

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 4093/MUM/2023 (A.Y: 2011-12)

Manoj Ramsakal Rai Harikunj, Santosh Nagar Tisgaon, Kalyan (E)-421306 PAN: AAOPR1362Q	v.	ACIT – Circle – 3 2 nd Floor, Rani Mansion Murbad Road Kalyan (W)-421301
(Appellant)		(Respondent)

Assessee Represented by	:	Dr. P. Daniel
Department Represented by	:	Smt Mahita Nair
Date of conclusion of Hearing	:	18.04.2024
Date of Pronouncement	:	24.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal filed by the assessee is preferred against the order dated 20.09.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2011-12.

2. The grievance of the assessee read as under: -

"1. The Learned A.O. and Learned CIT(A) erred in passing the orders without following the Principles of Natural Justice.

2. The Learned Assessing Officer erred in issuing the notice u/s. 143(2) without jurisdiction and the Learned CIT(A) erred in not considering the submissions with proof in proper perspective, and therefore, the order passed on such notice is void ab initio.

3. The Learned CIT(A) erred in stating that even though Notice of Demand is unsigned, the order is valid as the intent is clear.

4. The Learned CIT(A) erred in confirming the addition u/s. 69 of the 1. T. Act, an amount of Rs. 80,80,000/- as unexplained investment disregarding the Remand Report.

5. The Learned CIT(A) erred in adding an amount of Rs. 1,09,00,000/- as unexplained investment u/s. 69 of the Income tax Act, 1961.

6. The Learned CIT(A) erred in not considering giving relief against the interest u/s. 234A, 234B & 234C of the Income tax Act.

7. It is prayed that the assessment may be cancelled or in the alternative the additions made may please be deleted."

3. At the very outset, the counsel vehemently contended that the Assessing Officer has framed the assessment under section 144 of Income-tax Act, 1961 (in short "Act") without properly serving the notice under section 143(2) of the Act. It is the say of the counsel that the mandate of the CBDT Circular which conferred the jurisdiction has been completely ignored as per the information collected by the assessee under RTI Act.

4. The counsel pointed out that the assessment has been framed by ACIT, Circle -3, Kalyan; whereas the notice under section 143(2) has been issued by Income Tax Officer, Ward - 1(3), Kalyan. The counsel placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of ACIT *v.* Hotel Blue Moon [(2010) 321 ITR 362 (SC)], S.K. Industries *v.* ACIT [(SC) 141 taxmann.com 569, ITAT Kolkata Bench in the case of Shri Sukumar Ch. Sahoo *v.* ACIT in ITA No. 2073/Kol/2016 dated 27.09.2017 and ITAT Mumbai Bench in the case of Monarch & Quresh Builders *v.* ACIT in ITA No. 2026/MUM/2023 dated 21.12.2023.

5. Per contra, supporting the assessment order, the Ld. DR pointed out that the notice under section 143(2) was served on the basis of PAN jurisdiction and therefore it is incorrect to say that no notice was served.

6. We have given a thoughtful consideration to the orders of authorities below and have considered the judicial decisions relied by the counsel in the light of Rule 18(6) of the ITAT Rules. As per the information collected by the assessee under RTI, which is as under: -

OFFICE OF THE INCOME TAX OFFICER, WARD 1(3), KALYAN
AND CENTRAL PUBLIC INFORMATION OFFICER
1ST FLOOR, MOHAN PLAZA, WAYLE NAGAR, KHADAKPADA, KALYAN(W)

001

No.Kyn/ITO Wd.1(3)/RTI/2013-14/270

Dt: 19.03.2014

Name and address of the Applicant : Adv. Miss. Vaishali S. Barod(L.L.M)
B-1/1103/104,Mansarovar,
Dhamankar Naka, Bhiwandi
Date of application : 03/03/2014
Date of order : 19/03/2014

ORDER UNDER SECTION 7(1) OF THE RIGHT TO INFORMATION ACT, 2005

The applicant, Adv. Miss. Vaishali S. Barod (L.L.M) vide application dated 03/03/2014 has made an application seeking information under Right to Information Act,2005. The details of information are as under:-

1. Jurisdiction of income tax officer ward-1(3), Kalyan for A.Y. 2010-11, 2011-12, 2012-13 & 201314 on the basis of following:

A. Income limit:

Upto 31/03/2011 Total income upto Rs. 5 lacs.

w.e.f. 01/04/2011 Total income Rs. 10 lacs for non – corporate assesseees and Total income upto Rs. 15 lacs for corporate assesseees.

