

**IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.56 & 202/RAN/2019

Assessment Year: 2011-12

Ajay Kumar Murarka Jugsalai, ME School Road, Near Rajasthan Seva Sadan, Jamshedpur (PAN: ADQPM9626B)	Vs.	Asstt. Commissioner of Income-tax, Circle-1(1), Jamshedpur
(Appellant)		(Respondent)

&

Present for:

Appellant by : Shri Akshay Ringasia, FCA
Respondent by : Shri Pranob Kumar Koley, Sr. DR

Date of Hearing : 19.10.2023
Date of Pronouncement : 13.12.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are against the order of Ld. CIT(A), Jamshedpur dated 30.10.2018 and 14.02.2019 passed against the assessment order/penalty order of ACIT, Circle-1(1) ward-3, Jamshedpur / Ld. CIT(A), Jamshedpur, u/s. 147 r.w.s. 143(3) and 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 27.12.2017 and 14.02.2019 respectively, for AY 2011-12.

2. Grounds raised by the assessee in the Memorandum of Appeal in Form 36 are reproduced as under:

"1. For that the proceedings being initiated u/s 147 is bad eye of law and fit to be cancelled. No copy of the reasons recorded was furnished to the assessee. Moreover, as per the order of assessment

the reasons recorded can be clearly seen to be a change of opinion as no fresh evidence has been brought on record to suggest any escapement of income as such, proceedings initiated u/s 147 is bad in eye of law and fit to be cancelled.

2. For that Ld. CIT(A) was not justified in confirming the addition of Rs. 75000/- and Rs. 1,82,26,700/- made by Ld. AO on account of long term capital gain exemption claimed u/s 10(38) on account of share transaction of M/s Blueprint Securities Pvt. Ltd. Complete details regarding the same was furnished before the authorities below who brushed aside our contention and made the said addition.

3. For that Ld. CIT(A) was not justified in making the enhancement of Rs. 9,17,400/- considering the same to be 5% of the long term capital gain amount being commission charges or expenses incurred by the assessee. Ld. CIT(A) has no jurisdiction or authority to make enhancement of a fresh issue which is not been considered by Ld. AO . Moreover, no specific show cause notice was ever issued or served upon the assessee. As such, the enhancement being made by Ld. CIT(A) is completely on presumption basis is fit to be cancelled.

4. For that in any view of the case the authorities below not justified in making the addition of the long term capital gain, amount claimed as exempt u/s. 10(38) stating the same to be penny stock. Complete details with respect to the transactions have been furnished to justify the claim for the same, as such, the addition being made by Ld. AO and sustained by Ld. CIT(A) is fit to be deleted.

5. For that Ld. A.O. was not justified in charging interest u/s 234A and 234B on the assessed income. Interest should be charged on the returned income following the decision of Hon'ble Jharkhand High Court.”

3. Assessee has also prayed for admission of additional grounds under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 by placing reliance on the decision of Hon'ble Supreme Court in the case of NTPC Limited -vs.- CIT (1998) 229 ITR 383 (SC) since these additional grounds are on the jurisdictional issues which goes to the root of the matter and permeates from the facts already on record. The additional grounds raised by the assessee are reproduced as under:

“1. That the entire order under section 148 is null and void and no prior approval was taken from the PCIT.

2. That the approval was never granted by the PCIT in first place and was only delegated to the ITO which is not permissible in law as held by the Hon'ble Supreme Court. Even otherwise, no satisfaction is recorded for granting approval.

3. That the reasons were not recorded on the date of issuance of notice under 148.

4. That the entire assessment is null and void as no notice under section 143(2) was issued against return under 148.”

4. On confrontation of these additional grounds for their admission, Ld. Sr. DR has not raised any objection. Accordingly, the same were admitted for adjudication.

5. Since additional grounds are on the jurisdictional issue, we are inclined to take up the same first. First three additional grounds relate to approval not granted by Ld. Pr. CIT before issuing notice u/s. 148 and reasons not recorded on the date of issuance of notice u/s. 148. The fourth additional ground is in respect of non-issuance of notice u/s. 143(2) against return filed in response to notice u/s. 148 and, therefore, the entire assessment is null and void.

