



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

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

ITA No.167/CTK/2024
Assessment Year : 2018-2019

Shree Deosharwali Oil Industries, Govindpur, Bargarh	Salepali	Vs.	Income Tax Officer, Ward Bargarh, BSF Nagar. NH Street, Bandu Vikira Chowk, 1 st floor, Bargarh
PAN/GIR No.ACBFS 4179 D			
(Appellant)		..	(Respondent)

Assessee by : Shri Sunil Surana, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 29/07/2024
Date of Pronouncement : 29/07/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 15.3.2024 in Appeal No. NFAC/2017-18/10233231 for the assessment year 2018-19.

2. Shri Sunil Surana, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. Ld AR of the assessee has submitted additional ground challenging the notice issued u/s.148 of the Act, which reads as follows:

“The aforesaid appeal has been fixed for hearing on 29.7.2024.

In this connection, it is submitted that the assessment was reopened u/s.147. This is bad in law. Therefore, the assessee is filing herewith some additional grounds which goes to the root of the issue and no fresh investigation of facts is required. In view of the judgment of the Hon’ble Supreme Court in the case of jute Corporation of India reported in 187 ITR PAGE 688 National Thermal Power Corporation reported in 229 ITR 383, the additional grounds may be admitted.”

Yours faithfully,

Sd/

For Shree Deosharwali Oil Industries

Additional grounds

1. For that the proceedings initiated vide notice u/s.148(A)(b), 148A(d) and 148 were without jurisdiction and therefore, the entire reassessment is bad in law.
 2. For that the Id CIT(A) erred in confirming the action of reopening when notice u/s.148A(b) is bad in law since it provided less than 7 days to comply and therefore, the entire assessment is bad in law.
 3. For that the Id CIT(A) erred in confirming the action of reopening when the sanction obtained u/s.151 was bad in law and were not provided to the assessee despite specific requests.
 4. For that the notice issued u/s.148 is bad in law since it was issued prior to the passing of order u/s.148A(d).
 5. For that the AO erred in making addition on other item which was not the issue for which the case has been reopened and when no addition was made on the item for which the case was reopened.”
4. It was the submission that notice issued u/s.148 of the Act was bad in law on account of pecuniary jurisdiction. Ld AR drew our attention to page 37 of assessment order, wherein, it is specifically mentioned that the

returned income of the assessee is Rs.63,08,415/-. Ld AR further drew our attention to the Instruction issued by CBDT No.1/2011 [F. NO. 187/12/2010-IT(A-D)] dated 31.01.2011, which read as follows:

"INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship. An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mufssil areas)	Income Declared (Metro cities)
	ITO ACs/DCC	ITO DCs/ACs
Corporate returns	Upto Rs. 20 lacs above Rs.20 lacs	Upto Rs. 30 lacs Above Rs. 30 lacs
Non-corporate returns	Upto Rs. 15 lacs Above Rs. 15 lacs	Upto Rs. 20 lacs Above Rs. 20 lacs

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011."

5. It was the submission that the Co-ordinate Bench of Kolkata Tribunal in the case of Shivam Finance in ITA No.422/Kol/2023 order dated 21.6.2023 following the decision of Hon'ble Calcutta High Court in the case of PCIT vs Shree Shoppers Ltd., in ITAT /39/2023 in IA No.GA/1/2023, dated 15.3.2023 in paras 8 & 9 of the said order, the Tribunal has held as follows:

"8. We have heard the rival contentions and perused the material available on record and find that the issue raised by the Ld. Counsel on the jurisdictional aspect in respect of notice issued u/s. 143(2) is no longer res

integra. It is a settled position of law that for carrying out an assessment proceedings u/s. 143(3) of the Act, statutory requirement of serving a valid notice u/s. 143(2) of the Act is a must and in absence of which the subsequent proceedings become invalid. In the present case before us, it is a fact that assessee has reported total income of Rs.43,53,620/- which exceeds the threshold prescribed in the CBDT Instruction no. 1/2011 read with revised monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction, it stated that in case of metro cities, in case of corporate declared income above Rs. 30 lakh, the jurisdiction of such corporate assessee will lie with the DCs/ ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs. 30 lakhs and the same was lying with the DCs/ACs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward 49(1), Kolkata. It is true that subsequently the assessment has been framed by ACIT, Circ1e-49, Kolkata but the point in dispute is that on the date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward-49(1), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act. We find that Hon'ble jurisdictional High Court in the recent judgment in the case of PCIT Vs. Shree Shoppers Ltd. (supra) has decided identical issue in favour of the assessee.

9. Thus, from the perusal of the findings given by Hon'ble jurisdictional High Court and from the examination of facts of the present case, we find that the aforesaid judgment of the Hon'ble High Court is squarely applicable on the facts of the present case. We thus, unhesitatingly hold that ITO, Ward-49(1), Kolkata had no valid jurisdiction over the assessee on the date of issuing notice u/s. 143(2) of the Act. Revenue has not controverted this fact by placing any other contrary material on record to indicate otherwise. Since a valid notice u/s. 143(2) has not been issued, the assessment proceedings carried thereafter deserves to be quashed. We, therefore, respectfully following the ratio laid down by Hon'ble jurisdictional High Court in the case of PCIT Vs. Shree Shoppers Ltd. (supra), allow ground no. 4 raised by the assessee and quash the assessment proceedings completed u/s. 143(3) of the Act. Since we have quashed the assessment proceedings, the grounds relating to the merits of the case are rendered mere academic in nature and are, therefore, not adjudicated upon. Accordingly, the appeal of the assessee is allowed."

6. It was the submission that similar findings are in the case of Anil Kumar Khetawat in ITA No.1136/Kol/2019 order dated 26.5.2022. Ld AR further drew our attention to the decision of Hon'ble Calcutta High Court in the case of Shree Shoppers Ltd in ITAT/39/2023 IA No.GA/1/2023 dated 15.3.2023, wherein, the Hon'ble Calcutta High Court has held as follows:

“The short issue which falls for consideration in the instant case is whether there is valid notice issued under section 143(2) of the Act for commencing the scrutiny assessment. The Tribunal has noted the facts and rendered a finding that on the date when the case was selected for scrutiny, the authority who issued the notice namely, the Income Tax Officer, Wqrd No.9(4), Kolkata did not have jurisdiction and the jurisdiction was with the Deputy Commissioner of Income Tax. The following findings has been recorded by the Tribunal:

Therefore, the legal ground stands to be admitted and the same relates to invalid notice issued u/s. 143(2) of the Act. It is a settled position of law that for carrying out the assessment proceedings u/s. 143(3) of the Act, the statutory requirement of serving of valid notice u/s. 143(2) of the Act is must and in absence thereof the subsequent proceedings become invalid. In the case of assessee, the facts are that the assessee has declared income of Rs.48,47,180/- in the e-return filed on 26.09.2012. For selecting the case for scrutiny notice u/s. 143(2) of the Act was issued by ITO, Ward-9(4), Kolkata dated 23.09.2013. The Central Board of Direct Taxes (CBDT vide Instruction No. 1/2011 (supra) revised the monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction it stated that in case of metro cities in case of corporates declare income above Rs. 30 lakh the jurisdiction of such corporate assessee will lie with the DCs/ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs. 30 lakhs and the same was lying with the DCs/ACs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward-9(4), Kolkata. It is true that subsequently the assessment has been framed by DCIT, Circle-9(2), Kolkata but the point in dispute is that on date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward-9(4), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act.

The above factual position recorded by the Tribunal is not in dispute. Therefore, we are of the clear view that the Tribunal rightly allowed the assessee's appeal and quashed the scrutiny proceedings as defect in issuance of notice is incurable as it goes to the root of the matter.

Thus, we find no ground to differ with the findings recorded by the learned Tribunal.”