B. Type of assessee:

upto 31/03/2011 - Only non- corporate assesseees having alphabet N to R other than salary income.

w.e.f. 01/04/2011 both non – corporate and corporate assesseees having alphabet N to R having business income and income from other sources other than salary income.

- C. Area of jurisdiction: Assesseees having business in Taluka-Bhiwandi,alphabet N to R. Upto 31/03/2011 area of Taluka -Bhiwandi for non-corporate assesseees only.

w.e.f. 01/04/2011 apart from non-corporate assesseees of Bhiwandi Taluka, all corporate assesseees of Kalyan, Dombivali, Ulhasnagar, Bhiwandi, Murbad, Ambernath, Badlapur, Shahapur, Titwala etc.

The applicant may prefer an appeal before the Designated Appellate Authority, Jt. Commissioner of Income Tax, Range-1, Kalyan, 1st floor, Mohan Plaza, Khadakpada, Wayale Nagar, Kalyan(W) within Thirty Days from the date of receipt of this order.

Note: Jurisdiction is not Assessment year wise. It depends on total income and territorial jurisdiction.



(Kaushal Kumar)

Central Public Information Officer,
Income -tax Officer, Ward -1(3),
KALYAN.

To:1. The Joint Commissioner of Income-tax, Range-1, Kalyan.

2. Adv. Miss. Vaishali. S. Barod (L.L.M.) An appeal, if desired, may be filed against this decision to the Joint Commissioner of Income-tax, Range-1, Kalyan, 1st Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan (w). The appeal is to be filed within 30 days from the date of receipt of this decision.

Central Public Information Officer,

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GOVERNMENT OF INDIA
OFFICE OF THE CENTRAL PUBLIC INFORMATION OFFICER
& JOINT COMMISSIONER OF INCOME TAX (OSD), CIRCLE-3, KALYAN.
2nd Floor, Rani Mansion, Murbad Road, Kalyan (w)-421301


Name & address of the applicant	Shri Balaji Venkatesan Devrajan, 2, Gangagiri CHS, Opp-Hotel Prasad Poona Link Road, Tisgaon, Kalyan East. PIN - 421306.
Date of Application	10/05/2018
Date of Receipt of Application in this Office	10/05/2018
Date of Order	23/05/2018

ORDER u/s 7(1) OF THE RIGHT TO INFORMATION ACT, 2005/35

Shri Balaji Venkatesan Devrajan, has filed an application dated. 10/05/2018 received in this office on 10/05/2018. The applicant has sought for certain information, which is as under:-


1. Jurisdiction of Income ACIT Circle-3, Kalyan for A.Y 2010-11, 2011-12, 2012-13& 2013-14 on the basis of following :
 - A. **Income Limit:**
Upto 31.03.2011 total income more than Rs. 5Lakh, for non corporate assessee and w.e.f 01.04.2011 Total income more than Rs. 15 Lakh for non corporate assessee.
 - B. **Type of Assessee**
All non corporate assessee (Other than Corporate/Public Trusts) having alphabet "A to Z"
 - C. **Area of Jurisdiction.**
Non corporate assessee (Other than Corporate/Public Trusts) in areas of Taluka Kalyan, Dombivli Titwala Shahad etc.

In case the applicant is not satisfied with this order, he may file an appeal against this order before the Appellate Authority i.e. the Jt. Commissioner of Income Tax, Range-3, 2nd Floor, Rani Mansion, Murbad Road, Kalyan(West).


(K. Harigovind)
CPIO & JCIT (OSD),
Circle-3, Kalyan

Copy to :

1. Shri Balaji Venkatesan Devrajan,
2. Gangagiri CHS, Opp-Hotel Prasad Poona
Road, Tisgaon, Kalyan East.
PIN - 421306.
2. The Jt. CIT, R-3, Kalyan.


CPIO & JCIT (OSD), Circle-3, Kalyan.

7. A perusal of the assessment order read with the aforementioned show that the return was selected for scrutiny through CASS. It would be pertinent to understand this procedure of scrutiny selection. Computer assisted scrutiny selection of the return of income is done by Central Processing Centre, Bangalore. Certain Parameters are notified beforehand by the CBDT for scrutiny selection through CASS. Once the return is selected for scrutiny through CASS, notice is automatically generated under section 143(2) of the Act as per address given in the PAN data base and the Assessing Officer in whose jurisdiction the PAN lies has to only serve the notice generated through CASS.

8. In the present case also the return was selected for scrutiny through CASS and the Assessing Officer, Ward - 1(3), Kalyan, served the notice on the address as per PAN data base. Once the assessment proceedings started it was realized that the return of income of the assessee is more than ₹.30 lakhs and therefore, the jurisdiction lies with ACIT, Circle -3, Kalyan. The return of income along with the notice served under section 143(2) of the Act was transmitted to ACIT, Circle-3, Kalyan. Thereafter the assessee participated in the assessment proceedings. This fact clearly show that it is not a case where notice has not been issued and served under section 143(2) of the Act and it

cannot be said that the notice was issued by a different Assessing Officer and assessment has been made by a different Assessing Officer. This is in line with the CASS selection of return for scrutiny and generation of notice without any human interference. All the decisions relied upon by the Counsel are devoid of any mention of the new procedure for selection of return for scrutiny assessment under CASS. What the Hon'ble Supreme Court has held in the case of ACIT *v.* Hotel Blue Moon (supra) is that issue of notice is mandatory under section 143(2) of the Act and the notice has been issued in the present case. The decision of the Hon'ble Jurisdictional High Court of Bombay in the case of Ashok Devichand Jain *v.* UOI [(2023) 452 ITR 43 (Bom)] is dealt on different facts and in that case the Income Tax Officer in his affidavit has stated that since the assessment was getting barred by limitation the time available with the Income Tax Officer was too short to migrate the Permanent account number after obtaining administrative approval from the higher authorities, which means that PAN jurisdiction must have been changed.

9. In the case in hand, on the facts discussed hereinabove, it cannot be said that the notice has been issued by an officer who had no jurisdiction over the petitioner as mentioned elsewhere, the return was

selected for scrutiny through CASS and the notice was generated simultaneously Officer having PAN jurisdiction issued and served notice under section 143(2) of the Act. The decision of the Coordinate Bench relied upon by the counsel are again devoid of the fact of any mention of scrutiny selection through CASS and the procedure laid down therein and have followed the decision of Hon'ble Bombay High Court (supra) which is itself is not applicable.

10. Considering the peculiar facts of the case in hand, we do not find any merit in the challenge to the issue and service of notice under section 143(2) of the Act. The grounds related to this issue are dismissed.

11. Coming to the merits of the case, we find that addition of ₹.80.80 lakhs has been made on the basis of AIR information available in the ITD System though. In his remand report the Assessing Officer has admitted that this purchase was made by the firm M/s. Rai Residency Pvt., Ltd., in which the assessee is a Director and PAN number of the assessee has been mentioned therein. The remand report is clear where it states that name of purchaser is M/s. Rai Residency Pvt., Ltd., since the assessee is not the purchaser of the impugned property as

accepted by the Assessing Officer himself, we do not find any reason of making the impugned addition in the hands of the assessee. The Assessing Officer is directed to delete the addition of ₹.80.80 lakhs. This ground is allowed.

12. The next addition is of ₹.1.09 Crores, on account of sale of land as per AIR information available in ITD system.

13. Before us, the counsel stated that firstly the Assessing Officer has not deducted the cost while computing the gains and secondly and most importantly the assessee is only 1/3rd owner of the said property.

14. Perusal of the assessment order shows that these facts are missing from the order. Therefore, in the interest of justice and fair play we restore this issue to the file of the Assessing Officer. The assessee is directed to furnish necessary evidences to demonstrate that he is 1/3rd owner of the impugned property. Assessee is also directed to furnish the details of cost and the Assessing Officer is directed to examine the same and decide this issue afresh, after affording a reasonable and adequate opportunity of being heard to the assessee.

15. In the result, appeal filed by the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on 24th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 24.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum