

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 1159 & 1160/KOL/2023
Assessment Years: 2014-15 & 2015-16**

***Md. Hakimuddin.....Appellant
[PAN: ABUPH 8782 K]***

Vs.

ITO, Ward-1(1), Kolkata.....Respondent

Appearances:

Assessee represented by: P.K. Himatsinghka, A/R.

Department represented by: Prabhakar Prakash Ranjan, Addl. CIT.

Date of concluding the hearing : May 20th, 2024

Date of pronouncing the order : June 24th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

This is a batch of two appeals of the same assessee for AY 2014-15 & AY 2015-16. In both the cases, there are identical issues and principle and hence the same are disposed off with a single order. For the sake of convenience ITA No. 1159/KOL/2023 (AY 2014-15) will be taken as the lead case for adjudicating the grounds of appeals.

1.1. In the present case the assessee was served with a notice u/s 148 of the Act on the ground that the assessee had not filed any return of income and there was a transaction relating to sale/purchase of land to the tune of

Rs. 13,78,937/- (AY 2014-15). It is seen that there was no worthwhile compliance to the notices issued by the ld. AO, attempting to elicit information regarding the said transaction. In light of the non-compliance income was assessed at Rs. 13,78,937/- vide order dated 28.03.2022 (AY 2014-15).

1.2. Aggrieved with this action of the AO, the appellant approached the ld. CIT(A) but before him also there was no discussion on the merit of the case as the ld. CIT(A) chose not to condone the delay of more than three months and proceeded to dismiss the appeal as not admitted.

2. Aggrieved with the action of both ld. AO and ld. CIT(A) the appellant has filed the present appeal through the following grounds:

“(1) That under the facts and circumstances of the case, the notice u/s 148 dated 31.03.2021 issued on 01.04.2021 without issue of notice u/s 148A and without complying mandatory procedure contained u/s 148A as applicable from 01.04.2021 as inserted by Finance Act 2021. The notice so issued is unlawful, illegal, bad in law and liable to be quashed, and subsequent proceeding continued with such non-jurisdictional notice are also not sustainable in law and void-ab-initio.

(2) That the notice u/s 148 dated 31.03.2021 issued on 01.04.2021 without complying the mandatory direction issued by Hon’ble Supreme Court Judgement dated 04th May 2022 in Union of India v Ashsish Agarwal. The notice so issued is therefore in illegal, invalid, bad in law and liable to be quashed and the assessment order passed in persuance to such non jurisdictional notice is liable to be annulled/ cancelled.

(3) For that the approval for initiation of reopening proceedings u/s 148 has not been taken from appropriate authorities u/s 151 of I.T. Act, 1961, the notice is therefore illegal & void-ab-initio.

(4) That under the facts and circumstances of the case, re-opening proceeding has been initiated u/s 148 r.w.s 147 of I.T. Act, 1961, on the basis of vague, arbitrary and suspicious reasoning without bringing any tangible material on record and without linking the assessee that income chargeable to tax has escaped assessment.

(5) That under the facts & circumstances of the case, L’d CIT(A) NF AC erred in dismissing the appeal as not admitted.


(6) That the L’d AO erred in making addition of Rs. 13,78,937/- being invested in purchase of property in the absence of corroborative material on record, and without considering the reply submitted on dated 24th March

2022 against show cause notice dated 23rd March 2022. The addition was made on the basis of suspicion, surmises and conjectures.

(7) That the L'd AO passed the assessment order dated 28.03.2022 allowing only one day time to respond against SCN dated 23-03-2022 without allowing sufficient opportunity of being heard, thus violates the principle of natural justice.

(8) That the appellatant craves to add or amend any ground of appeal on or before the date of hearing.”

2.1. Right At the outset, Id. Counsel for the assessee pointed out that the assumption of jurisdiction itself was faulty as the notice u/s 148 of the Act dated 31.03.2021 was actually issued on 01.04.2021. In support of his contention that the said notice was issued beyond the statutory time limit, the Id. A/R has filed screenshot from the ITBA portal. For a better appreciation of the contention of the Id. A/R two documents are reproduced below:

	GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 1(1) JALPAIGURI
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 PCIT, Siliguri	
SURENDAR TIGGA WARD 1(1) JALPAIGURI	
<small>(In case the document is digitally signed please refer Digital Signature at the bottom of the page)</small>	

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Proceeding Name	PAN	Name of Assessee	Assessment Year
Assessment Proceeding u/s 147	ABUP18782K	MD HAKIMUDDIN	2014-15

Financial Year
2013-14

Notice/ Communication Reference ID : 100046841302

144 Notice u/s	ITBA/AST/F/144(SCN)/2 021-22/1041388023(1) Document reference ID	Description : [ITBA]Show Cause Notice Issued On : 23-Mar-2022 Response Due Date : 25-Mar-2022	View Response
			Notice/Letter pdf
			Seek/View Adjournment
			Seek Video Conferencing

Notice/ Communication Reference ID : 100044120070

142(1) Notice u/s	ITBA/AST/F/142(1)/202 1-22/1039797022(1) Document reference ID	Description : [ITBA]Notice u/s 142(1)of Income Tax Act 1961. Issued On : 16-Feb-2022 Response Due Date : 02-Mar-2022	View Response
			Notice/Letter pdf
			Seek/View Adjournment

Notice/ Communication Reference ID : 100040170029

142(1) Notice u/s	ITBA/AST/F/142(1)/202 1-22/1036952037(1) Document reference ID	Description : [ITBA]Notice u/s 142(1)of Income Tax Act 1961. Issued On : 15-Nov-2021 Response Due Date : 30-Nov-2021	View Response
			Notice/Letter pdf
			Seek/View Adjournment

Notice/ Communication Reference ID : 100033610178

148 Notice u/s	ITBA/AST/S/148/2020- 21/1032052081(1) Document reference ID	Description : [ITBA]Notice u/s 148of Income Tax Act 1961. Issued On : 01-Apr-2021	View Response
			Notice/Letter pdf
			Seek/View Adjournment

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2.2. It is evident from the documents filed before us that the said notice u/s 148 of the Act was actually issued on 01.04.2021 and not on 31.03.2021. Ld. A/R has relied on the findings of this Tribunal in the case of *M/s. Osian Stock*

Broking Pvt. Ltd. vs ITO in ITA No. 375/KOL/2022 dated 12.05.2023 to canvass the point that issue is squarely covered in favour of assessee by the finding in this case.

2.3. Ld. D/R vehemently protested that since the assessee has not appeared before the ld. AO and thus, there was no opportunity for any correct appreciation of the facts. Even before the ld. CIT(A) the facts have not been correctly determined as the appeal filed before him was dismissed *in-limine* on account of delay in filing.

2.4. We have carefully considered the rival contentions and also examined the documents placed before us, specially the screenshots from the ITBA Portal. It is seen that this case is squarely covered in favour of the assessee through the case of *M/s. Osian Stock Broking Pvt. Ltd. (supra)*. The relevant portions from the said order are extracted as under:

“4. We have heard the rival contentions and gone through the records. The notice in this case has been shown to be signed on 30.09.2015, however, the same was emailed to the assessee on 03.11.2015. The Hon’ble Jurisdictional Calcutta High Court in the case of Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.’ (supra) considering the facts that the notice u/s 148 of the Act was signed on March 31 2021, however, it was actually uploaded for communication on April 1 2021 at 3 a.m. thereby treating the 1st April 2021 as issuance of impugned notice u/s 148 of the Act, quashed the reassessment proceedings holding that the provisions of Finance Act 2021 would be applicable from 01.04.2021 and therefore, before issuance any notice u/s 148 of the Act, the Assessing Officer was required to observe the statutory formalities u/s 148A of the Act. In the case in hand also, the notice was set in motion only on 03.11.2015, in our humble view, signing of the notice would not constitute as issuance of notice. The date of issuance of notice would be when it is set in motion for delivery to the assessee. So far as the contention of the ld. counsel that the issue of notice u/s 143(2) of the Act within the prescribed period in relation to the reassessment proceedings u/s 147/148 was not mandatory, we find that the issue has been settled by the various High Courts holding that even in the case of reassessment proceedings u/s 147/148 of the Act, the issuance of notice within the specified period u/s 143(2) of the Act is mandatory and that the Assessing Officer cannot assume jurisdiction u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act and this defect cannot be cured by taking recourse to the deeming fiction provided u/s 292BB of the Act. Reliance in this respect can be placed on the decision of the Delhi High Court in the case of PCIT vs. Shree Jai Shiv Shankar Traders Pvt. Ltd. IT Appeal

No.1068 of 2013 dated 18.02.2015; Hon'ble Madras High Court in the case of Saphthagiri Finance & Investment vs. ITO reported in (2013) 90 DTR (Mad) 289; Hon'ble Delhi High Court in the case of DIT vs. Society for Worldwide Interbank Financial Telecommunications reported in (2010) 323 ITR 249 (Del); Hon'ble Allahabad High Court in the case of CIT vs. Solarpur Cold Storage P Ltd (2014) 50 Taxmann.com 105 (All); Hon'ble Allahabad High Court in the case of CIT vs. Rajeev Sharma reported in [2011] 336 ITR 678 (All.). Since the Assessing Officer did not issue notice u/s 143(2) of the Act within the specified time period, therefore, the Assessing Officer could not have assumed jurisdiction to frame the assessment u/s 143(3) of the Act and, therefore, the impugned assessment order is bad in law and the same is accordingly held to be non-est."

3. In light of the discussion above, the appellant succeeds for both the assessment years under consideration on the ground that the assumption of jurisdiction itself was faulty and consequently, any subsequent findings also become *void ab initio*.

3.1. In light of the finding for AY 2014-15, since the facts are on identical footing, the appellant gets relief on same ground as discussed for AY 2014-15.

4. In the result, the appeals filed by the assessee in ITA Nos. 1159 & 1160/KOL/2023 are allowed.

Order pronounced in the open Court on 24th June, 2024.

Sd/-

[Sanjay Garg]

Judicial Member

Dated: 24.06.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]

Accountant Member

Copy of the order forwarded to:

- 1. Md. Hakimuddin, C/o. P.K. Himmatsinghka & Co. 41, B.B. Ganguly Street, Central Plaza, 2nd Floor, Kolkata, West Bengal, 700012.**
- 2. ITO, Ward-1(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata