

**आयकर अपीलीय अधिकरण, कटक न्यायापीठ, 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.258/CTK/2024**

**(निर्धारण वर्ष / Assessment Year : 2013-2014)**

Ganesh Kumar Sharma, Buxi Bazar, C/O: D.N.Mohanty, Buxi Bazar, Cuttack-753001	Vs	ITO, Ward-1, Cuttack
<b>PAN No. :AHMPS 4283 J</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>निर्धारिती की ओर से /Assessee by</b>	:	Shri S.K.Sarangi, CA
<b>राजस्व की ओर से /Revenue by</b>	:	Shri S.C.Mohanty, Sr. DR
<b>सुनवाई की तारीख / Date of Hearing</b>	:	05/08/2024
<b>घोषणा की तारीख/Date of Pronouncement</b>	:	05/08/2024

**आदेश / O R D E R**

**Per Bench :**

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.04.2024, in DIN & Order No.ITBA/NFAC/S/250/2024-25/1064423847(1) for the assessment year 2013-2014.

2. Brief facts of the case are that the assessee has filed the return of income u/s.139 of the Act 31.03.2015 declaring total income of Rs.17,36,790/-. The case has been reopened u/s.148 of the Act by issue of notice u/s.31.03.2021 and consequently the proceedings were completed vide order dated 29.03.2022 passed u/s.147 r.w.s 144 r.w.s.144B of the Act, wherein the addition of Rs.43,82,162/- has been made on account of long term capital gain by treating the same as undisclosed income u/s.68 of the Act. In first appeal, the Id. CIT(A) has

dismissed the appeal, therefore, being aggrieved, the assessee is in further appeal before us.

3. During the course of hearing, Id. AR of the assessee submitted that notice issued u/s.148 of the Act is barred by limitation as the impugned year is of 2013-2014 and as per the limitation provided u/s.153 of the Act, the notice u/s.148 of the Act could be issued within a period of six years from the end of the relevant assessment year. In the instant case the limitation period has been expired on 31.03.2020, whereas the notice u/s.148 of the Act was issued on 31.03.2021. He, therefore, submitted that the notice issued u/s.148 of the Act is time barred. For this he placed reliance on the judgment of the Hon'ble Jurisdictional High Court in the case of Bhagirathi Barik, passed in W.P.(C) No.7504 of 2024, order dated 03.04.2024, wherein the Hon'ble High Court has followed its earlier order passed in W.P.(C) No.20919 of 2021 in the case of M/s Ambika Iron and Steel Pvt. Ltd. vs. Pr.CIT, order dated 24.01.2022 and held that the proceedings u/s.148 of the Act is time barred. Id. AR further argued that the assessee has declared total income at Rs.17,36,790/- and as per the Board Instruction No.01/2011, dated 31.01.2011, the cases where the income declared by non-corporate assessee is Rs.15 lakhs or above, the jurisdiction lies with the ACs/DCs. In this regard, Id. AR drew our attention to the notice u/s.148 of the Act, which is issued by the ITO Ward-1(1), Cuttack. Id. AR drew our attention to the return of income filed by the assessee before the ACIT, Circle-2(1), Cuttack and submitted that correct jurisdiction was lies with the ACIT Circle-2(1), Cuttack, therefore, notice

u/s.148 of the Act issued by the ITO Ward-1(1), Cuttack is without jurisdiction and all the consequential proceedings deserves to be held as invalid. For this he placed reliance on the decision of the coordinate bench of the Tribunal in the case of Shree Deosharwali Oil Industries, passed in ITA No.167/CTK/2024, order dated 29.07.2024, wherein the Tribunal has followed the decision of the Hon'ble Calcutta High Court in the case of Pr.CIT Vs. Shree Shoppers Ltd., passed in ITA No.39/2023 in IA No.GA/1/2023, order dated 15.03.2023.

4. On merits, Id. AR submitted that the shares were sold during the year of the company M/s Global Capital Market Ltd. and long term capital gain of Rs.43,82,162/- was earned out of such transaction. The said shares were purchased by the assessee and held for a period of more than one year and they were lying in the demat account of the assessee during the intermittent period. The sales have been made through recognized stock exchange. The copies of the sales bills, demat account and other evidences with regard to the holding period, were submitted before the AO. The sale consideration was also received through payees account cheque. The AO solely relying upon certain statements of some alleged entries operators and without any connection/reference of assessee in those statements arbitrarily has held the same as bogus entries without appreciating the evidences filed by the assessee. He, thus, submitted that the transaction of long term capital gain being genuine transaction deserves to be allowed as exempt u/s.10(38) of the Act. For this, he placed reliance on the judgment of Hon'ble Jurisdictional High

Court in the case of Kuntala Mohapatra, reported in [2024] 160 taxmann.com 567 (Orissa) and submitted that the SLP against the said order was also dismissed by the Hon'ble Supreme Court, reported in 160 taxmann.com 608 (SC). He thus, submitted that the facts in the case of Kuntala Mohapatra are *pari materia* to the facts of the assessee. Therefore, on the merits also, no addition is required to be made.

5. On the other hand, Id. Sr. DR supported the orders of the lower authorities and submitted that the assessee has not raised the issue of jurisdiction before the AO and participated in the proceedings, therefore, in view of the Section 292BB of the Act, such objection cannot be admitted at this stage itself. He further submitted that due to Covid period, the limitation were extended, therefore, it cannot be held that notice u/s.148 of the Act was barred by limitation.

6. With regard to merits of the issues, he placed reliance on the order of the Id. CIT(A) and AO and submitted that the detailed analysis of the facts have been made by the lower authorities and assessee at no stage could be able to prove that the allegation made by the AO are not correct. Merely submitting the copies of the bills and submitting that the payments were received through payees account cheque, does not hold the transaction as genuine. Thus he prayed for confirmation of the addition so made by the Id. AO and upheld by the Id. CIT(A).

7. We have considered the rival submissions and perused the material available on record. In the present case, the Id. AR of the assessee has raised the following three issues:-

- i) Notice u/s.148 of the Act issued by the AO is barred by limitation;*
- ii) Notice issued u/s.148 of the Act by the AO is without jurisdiction and;*
- iii) Non-appreciation of factual aspects with regard to merits of the case by both the authorities below.*

8. Firstly, with regard to limitation of issuance of notice u/s.148 of the Act, it is seen that the notice u/s.148 of the Act was issued on 31.03.2021, which is admittedly after the expiry of the period of six years from the end of the relevant assessment years as has been provided u/s.153 of the Act, therefore, the notice is not within the time frame provided in the said section. Though it was the period where the whole country was under Covid pandemic, however, the Hon'ble jurisdictional High Court under similar circumstances after taking due consideration of fact of Covid pandemic in the case of Bhagirathi Barki (supra) has held that the notice issued u/s.148 of the Act is time barred, therefore, by respectfully following the order of the Hon'ble Jurisdictional High Court of Orissa and also the decision of the coordinate bench of the Tribunal in ITA No.214/CTK/2024 in the case of Manas Ranjan Pattanayak, order dated 08.07.2024, we are of the considered view that the notice issued u/s.148 of the Act by the AO is time barred and, therefore, the re-assessment order framed by the AO and the consequential proceeding stands quashed.

9. With regard to the issue of invalid jurisdiction exercised by the AO in issuing the notice u/s.148 of the Act, the CBDT vide Instruction dated 01/2011 dated 31.01.2011 has revised the monetary limits for non-

corporate returns upto 15 lakhs by the ITOs and above Rs.15 lakhs by the ACs/DCs. The relevant Instruction is as under :-

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

**SECTION 119 OF THE INCOME-TAX ACT, 1961 -INCOME-TAXAUTHORITIES -INSTRUCTIONS TO SUBORDINATE AUTHORITIES**

**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 DCIAC 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 (Mofussil area)		Income Declared (Metro cities)	
	ITOs	ACs/DCs	ITOs	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.*

10. The coordinate bench of the Tribunal in ITA No.167/CTK/2024 in the case of Shree Deosharwali Oil Industries, vide order dated 29.07.2024, by following the decision of the ITAT Kolkata Bench in the case of Anil Kumar Khetawat in ITA No.1136/Kol/2019, order dated 26.05.2022 and the decision of the Hon'ble Calcutta High Court in the

case of Shree Shoppers Ltd., passed in ITAT/39/2023 IA No.GA/1/2023 dated 15.03.2023, has held that the notice issued u/s.148 of the Act by the ITO instead of ACIT is bad in law. The relevant observation made by the Tribunal in the case of Shree Deosharwali Oil Industries (supra) are as under :-

*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 Page7|8 Assessment Year : 2018-2019 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 view of the above decision of the coordinate bench of the Tribunal and also looking to the fact that in the present case the assessee has filed the return of income before the ACIT Circle-2(1), Cuttack, however, notice u/s.148 of the Act was issued by the ITO-1(1), Cuttack, therefore, the said notice is without jurisdiction and is held as bad in law and accordingly, the consequential reassessment proceedings are also

bad in law and the same is hereby quashed. The assessee would succeed on this score also.

12. With regard to the merits of the case, we find that under identical circumstances, this bench of the Tribunal in the case of Sandeep Kumar Agarwal Vs. ACIT, passed in ITA No.80/CTK/2024, order dated 28.05.2024, following the decision of the Hon'ble Jurisdictional High Court in the case of Kuntala Mohapatra (supra), Bimla Devi Singhania & Radheshyam Singhania, in ITA Nos.2012& 213/CTK/2019 respectively, order dated 6.7.2022, which had been upheld by the Hon'ble Jurisdictional High court of Orissa in ITA No.84 & 85 /2022 vide order dated 10.10.2023, has allowed the appeal of the assessee by treating the long term capital gain as genuine. The observations of the Tribunal are as under :-

*7. As it is noticed that the issues in this appeal are squarely covered by the principles laid down by the Hon'ble High Court of Orissa in the case of Bimla Devi Singhania and Radheshyam Singhania (supra) and as it is also noticed in assessee's case for the assessment year 2013-14, the assessee has been granted the benefit of exemption u/s.10(38) of the Act in respect of same shares, the order of the AO and that of the Id CIT(A) denying the assessee the benefit of deduction u/s.10(38) of the Act is set aside and the Assessing officer is directed to allow the benefit of exemption u/s.10(38) of the Act as claimed. As we have granted the benefit of deduction u/s.10(38) of the act, the addition representing 5% alleged commission as made by the AO would also stands deleted.*

13. Thus, by respectfully following the decisions of the Hon'ble Supreme Court, the Jurisdictional High Court and the coordinate bench of the Tribunal and also looking to the fact that transaction of purchases and sales were carried out in recognized stock exchange where due STT was paid at the time of sales and all the transactions were through banking

channel, further no evidence against the assessee was found/brought on record by the department in support of the allegation that transaction carried out by assessee is bogus, therefore, we are of the considered view that the long term capital gain declared by the assessee is genuine and, thus, the addition made on this account is deserves to be deleted and we do so. Thus, the assessee also succeeds on this score also.

14. In the result, appeal of the assessee is allowed on the legal as well as on merits also.

Order dictated and pronounced in the open court on 05/08/2024.

**Sd/-  
(GEORGE MATHAN)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-  
(MANISH AGARWAL)**

**लेखा सदस्य/ ACCOUNTANT MEMBER**

**कटक** Cuttack; दिनांक Dated 05/08/2024

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
Ganesh Kumar Sharma,  
Buxi Bazar, C/O: D.N.Mohanty,  
Buxi Bazar, Cuttack-753001
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-1, Cuttack
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**