आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील **सं/ITA No.77/CTK/2024**

(**निर्धारण वर्ष /** Assessment Year : 2017-2018)

Susanta Patra, Flat No.414, 78, Dream Apartment, Ghatikia, Odisha	Vs	National Faceless Assessment Centre (NFAC), Delhi
PAN No. :ABHPP 8213 G		

(**अपीलार्थी /Appellant**)	..	(**प्रत्यर्थी / Respondent**)

निर्धारिती की ओर से /Assessee by	:	Shri Nihar Ranjan Biswal & Ramesh Chandra Rana, ARs
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / **Date of Hearing**	:	04/06/2024
घोषणा की तारीख/**Date of Pronouncement**	:	04/06/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.12.2023, in DIN & Order No.ITBA/NFAC/S/250/2023-24/1059196403(1) for the assessment year 2017-2018.

2. The assessee has filed an additional ground which reads as under:-

> *Ground No.6.*
>
> *For that, on the facts and circumstance of the case, the Ld.A.O. has erred in law by6 issuing a notice u/s.148 beyond the time limit as specified u/s.149. therefore issue of notice is beyond jurisdiction. Therefore issue of notice u/s.148 is liable to be null and void.*

3. The above additional ground is admitted as it is purely a legal ground in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd., reported in 229 ITR 383 (SC).

4. It was submitted by the ld. AR that the AO has mentioned in its assessment order at page 2 para 2 that notice u/s.148 of the Act has been issued on 31.03.2021 and served on the assessee through email. Ld. AR has placed before us the copy of the notice of communication in the assessment for the assessment year 2017-2018, the same is extracted as follows :-

Proceeding Name	PAN	Name of Assessee	Assessment Year
Assessment Proceeding u/s 147	ABHPP8213G	SUSANTA PATRA	2017-18

Financial Year
2016-17

Select by Notice ID

Notice/ Communication Reference ID : 100044432862

144 Notice u/s	ITBA/AST/F/144(SCN)(F)/2021-22/1040016283(1) Document reference ID	Description : [ITBA]Show Cause Notice Issued On : 23-Feb-2022 Response Due Date : 28-Feb-2022	View Response Notice/Letter pdf

Notice/ Communication Reference ID : 100041710371

142(1) Notice u/s	ITBA/AST/F/142(1)/2021-22/1038073837(1) Document reference ID	Description : [ITBA]Notice u/s 142(1)of Income Tax Act 1961. Issued On : 23-Dec-2021 Response Due Date : 06-Jan-2022	Submit Response Notice/Letter pdf

Notice/ Communication Reference ID : 100040863613

142(1) Notice u/s	ITBA/AST/F/142(1)/2021-22/1037467827(1) Document reference ID	Description : [ITBA]Notice u/s 142(1)of Income Tax Act 1961. Issued On : 03-Dec-2021 Response Due Date : 14-Dec-2021	Submit Response Notice/Letter pdf

Notice/ Communication Reference ID : 100039202863

142(1) Notice u/s	ITBA/AST/F/142(1)/2021-22/1035977154(1) Document reference ID	Description : [ITBA]Notice u/s 142(1)of Income Tax Act 1961. Issued On : 28-Sep-2021 Response Due Date : 06-Oct-2021	Submit Response Notice/Letter pdf

Notice/ Communication Reference ID : 100033644442

148 Notice u/s	ITBA/AST/S/148/2020-21/1032082824(1) Document reference ID	Description : [ITBA]Notice under section 148 of the Income Tax Act, 1961 Issued On : 01-Apr-2021	Submit Response Notice/Letter pdf

5. Ld. AR has also placed before us the copy of the notice issued u/s.148 of the Act, which is scanned and attached as follows :-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
ITO, WARD 3, ROURKELA

To, SUSANTA PATRA FLAT NO 2 MARKETING CENTRE SECTOR 5 , ROURKELA 2 ROURKELA SUNDARGARH 769002 , Orissa India	

PAN:	AY:	Dated:	DIN & Notice No :
ABHPP8213G	**2017-18**	**31/03/2021**	**ITBA/AST/S/148/2020-21/1032082824(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 **2017-18** 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

HARIHAR NAIK
ITO, WARD 3, ROURKELA

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

Note: If digitally signed, the date of digital signature may be taken as date of document.
,AAYAKAR BHAWAN, Rourkela Range, UDIT Nagar, ROURKELA, Orissa, 769012
Email: ROURKELA.ITO3@INCOMETAX.GOV.IN,
*** DIN-Document identification No.**

This document is digitally signed
Signer: HARIHAR NAI
Date: Thursday, Apri , 2021 2:33 PM
Location: BHUBANE AR, India

6. It was the submission that as per the communication reference the notice u/s.148 of the Act was issued on 01.04.2021. It was the submission that as per the notice issued u/s.148 of the Act, the same was digitally signed by Shri Harihar Naik, ITO, Ward-3, Rourkela on the Thursday, April 1 2021 at 2.33 PM at Bhubaneswar, India. It was the submission that as on 1st April, 2021, the law in relation to issuance of notice u/s.148 of the Act stood amended and the impugned notice u/s.148 of the Act is bad in law and the same is liable to be quashed as also the consequential assessment order.

7. In reply, ld. Sr. DR vehemently supported the orders of the ld. AO and ld. CIT(A). It was the submission that in regard to the notice u/s.148 of the Act alleged to have been issued on 1st April, 2021, he needs to take instruction from the AO.

8. We have considered the rival submissions. A perusal of the communication reference clearly shows that the notice u/s.148 of the Act has been issued on 1st April, 2021. A perusal of the digitally signed notice u/s.148 of the Act also clearly shows that the same has been issued on 1st April, 2021 at 2.33 PM. The law in relation to the provision of reopening of the assessment by issuance of notice u/s.148 of the Act stood amended w.e.f. 01.04.2021. Admittedly, the impugned notice u/s.148 of the Act is not in compliance with law as on 01.04.2021 as it stood amended. Consequently, the said notice u/s.148 of the Act issued by the AO is found to be invalid and the same stands quashed. Consequent to the quashing of the notice issued u/s.148 of the Act, consequential

assessment and consequential order of the ld. CIT(A), also stand quashed.

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

Order dictated and pronounced in the open court on 04/06/2024.

Sd/-	Sd/-
(GEORGE MATHAN)	**(MANISH AGARWAL)**
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य/ **ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 04/06/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
   Susanta Patra,
   Flat No.414, 78,
   Dream Apartment, Ghatikia,
   Odisha
2. प्रत्यर्थी / The Respondent-
   National Faceless Assessment Centre
   (NFAC), Delhi
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Assistant Registrar**)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack