

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3849/Mum/2023 (A.Y 2009-10)**

Chetan Balubhai Sanena B-405, Rainbow Apartments C.S. Road, Dahisar (E) Mumbai 400068	Vs.	Income Tax Officer – 32(1)(2) Bandra Kurla Complex Mumbai 400051
PAN/GIR No. :ACIPP3106F		
Appellant	..	Respondent

Appellant by :	Shri Gunjan Kakkad
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	08.05.2024
Date of Pronouncement	14.05.2024

आदेश / O R D E R

**PER AMARJIT SINGH, AM:**

This appeal filed by the assessee is directed against the order passed by the CIT(A) NFAC, Delhi, which in turn arises from the assessment order passed by the A.O u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated 27.02.2015 for A.Y. 2009-10. The assessee has assailed the impugned order on the following grounds before us:

***“Ground No. 1: Delay in filing appeal ought to have been condoned.***

1.1 *On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as "the Id.*

*CTT(A)" forsake of brevity] has erred in holding that the delay in filing of appeal could not be condoned.*

1.2 *The Appellant submits that Ld. CIT(A) ought to have appreciated the fact that assessment order was never received by the Appellant till September 2017 and the authorised representative had specifically filed a letter to that effect.*

1.3 *The Appellant prays that under the circumstances, the delay in filing of appeal be condoned.*

**Ground No. 2: Assessment order is invalid.**

2.1 *On the facts and circumstances of the case and in law, the assessment order is invalid insofar as the same was not served upon the Appellant.*

2.2 *On the facts and circumstances of the case and in law, the assessment order is invalid insofar as the same was not served upon the Appellant and hence, barred by limitation.*

**Ground No. 3: Reassessment proceedings are invalid.**

3.1 *On the facts and circumstances of the case and in law, the Appellant submits that the reassessment proceedings are invalid.*

3.2 *Ld. CIT(A) ought to have considered when the Appellant had specifically stated that the notice under section 148 and other notices under section 142(1) of the Act were never served upon the Appellant.*

3.3 *The Appellant submits that the impugned notice under section 148 of the Act was never served and thus, the reassessment proceedings are invalid.*

3.4 *On the facts and circumstances of the case, Ld. AO erred in initiating reassessment proceedings without independent application of mind.*

**Ground No. 4: Additions to total income are unjustified.**

4.1 *On the facts and circumstances of the case and in law, the Ld. AO could not have made additions to the total income without providing adequate opportunity of being heard.*

4.2 *On the facts and circumstances of the case and in law, the Ld. AO could not have made additions to the total income without application of mind and by merely relying upon the investigation report of the sales-tax department."*

2. The facts in brief are that the return of income declaring total income of Rs. 8,39,020/- was filed on 21.09.2009. The same was processed u/s. 143(1) of the Act. Subsequently information was received from the DIGT (Inv), Mumbai that the Sales Tax Department, Mumbai has communicated that the assessee has received accommodation entries of bogus purchases without delivery of goods from the following 5 parties:

Name of the Party	Amount (in Rs.)
Ashtavinayak Sale Agency	4,25,982
Vinayak Trading Co.	54,615
Thar Traders P. Ltd.	5,09,317
Takshil Trading P. Ltd.	18,35,393
Komal Enterprises	1,744
Total	28,27,051

Therefore, the case was reopened by issue of notice u/s. 148 of the Act dated 06.03.2014. However, the assessee has not made any compliance to the notices issued u/s. 148 of the Act and further notice issued u/s. 142(1) of the Act during the assessment proceedings before the AO. Consequently, the Assessing Officer (AO) has disallowed the aforesaid purchases of Rs.28,27,051/- by holding these as bogus transactions and added to the total income of the assessee.

3. The assessee appealed before the CIT(A). The ld. CIT(A) dismissed the appeal of the assessee on merits and also not condoned the delay in filing the appeal by 933 days.

4. During the course of appellate proceedings before us the ld. counsel for the assessee filed an affidavit dated 14.03.2014. The assessee has submitted that he has not received any notice issued u/s. 148 of the

Act nor he had received the assessment order dated 27.02.2015 passed u/s. 144 of the Act by the AO. The assessee further submitted that he has filed various letters to the AO and also filed an application under the Right to Information (RTI) Act and sought assessment records along with information of date of issue of notices, date of service of such notices and date of issuance of assessment order dated 24.09.2015. He further submitted that only on receipt of notice of demand dated 19.01.2017 he came to know about the assessment order dated 27.02.2015. He further submitted he had received the notice of demand dated 19.01.2017 without receiving the assessment order passed u/s. 144 of the Act on 27.02.2015 by the AO. He further mentioned in his letter dated 07.02.2017 that he brought to the notice of the AO that he has not received any notice/ assessment orders for the assessment year 2009-210 and requested the AO to provide copy of the notice and the assessment order. He submitted that he has received the assessment order dated 27.02.2015 only on 07.09.2017 and on receipt of the assessment order his consultant has filed the appeal before the CIT(A) on 17.10.2017. Therefore, there was no delay in filing the appeal by 933 days. The assessee has also filed copy of the letter dated 07.02.2017 received by the AO in which the assessee has submitted that he has not received any notice/assessment order for AY 2009-10. The assessee has also filed copy of the letter dated 20.02.2024 filed before the AO under the RIT Act to provide him information about the date of service of notice u/s. 148 of the Act and copy of other assessment records. The ld. counsel for the assessee also filed copy of the letter dated 01.12.2023 written to the AO in which the assessee has asked to provide certified copies of assessment records for AY 2009-10 including notice u/s. 148, reasons recorded for issuing notice u/s. 148 and date of dispatch of the assessment order. After referring to the aforesaid various material the ld.

counsel for the assessee submitted that since the notice u/s. 148 was not issued to the assessee, the assessment order passed u/s. 144 r.w.s. 147 of the Act was invalid in law. Further he submitted that the ld. CIT(A) is not justified in dismissing the appeal of the assessee for want of delay in filing the appeal, since the delay was happened on account of not supplying copy of the assessment order passed by the AO on 27.02.2015 as submitted in the affidavit.

5. During the course of appellate proceedings before us, the ld. D.R. was directed to produce the assessment record in order to verify the claim of the assessee that no notice u/s. 148 of the Act was issued to the assessee. Vide order sheet entry dated 04.03.2024, the ld. D.R. sought time to produce the assessment record by 16.04.2024. However, the same was not produced. Therefore, at the request of the ld. D.R., further period to produce the record was extended upto 08.05.2024. However, no compliance was made from the side of the Revenue.

6. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above in this order the case of the assessee was reopened by the AO on the basis of the information received from the from DIGT (Inv), Mumbai that the assessee has obtained accommodation bills from four parties as per information received from the Sales Tax Department. The AO has passed ex-parte assessment order u/s. 144 r.w.s. 147 of the Act on 27.02.2015 and disallowed the entire alleged bogus purchases of Rs.28,27,051/- on the basis of the information received from the Sales Tax Department and reply received from one of the sale party M/s. Vinayak Trading Co. stating that they were indulged in issued bogus invoices to various parties. The ld. CIT(A) has not allowed the application of the assessee filed for condonation of the delay of 933 days on account of non-receipt

of the assessment order as discussed above in the order. The ld. CIT(A) has also dismissed the appeal of the assessee on merit.

7. During the course of appellate proceedings before us regarding the delay in filing the appeal before the ld. CIT(A), we have perused the affidavit and submission filed by the assessee. The assessee has received notice of demand on 19.01.2017 and thereafter issued various letters and made correspondence with the AO as mentioned in the submissions of the ld. counsel for the assessee regarding not receiving of ex-parte assessment order dated 27.02.2015 and also not receiving the notice issued u/s. 148 of the Act on the basis of which the case of the assessee was reopened. The assessee has also communicated to the AO by a letter dated 07.02.2017 that he has not received any notice and assessment order for AY 2009-10 and requested the AO to provide the copy of the notice and assessment order so that appeal can be filed before the ld. CIT(A). We have also perused the copy of the letter of the assessee filed before the AO on 01.12.2023 in which the assessee has categorically brought to the notice of the AO to provide him certified copy of the assessment records for AY 2009-10 including notices issued u/s. 148 and 142(1), reasons recorded for issuing of notice u/s. 148 and date of dispatch of assessment order, etc. The assessee has also filed application under RTI Act before the AO for providing information pertaining to service of notices u/s. 148, date of service and issue of assessment order and copy of assessment records for AY 2009-10.

8. Further, during the course of appellate proceedings before us, the ITAT Bench vide order sheet dated 24.05.2025 at the time of hearing the appeal has categorically brought to the notice of the ld. D.R. that the assessee has not received the notice issued by the AO pertaining to the assessment made u/s. 144 r.w.s. 147 of the Act in the case of the

assessee and directed the ld. D.R. to produce the assessment records on 16.04.2024. However, the ld. D.R. has not produced the said records. Therefore, on 17.04.2024, the ld. D.R. was again directed to produce the assessment folder for AY 2009-10 on 08.05.2024 and also informed that no further adjournment will be provided. However, on the date of hearing of this case the ld. D.R. has neither produced the assessment records nor report about the availability of the assessment records. The aforesaid material facts, findings and documents demonstrate that there was bona fide reason for the assessee for delay in filing the appeal since the assessment order and the notice issued on the basis of which the assessment was completed was not received by the assessee. Further, before the ld. CIT(A) in Form 35 the assessee has categorically submitted that he has neither received the notice issued u/s. 148 and 142(1), show cause notice nor received the reassessment order and also submitted that the order passed by the AO was bad in law and against natural justice. We have also considered the decision of the Hon'ble Supreme Court in the case of Union of India v. Rai Singh Deb Sign Bist [1973] 88 ITR 200 (SC) and the decision of the Hon'ble Bombay High Court in the case of Murlidbar Pusaram v. Asst. Controller of Estate Duty [1985] 154 ITR 814 (Bom). Referred by the ld. Counsel on the proposition that in case the AO failed to produce the record, therefore, the AO has no reason to believe that income chargeable to tax has escaped assessment and the Hon'ble Bombay High Court held that since the records were not produced and no reasons were given for not producing them, therefore, the adverse inference was taken against the Department. In the light of the above facts and circumstances in the case of the assessee, in spite of providing sufficient opportunities, the Revenue has failed to produce assessment records to substantiate that notice u/s. 148 of the Act and another notices were issued to the assessee pertaining to the

reassessment made in the case of the assessee u/s. 144 r.ws. 147 of the Act on 27.02.2015. In view of the facts, findings and circumstances the reassessment order without issuing and servicing of notice u/s. 148 of the Act on the assessee are invalid. Therefore, grounds 1 to 3 of the assessee are allowed. Since we have quashed the reassessment proceedings, therefore, ground No. 4 of the assessee pertaining to merit of the addition is left open.

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

Order pronounced in the open court on 14.05.2024

Sd/-  
(VIKAS AWASTHY)  
Judicial Member

Sd/-  
(AMARJIT SINGH)  
Accountant Member

Place: Mumbai

Date: 14.05.2024

n.p

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण/ ITAT, Bench,  
Mumbai.**