7. Ld A.R. further drew our attention to the notice issued u/s.148 of the Act dated 26.3.2022, which reads as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX
OFFICER
ITO, WARD BARGARH/

To, SHREE DEOSHARWALI OIL INDUSTRIES C/O BINAY KUMAR JINDAL PUSHK KUNJ , NH 6 BARGARH 768028 , Orissa India	
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PAN: ACBFS4179D	A.Y: 2018-19	Dated: 26/03/2022	DIN & Notice No: ITBA/AST/S/148_1/2021- 22/1041704169(1)
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Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/ M/s.

- I have the following information in your case or in the case of the person in respect of which you are assessable under the Income tax Act, 1961(here in after referred to as "the Act") for Assessment Year **2018-19**
 - information flagged by the risk management strategy formulated in this regard suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/AST/F/148A/2021-22/1041703337(1) dated **26/03/2022** and annexed herewith for reference,
- I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other, allowance or deduction for the Assessment Year **2018-19** and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year **2018-19**.
- This notice is being issued after obtaining the prior approval of the PCIT, Sambalpur accorded on date **26/03/2022** vide Reference No. **10000028782101**.

LAXMIDHAR GAJENDRA
ITO, WARD BARGARH/

(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.
INCOME TAX OFFICE, BSF NAGAR, NH-STREET, BANDU VIKIRA CHOWK, 1 ST FLOOR, BARGARH, Orissa, 768028
Email: BARGARH.ITO@INCOMETAX.GOV.IN
Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN-Document identification No.

Shree Deosharwali Oil Industries

This document is digitally signed
Signer: LAXMIDHAR GAJENDRA
Date: Saturday, Mar 26, 2022 10:50 PM
Location: BHUBANESHWAR, India

8. It was the submission that notice u/s.148 of the Act has been issued by the Income Tax officer, Ward Bargarh and he did not have the pecuniary jurisdiction and consequently notice u/s.148 of the Act and consequential assessment order is liable to be quashed.

9. In reply, Id Sr DR vehemently supported the order of the AO and Id CIT(A). It was the submission that the Assessing Officer had concurrent jurisdiction and the ITO was competent to issue notice even though notice is liable to be issued by ACIT, Bargarh. It was the submission that in any case, it is curable defect u/s.292 BB of the Act.

10. We have considered the rival submissions. CBDT vide its instruction No.1/2011 (supra) has issued specific instruction in regard to pecuniary jurisdiction. If the Sub-ordinate Officer was not competent to issue notice u/s.148 of the Act, it has to be issued by a higher authority, then there was no reason for CBDT to issue such instruction. It is possible that a Senior Officer assumed the jurisdiction of a Sub-ordinate Officer but the reverse is not possible and should that argument is accepted, nothing could stop the Income Tax officer for assuming the duty from a Senior Officer also. Now coming to the issue of Section 292BB, a perusal of the same would clearly show that, that was a case where a valid notice has been issued and the assessee has cooperated in such proceedings. That is a provision to protect the issuance of notice more so service on the AO, it does not protect invalid issuance of notice on account of jurisdiction. Section 292 B is for blocking

the invalidation for reasons of any mistake, defect or omission to protect a notice which has been issued without jurisdiction. In the present case, admittedly, the Assessing Officer who has issued the notice u/s.148 of the Act, did not have the pecuniary jurisdiction in view of the instruction issued by CBDT (supra). This being so, respectfully following the principles laid down by Hon'ble Calcutta High Court in the case of Shree Shoppers (supra) as also the decision of the Co-ordinate Bench of Kolkata Tribunal in the case of Shivam Finance (supra), it is held that notice issued u/s.148 of the Act is bad in law and consequential assessments are also bad in law.

11. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 29/07/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER
Cuttack; Dated 29/07/2024
B.K.Parida, SPS (OS)

sd/-
(George Mathan)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The appellant; Shree Deosharwali Oil Industries, Salepali Govindpur, Bargarh
2. The Respondent: Income Tax Officer, Ward Bargarh, BSF Nagar. NH Street, Bandu Vikira Chowk, 1st floor, Bargarh
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Sambalpur
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack