this lands being cultivated forefathers and were registered in since*

- 3 -

duly government records (including crops name and land size). CIT (A) further erred in not considering the genuine fact that (late Ram karan Pathak) was authorized by his family members to keep all earnings(proof submitted to CIT-A) and making expenses in relevance (proof submitted CIT-A) and to keep net profit/savings after meeting households family expenses. This yearly savings from agriculture activity was saved over years and was more than sufficient to make Investment of Rs 2.50,10,000/- in impugned house. Henceforth addition made of Rs. 2,50,10,000/- towards investment in impugned house. may kindly be deleted.

6. WITHOUT PREJUDICE TO GROUND NUMBER 1 to 4 further appeal on ground that on the facts and circumstances of the case Id CIT (A) erred in not considering the fact that assessee (late Ram karan Pathak) legal heir has duly submitted to CIT (A) all bills for agricultural produce sale including that to government society and to local traders and expenses proof besides informing him that agricultural lands were being situated at remote and hence agriculture activity has been carried on traditional basis. Accordingly addition of Rs 2.50,10,000/- as investment in impugned house should be deleted as source to acquire same was duly explained to CIT(A) with proofs.

7. WITHOUT PREJUDICE GROUND NUMBER 1 TO 4 to further appeal on ground that on the facts and circumstances of the case Id CIT (A) erred in confirming AO order on incorrect facts and assumptions viz. a) that assessee has not filled return showing agricultural income without considering the fact and law that If the income earned in the financial is only from agricultural, year then it is not required to file income tax return b) that assessee has not given breakup of the yearly expenses in come from agricultural activity while the fact was that same was duly given in reply filled with CIT(A) along with profit and hence the CIT (A) order may kindly be quashed or addition of Rs

- 4 -

2.50,10,000/- as investment in impugned house may kindly be deleted.

8. WITHOUT GROUND PREJUDICE NUMBER 1 TO 4 further appeal on ground that on the facts and circumstances of the case Id CIT (A) erred in not deciding the ground number 1 to 7 (in para 5.5.5.6. and 5.7 of CIT (A) order) on grounds which were raised in appeal and simply rejected same by making incorrect and general reasons and hence the CIT (A) order be quashed and addition of Rs 2.50,10,000/- as investment in impugned house may kindly be deleted.

9. The appellant craves leave to add or amend any ground of the appeal.

2. The brief facts of the case are that, the assessee was a agriculturist. The Assessing Officer (AO) has received the information as per AIR that the assessee has purchased an immovable property situated at Bhopal amounting to Rs. 2,50,10,000/- on 31-05-2018 in the F.Y 2013-14. Hence the assessing officer after recording the reasons for reopening and further has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. Whereas it was brought to the knowledge that, the assessee Shri Ram Karan Pathak has expired on 18.02.2015 and in response to the notice u/sec 148 of the Act, the assessee's son Shri Sunil Pathak attended the proceedings. Whereas the assessee the late Sri Ram Karan Pathak was agriculturist and holding 386 acres (appx)

Ancestral Agriculture Lands along with the family members and was used for Agriculture cultivation purpose. In the course of hearing proceedings, the AO has called for the sources of purchase of property at Bhopal and submit the evidences in support of agriculture income. Since the assessee does not have PAN and the assessee has purchased in auction, the property from Bank of Baroda which was seized by the bank. The assessee has expired and his son Shri Sunil Pathak has filed the affidavit mentioning the facts of death and purchase of the property by his father Late Shri Ram Karan Pathak and the said property was purchased on behalf of family members of the assessee. whereas the A.O has issued notice u/sec 142(1) of the Act to explain the sources of investment in the property, along with the copy of income tax return, computation of income, profit and loss account, audit report and balance sheet, bank statement. Since there was no compliance, the AO has invoked the provisions of best judgment assessee u/sec 144 of the Act.

3. Whereas the facts of the property purchased are that the Bank Of Baroda BHEL branch Bhopal has seized the property from Smt. Pushpalata Sharma and in the auction, the assessee has purchased the property and cleared the

loan and made the payment from three bank accounts (i)Bank of Baroda BHEL branch of Rs. 86,30,000/- (ii) Bank of Baroda, Hoshangabad Road Branch of Rs. 20lakhs and (iii) through cash deposits of Rs. 1,42,80,000/- with authorized officer Bank of Baroda BHEL Bhopal. Whereas the AO in the bank account with Bank of Baroda BHEL Branch found the cash deposits and RTGS aggregating to Rs. 77,22,000/-. The assessee's son Shri Sunil Kumar Pathak has submitted that the his father was agriculturalist and was doing combined agricultural activity on behalf of the joint family and the family owned about 385.406 Hectors of agricultural land. Further the assessee was elder son of the family and therefore managed all the agricultural lands and distributed agricultural receipts among the family members and the sources of purchase of residential property at Bhopal is wholly through the agricultural income. Finally the AO has observed that the Shri Sunil Kumar Pathak has not furnished any information in respect of acquisition of property nor any documentary evidence in respect of agriculture income earned from the agriculture lands but the documentary evidence in respect to land records of Khasra are filed on 03.12.2018 and made addition of unexplained investment

of the purchase of residential property and assessed the total income of Rs 2,50,10,000/- and passed the order u/sec 144 of the Act dated 03.12.2018.

4. Aggrieved by the assessee order, the assessee has filed an appeal before the CIT(A). The assessee has challenged the validity of reassessment proceedings and the additions by the A.O. Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO and remand report and has confirmed the validity of reassessment proceedings and sustained the addition of the Assessing officer and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in overlooking the facts that the Assessing officer has recorded the reasons for reopening in the name of Shri SunilKumar Pathak legal heir of late Ram karan pathak(deceased assessee) and whereas the notice u/sec148 of the Act was issued in the name of Shri Sunil Kimar Pathak only, thus the notice was issued in incorrect name and hence the notice is defective and not a curable defect and reassessment proceedings are bad in law and

liable to be annulled and relied on the judicial decisions. Further there was full disclosure of information, details and supporting evidences substantiating the sources of acquisition of residential property was filed in the assessee proceedings. The CIT(A) has erred in sustaining the additions of AO overlooking the material facts and information filed in the course of hearing proceedings and the CIT(A) has erred in not providing the copy of remand report nor the opportunity to the assessee to file the reply to the A.O remand report. Further the Ld.AR emphasized that the deceased assessee was eldest of all the family members and was an agriculturalist and doing combined agricultural activity on behalf of the joint family and the family owned 385.406 Hectors of agricultural lands and was taking care of all the financial transactions and agricultural operations. The Ld. AR substantiated the submissions with supporting material evidences of land holdings, khasara, evidence of agriculture income earned and expenses incurred and other material details in voluminous paper book (Volume 1 to 3) and judicial decisions and prayed for allowing the appeal.

6. Per Contra, the Ld. DR submitted that the notice issued U/sec148 of the Act is a valid notice. The CIT(A) was correct in sustaining addition u/sec69A of the Act in the hands of the legal heir and supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The Ld. AR of the assessee submitted that the CIT(A) has erred in confirming the validity of reassessment proceedings though the reassessment notice issued by the Assessing officer is defective and further the CIT(A) erred in confirming the action of the assessing officer in sustaining the addition overlooking the voluminous material evidences filed in the assessment and appellate proceedings. On the first issue of validity of issue of notice U/sec148 of the Act, we find the Assessing officer has recorded the reasons for reopening in the name of Shri Sunil Kumar Pathak legal heir of late Ram karan pathak(deceased assessee) and whereas the notice u/sec148 of the Act (placed at page 18 of the paperbook) was issued in the name of Shri Sunil Kumar Pathak and considered it appropriate to refer to the notice U/sec148 of the Act as under:

22

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1 REWA

To:	SUNIL KUMAR PATHAK AMAHYA, AMAHYA REWA, REWA 486001, Madhya Pradesh India	S/O Shri Ram Karan Pathak Shastri Nagar 3240
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PAN:	AY:	Dated:	Notice No :
ARWPP9628A	2014-15	22/03/2018	ITBA/AST/S/148/2017-18/1009364608(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 2014-15 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 RANGE SATNA



MALKHAN SINGH HEDAU
WARD 1 REWA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

8. Whereas the approval for issue of notice u/sec148 of the Act dated 7-03-2018(Placed at page 18 of the paper book) as under:

(10)

**OFFICE OF THE
ADDITIONAL COMMISSIONER OF INCOME TAX
RANGE SATNA [M. P.]**

F No./Addl.CIT/R-Satna/148/2017-18/ 4286

To,
Income Tax Officer
Ward-1, Rewa

Date: 07.03.2018

Sir,

Sub: - Approval for issuance of notice u/s 148 in the case of Shri Sunil Kumar Pathak, Legal Heir & S/o Late Shri Ram Karan Pathak, 479, Ward No.-23, Shashtri nagar, Amahiya, Huzur, Rewa for the AY 2014-15, (PAN- ARWPP9628A) - regarding -

Ref.:- F.No. ITO/Ward-1/Satna/148 Proposal/2017-18/3139 dated 06.02.2018

Please refer to your proposal sent vide abovementioned letter for initiation of proceedings u/s 147 in the following cases:-

S.No.	Name of the assessee	PAN	AY
1	Shri Sunil Kumar Pathak, Legal Heir & S/o Late Shri Ram Karan Pathak, 479, Ward No.-23, Shashtri nagar, Amahiya, Huzur, Rewa	ARWPP9628A	2014-15

After going through the reasons recorded by you, I am satisfied that above case is fit for action u/s 147 of the IT Act 1961. Therefore, approval is hereby accorded to issue notice u/s 148 of the IT Act 1961 in the abovementioned case. Please furnish timely service notice.

In this regard, you are required to submit the proposal on ITBA portal as well, so that approval may be granted online and notice could be generated through ITBA portal.

(V.B. Sargar)
Additional Commissioner of Income Tax,
Range-Satna

9. We find the assessee has raised grounds of appeal no 1 to 4 before the CIT(A) challenging the validity of issue of notice . Whereas the CIT(A) has observed in his decision at Page. 19&20 Para 5.4 to 5.6 of the order:

“5.4 I have gone through the grounds of appeal, statement of facts and written submissions filed by the appellant.

5.5 Grounds of Appeal No.1 & 2 are on the reopening of the assessment. The Assessing Officer has got information and on that the Assessing Officer has reasons to believe. Reasons were duly recorded by the Assessing Officer and hence both these grounds are dismissed.

5.6 Grounds of Appeal No.3 & 4 are on the issue whether the assessment can be done in the hands of Shri Sunil Pathak. Since Shri Ram Karan Pathak had died, Mr. Sunil Pathak is his son and hence as legal heir the assessment was done in his hands. Therefore, there is no infirmity in it and hence these two grounds are dismissed.”

10. The Ld. AR submitted that the CIT(A) erred in sustaining the additions without providing proper opportunity and overlooking the facts. The contentions of the Ld. AR that the AO and the CIT(A) has not considered the material evidences. The assessee has filed the all the details before the lower authorities and the CIT(A) has not considered the fact that were supported with the

documentary evidences. The Ld.AR also emphasized that the deceased assessee was eldest of all the family members and was an agriculturalist and doing combined agricultural activity on behalf of the joint family and the family owned 385.406 hectars of agricultural lands and was taking care of all the financial transactions and agricultural operations. The Ld. AR substantiated the submissions with supporting material evidences of land holdings, khasara, evidence of agriculture income earned and expenses incurred and other material details documentary evidences were filed before the lower authorities. We find the Assessing Officer has invoked the provisions of Section 148 of the Act by recording the reasons in legal heir name "Sri Sunil Pathak legal heir of Late Ram Karan Pathak" and issued notice in the name as "Sunil Kumar Pathak Son of Ram karan Pathak" which is not disputed by the revenue. We find Hon'ble High court of Madras relied on the decision of Hon'ble Supreme Court in the case of Narayana Chetty Vs ITO (35 ITR 388) and has observed as under:

"The notice prescribed by Section 34 of the Indian Income Tax Act, 1992, for the purpose of initiating re- assessment proceedings is not a mere procedural requirement, that the service of the notice on the is a condition precedent to the

validity of any re-assessment made under this Section and that if no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Assessing Officer without a notice or in pursuance of an invalid notice would be illegal and void".

11. Similarly the Coordinate Bench of ITAT in the case of M/s K.P. Cold Storage Vs ITO (Agra) in ITA.No. 145/Agra/2018 has observed as under

"We, after having held the service of notice under section 148 to be no service in the eye of law, are of the opinion that all subsequent proceedings including the ex parte assessment framed on 03.12.2018 in assessee's case illegal and void ab initio. "

12. Further the Co-ordinate Bench of the Honble Tribunal in the case of NASE Asia Fund Ltd Vs ADIT in ITA No. 3875/Mum/2005 has observed as under:

"24. Similarly, when the proceeding (issue of notice in this case) is in substance and effect in conformity with or according to the intent and purpose of the Act, the action of the AO cannot be faulted with. Section 292B meant to save only those notices in which there is in advertent error. saves

those notices which in substance and effect issued according to the interest and purpose of the Act. In present case, there is an in advertent error in the notice issued by the AO reflecting only the PAN column of the notice mentions PAN of the "HUF" instead of the 'individual' whereas the body of the notice and the address shows that the notice is clearly meant for the assessee himself. The provisions of Section 2928 have been further clarified the Circular No. 179 of CBDT dated 30.09.1975 that this provision has been made to provide against purely technical objects without substance coming in the way of validity of the assessment proceedings.”

13. The provisions of Section 292B of the Act shall be invoked only for those notices in which there is in advertent error. A valid notice u/sec148 of the Act confers jurisdiction on the Assessing Officer to assess /reassess the income of assessee or the income of person in respect of which assessee is assessable, which has escaped assessment. In the present case, assessment is framed in the capacity of the legal heir but the notice u/sec 148 of the Act was issued in the individual capacity. Whereas the approval dated 07-03-2018 was proposed and taken in name of the Legal heir of the deceased assessee only and

not in the individual capacity and the provisions under section 292 B of the Act cannot be made applicable by the revenue.

14. We also consider the ratio of decision of the Honble Supreme court in the case of the CIT Vs. K. Adinarayana Murty (1967) 65 ITR 607 (SC) held as under:

"under the scheme of the Income-tax Act the "Individual" and the 'Hindu undivided family' are treated as separate units of assessment and if a notice under s. 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu undivided family', the notice is illegal and ultra-vires and without jurisdiction. [391F-G] The Income-tax Officer was therefore justified in ignoring the first notice under s. 34 of the Act and the return filed by the assessee in response to that notice and consequently the assessment made by the Income-tax Officer pursuant to the second notice was a valid assessment. [391H)

In this case the Hon'ble Supreme Court reversed the judgment of the Hon'ble High Court wherein the Hon'ble High Court held that in reference, the High Court held that the first of the notices under s. 34 was not invalid in law and

consequently the issue of the second notice was illegal and the assessment made in pursuance of it was illegal. Similarly, in Madan Lal Aggarwal vs CIT (1983) 13 Taxmann 120 (ALL): We are, therefore, opinion that the notice under Section 34 issued to September, 1962, was Sri vague Madan Lal Agarwal on 29th and as such invalid. The vagueness of the said notice did not stand cured because the ITO at a later stage informed the assessee that he was to file his return in the status of HUF. The proceedings following such a vague and invalid notice also stand vitiated. In this view of the matter, it is not necessary for us to go into the various other grounds raised by the learned counsel for the assessee for questioning the validity of the proceedings under Section 147 (a) of the I.T. Act, 1961”

15. Whereas, the jurisdictional defects cannot be cured under the provisions of section 292B of the Act. We considering the facts, circumstances, provisions of the Act, evidences and ratio of the judicial decisions discussed above are of the view that the notice issued u/sec148 of the Act is invalid and could be enforced in the law and the provisions of section 292B could not be invoked to correct a fundamental /substantial error. Accordingly, we find the notice issued for reassessment u/sec148 of the Act is bad in law and quash the

assessment order passed u/s 144 r.w.s 147 of the Act. Since the legal issue is decided in favour of the assessee and again adjudicating on merits becomes academic and are left open and we allow the grounds of appeal in favour of the assessee.

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

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 10.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Jabalpur