6. Brief facts of the case are that assessee is an individual, deriving income from salary, house property, capital gain and other sources. Original return was filed on 14.09.2011, reporting a total income of Rs.19,36,530/-. Subsequently, Ld. AO recorded the reasons to believe stating that assessee has claimed long term capital gain as exempt income amounting to Rs.1,83,47,999/- which has not been substantiated during the survey proceedings u/s. 133A and thereafter. He thus formed reasons to believe that income to this extent has escaped

assessment. Notice u/s. 148 was issued which is dated 22.03.2017. In the course of reassessment proceedings, Ld. AO issued notice u/s. 142(1) along with questionnaire and completed the assessment by making an addition towards long term capital gain claimed as exempt by the assessee. Ld. CIT(A) in the first appeal has confirmed the addition so made.

7. Before us, Ld. Counsel for the assessee has placed on record a paper book containing 218 pages. Ld. Counsel for the assessee emphasized that the approval from the competent authority for issuing notice u/s. 148 was obtained by the Ld. AO on 31.03.2017 whereas notice was issued on 22.03.2017 itself which is prior to obtaining the approval from Ld. Pr. CIT, Jamshedpur. He also pointed to the order sheet on record to demonstrate this fact. Ld. Counsel also pointed that the reasons to believe recorded by the Ld. AO do not contain any date of recording of the same for the purpose of approval granted by the Ld. Pr. CIT. He referred to a letter issued by the ITO (Technical) from the office of Ld. Pr. CIT which is dated 31.03.2017 informing about the approval granted by Ld. Pr. CIT for issuance of notice u/s. 148. He thus, claimed that the notice was issued prior to approval of Ld. Pr. CIT and hence, the entire assessment proceedings undertaken are void ab initio and liable to be quashed.

8. Per contra, the Ld. Sr. DR claimed that proposal for approval of issuing notice u/s. 148 was submitted by the Ld. AO to the office of Ld. PCIT, Jamshedpur on 17.03.2017 itself. Thereafter, due to certain technical problems in the ITBA application, the case of the assessee did not reflect before the

Ld. JCIT, Range-1, Jasmshedpur and remained pending for approval. Owing to the technical problem, a Help Desk request was raised to resolve the problem and obtain the approval from the competent authority. He thus, submitted that Ld. Pr. CIT had granted his approval on 31.03.2017 manually based on which notice u/s. 148 was sent to the assessee on 31.03.2017 on the registered e-mail ID i.e. ramakant1574@gmail.com by the Ld. AO. Thus, according to Ld. Sr. DR, the notice was validly issued though it was dated 22.03.2017, by obtaining the approval from the Ld. Pr. CIT manually on 31.03.2017 by resending it through the e-mail on 31.03.2017 which is within the prescribed limitation. To corroborate all these factual submissions made by the Ld. Sr. DR, he was directed to furnish a paper book containing all such documents within ten days of hearing of this appeal. Accordingly, a paper book containing 29 pages is placed on record by the Ld. Sr. DR to demonstrate and corroborate the factual assertions made before us.

9. We have gone through the paper book furnished by the Ld. Sr. DR from which we note that Ld. AO had moved a proposal for issuing notice u/s. 148 to the office of Ld. PCIT on 17.03.2017. Latter, on 22.03.2017, JCIT wrote a letter to the office of Ld. Pr. CIT seeking approval for initiation of proceedings u/s.147 and issuance of notice u/s. 148 by making a note that case could not be recommended through ITBA application due to technical problem for which a complaint has already been lodged at ITBA Help Desk for necessary resolution and hence, recommendation for granting of approval manually. Ld. Sr. DR has placed on record copies

of complaint lodged at ITBA Help Desk describing the problem. Again on 28.03.2017, Ld. ACIT requested the Ld. Pr. CIT for granting of approval so that notice which had already been issued may be once again downloaded from the system. In the same letter, he again described about the technical error for which the complaint was lodged and remained pending for resolution. On 29.03.2017, ld. JCIT again wrote a letter to Ld. Pr CIT requesting to grant approval manually for issuing notice u/s. 148. Considering its request, ld. Pr. CIT granted his approval on 31.03.2017 recording his satisfaction that income had escaped assessment and it is a fit case for issuing notice u/s. 148.

9.1. For this grant of approval by Ld. Pr. CIT, ITO (Technical) from the office of Ld. Pr. CIT issued a letter addressing the Ld. JCIT dated 31.03.2017 that approval has been granted. He also in the same letter mentioned that online approval has also been accorded . Based on this intimation, Ld. AO issued notice u/s. 148 by e-mail dated 31.03.2017 with a time stamp of 08:54 PM on the e-mail ID ramakant1574@gmail.com. In this e-mail, Ld. AO attached the notice dated 22.03.2017 and mentioned in the copy of e-mail that *“please find attached herewith the notice u/s. 148 in your case for compliance”*.

9.2. Based on these above stated factual information corroborated by documentary evidence placed before us, we find that the additional grounds raised by the assessee that notice has been issued prior to granting of approval from Ld. PCIT does not stand. In our considered view, Ld. Pr CIT had granted his approval which is within the limitation available in

the Act for issuing notice u/s. 148. There were genuine reasons on account of technical problems for which all the relevant corroborative documents are placed on record and the manual approval was obtained. We note that after obtaining the approval, notice u/s. 148 was issued though the notice was same dated 22.03.2017 issued earlier prior to obtaining the approval. To our mind, date 22.03.2017 contained in the notice u/s. 148 has a little significance when it has been issued within the limitation available under the Act. More particularly, it has been resent to the assessee on the registered e-mail ID after obtaining the required approval from Ld. Pr. CIT as prescribed u/s. 151 of the Act. Thus, ground nos. 1, 2 and 3 raised by the assessee by way of additional grounds are dismissed.

10. Now, we take up ground no. 4 of the additional grounds where assessee has challenged the assessment is null and void since no notice u/s. 143(2) was issued against return filed in response to notice u/s. 148. In this respect, ld. Counsel submitted that assessee had furnished his return on 21.12.2017, reporting total income of Rs.19,36,530/-. He pointed out both, from impugned order as well as order sheet entry that there is no mentioning and recording about the fact of issue of notice u/s. 143(2) before completing the reassessment proceeding u/s. 147. He pointed out that Ld. AO had issued first notice u/s. 142(1) on 12.07.2017, then on 14.08.2017. Again on 17.11.2017 Ld. AO issued a letter and thereafter on 13.12.2017, Ld. Counsel further submitted that in the notice issued by the Ld. AO u/s. 142(1), it was mentioned that in case of non-compliance, assessment will

complete on the basis of material available on record. According to the Ld. Counsel, assessee filed his return of income on 21.12.2017 in response to notice u/s. 148 and Ld. AO completed the assessment by adopting the returned income reported by the assessee in its return filed in response to notice u/s. 148 without complying with the principles of natural justice by issuing notice u/s. 143(2) of the Act. The assessment order was passed on 27.12.2017 by making the additions and total income assessed as under:

Income as shown by the assessee for AY 11-12	:	Rs. 19,36,530/-
Add: As discussed in Para 5	:	<u>Rs. 75,000/-</u>
Add: As discussed in Para 7	:	<u>Rs.182,26,700/-</u>

Total Assessed Income : Rs. 202,38,230/-

11. To buttress his contention, Ld. Counsel placed reliance on the decision of Hon'ble High Court of Patna in the case of CIT Vs. Nagandra Prasad [2023] 156 taxmann.com 19 (Pat) wherein it was held that:

“INCOME-TAX: Where notice was issued by Assessing Officer under Section 148 requiring assessee to file a return within thirty days but return was filed after eight and a half months, since return was filed by assessee in response to said notice though delayed, there should have been a notice issued under Section 143(2) as requirement to issue notice could not be dispensed with”

12. Per contra, Ld. Sr. DR strongly asserted that assessee had failed to furnish return in response to notice u/s. 148 within 30 days and, therefore, there was no requirement of issuing of notice u/s. 143(2). Ld. AO has accordingly, issued notice u/s. 142(1) on various dates giving sufficient opportunities to the assessee to make his submissions and, therefore, claim of the

assessee is not tenable. On a specific query by the Bench to the Ld. Sr. DR as to availability of copy of notice issued u/s. 143(2), he stated that the same is not on record.

13. We have heard the rival submissions and perused the material available on record. It is a fact on record that assessee filed his return on 21.12.2017 which is delayed in terms of period of 30 days while considering the notice u/s. 148. However, we note that Ld. AO has completed the assessment by taking the total income reported by the assessee in the return so filed at Rs.19,36,530/- to which addition has been made for arriving at total assessed income at Rs.2,02,38,230/-. Thus, when income reported in the return filed in response to notice u/s. 148 though delayed, has been taken into account, it is incumbent upon the Ld. AO to issue a notice u/s. 143(2) which otherwise vitiates the entire assessment proceedings. Requirement of issuing notice u/s. 143(2) cannot be dispensed with. Accordingly, the reassessment proceedings undertaken by the Ld. AO and the impugned reassessment order passed thereafter are liable to be quashed.

13.1. While holding so, we draw force from the judgment of Hon'ble High Court of Patna in the case of CIT Vs. Nagendra Prasad (supra) which has held in favour of the assessee. The decision by the Hon'ble Court is extracted below:

"1. The appeal is filed against the order of the Tribunal setting aside an order under section 143(3)/147 of the Income-tax Act, 1961.

2. The assessee had initially moved the High Court relying on the decision of the Hon'ble Supreme Court in Assistant Commissioner of Income-Tax v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)] which writ

petition was dismissed refusing invocation of the extraordinary remedy and relegating the assessee to the statutory remedy.

3. The Tribunal found, relying on the decision in Hotel Blue Moon (supra) that the proceedings are liable to be struck down. It was held that the return was filed by the assessee in response to the notice under section 148 though delayed and in such circumstance, there should have been a notice issued under section 143(2) as has been held in Hotel Blue Moon (supra).

4. The only question of law arising in the facts and of the case is whether notice should have been issued under section 143(2) of the Income-tax Act?

5. Admittedly, the notice was issued by the Assessing Officer under section 148 of the Act on 14.07.2008 requiring the assessee to file a return within thirty days. A return was filed much later on 31-3-2009, after eight and a half months.

6. On identical facts, in M.A. No. 239 of 2011 titled as Chand Bihari Agrawal v. Commissioner of Income Tax, Central, Patna decided on 25-7-2023, this Court considered the issue and held against the revenue.

7. We find that the question of law has to be answered in favour of the assessee and against the revenue . Hotel Blue Moon (supra) governs the issue which has been followed in Chand Bihari Agrawal (supra).”

14. Accordingly, ground no. 4 in the additional ground raised by the assessee is allowed. Since the entire assessment is held to be null and void in absence of notice u/s. 143(2) as stated above, grounds raised by the assessee in the Memorandum of Appeal in Form 36 are not adjudicated upon, they being rendered academic in nature. Also, both the parties have not made any submissions on the merits of the case.

15. In the result, appeal of the assessee is allowed.

16. Now, we take up the appeal vide ITA No. 202/Ran/2019 against penalty imposed u/s. 271(1)(c) of the Act. It is important to note that penalty imposable u/s. 271(1)(c) is dependent upon the amount of tax sought to be evaded as

contained in Explanation (1) and Explanation (4) to section 271(1). Since in the present case, the assessment has been held to be null and void ab initio, there is no occasion for any tax sought to be evaded. Accordingly, the penalty is not imposable. Appeal of the assessee challenging the imposition of penalty is allowed.

17. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 13th December, 2023.

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 13th December, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent
3. CIT(A), Jamshedpur
4. CIT
5. DR, ITAT, Ranchi Bench, Ranchi
6. Guard file

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of dictation- 29/11/2023
2. Date on which the typed draft order is placed before the Dictating Member and Other member 29/11/2023
3. Date on which the approved order comes to the Sr. P.S./P.S. - /11/2023
4. Date on which the file goes to the Bench Clerk /07/2023
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....