

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.197/Coch/2023
Assessment Year: 2014-15

Balakumar Varavara Sethumadhavan Olive Kalesta, Aleta 19E, Near Info Park, Kakkanad Ernakulam 682 030 PAN NO : AIWPV3678D	Vs.	ITO (International Taxation) Kochi
APPELLANT		RESPONDENT

Appellant by	:	Sri Mathew Joseph, A.R.
Respondent by	:	Shri Sanjit Kumar Das, D.R.

Date of Hearing	:	11.07.2024
Date of Pronouncement	:	14.08.2024

O R D E R

PER SOUNDARARAJAN K., JUDICIAL MEMBER:

This is an appeal filed by the assessee challenging the order passed by the Id. AO dated 20.2.2023 on the directions of Id. DRP vide their order dated 26.12.2022 for the AY 2014-15.


2. The assessee is a NRI and he has not filed his return of income. The Id. AO based on the information gathered by him about the purchase of immovable property and the payments made in respect of the transfer of immovable property, issued a notice u/s 148 of the Income Tax Act, 1961 (in short "The Act") and thereafter notices u/s 142(1) of the Act were issued. Subsequently, the assessee filed his return of income on 5.3.2022 and after giving necessary opportunity to the assessee a draft assessment order u/s 144C of the Act was passed by the Id. AO in DIN & Order No.ITBA/AST/F/144C/2021-22/642269654(1) dated 31.3.2022 in which he had made an addition of Rs.16,09,540/-. The assessee filed his objections before the Id.

DRP-2 Bangalore and thereafter the ld. DRP after hearing the petitioner and after getting the remand report from the AO, had issued a direction vide their order dated 26.12.2022 in which the following direction has been issued:

2.5 This panel has carefully considered the objections of the assessee's written submissions and the Remand report of the AO dated 07.12.2022. From the Remand report of the AO, it is clear that the assessee could not substantiate his claim of additional amount of Rs.22,00,000 was paid over and above, the recorded value is not proved. This panel agrees that even though the assessee has withdrawn the amount on the same day of purchase, it cannot merely be concluded that the sum has been used for the finance the purchase of property. In the absence of concrete evidence in support of assessee's claim, the objection of the assessee is not tenable. Hence, this panel finds no infirmity in the action of the AO. Accordingly, the ground of objection is therefore rejected.

2.1 It is seen from the intimation sent by the ld. DRP, the directions were forwarded to the ld. AO on 26.12.2022 itself. Thereafter, the ld. AO followed the directions of the ld. DRP and made the assessment u/s 147 r.w.s. 144C(3) of the Act on 20.2.2023. Against the orders of the ld. AO, the assessee preferred this appeal before this Tribunal by raising the following grounds:

10	Grounds of Appeal	Tax effect relating to each Ground of appeal
1	The Assessing Officer went wrong in law in making the assessment u/s 147 on 20/02/2023. He ought to have	Rs.14,77,304

	<p>found that -</p> <p>(i) the assessment was made on the basis of a notice u/s 148 issued on 30/03/2021 by an officer at Mumbai who has no jurisdiction over the case ; and</p> <p>(ii) that the reasons recorded u/s 148(2) were not communicated to the appellant.</p>	
2	<p>The Assessing Officer erred in law and facts in making the assessment u/s 147 r.w.s 144C(3) on 20/02/2023. He ought to have found that -</p> <p>(i) the notice u/s 148 on the basis of which the assessment has been made is invalid for the reasons mentioned in ground (1) above;</p> <p>(ii) the notice u/s 143(2), selecting the return of income filed on 05/03/2022 for scrutiny which is a prerequisite for making an assessment in a case where a return was filed, has not been received by the appellant before receiving the assessment order u/s 147 on 20/02/2023 ; and</p> <p>(ii) that the appellant had filed objection under subsection (2) of section 144C to the variation proposed and, as such the assessment should have been made under sub section (13) and not as done by the assessing officer under subsection(3) of section 144C r.w.s 147.</p>	<p>Rs.14,77,304</p>
3	<p>The Assessing Officer erred in law in making the assessment u/s 147 r.w.s 144C(3) on 20/02/2023. He ought to have appreciated that -</p> <p>(i) the direction dated 26/12/2022 issued by the DRP u/s 144C(5) was received on 27/12/2022 as evident by the mail sent by ACIT(HQ) o/o the CIT [DRP]-2, Bangalore from mail id <bangalore. secretary.drp2@incometax.gov.in> to the assessing officer in the mail id kochi.ito.it@incometax.gov.in on 27/12/2022;</p> <p>(ii) since the appellant had objected to the variation</p>	<p>Rs.14,77,304</p>

	<p>proposed, the assessment should have been made in the manner laid down in sub section (13) according to which the assessment should be made within one month from the end of the which the direction of the DRP u/s144C(5) is received; and</p> <p>(iii) that since the direction of the DRP dated 26/12/2022 was received on 27/12/2022 by e mail, the assessment made on 20/02/2023 which is after the expiry of the prescribed date of 31/01/2023, is barred by limitation as per section 144C(13).</p>	
4	<p>The Assessing Officer went wrong in law and on facts in making the assessment u/s 147 on 20/02/2023 by applying the provisions of section 144C instead of on 31/03/2022 under the normal provisions in section 153(2). He ought to have found that the appellant, being an NRI and the case not subjected to provisions of section 92CA(3), became an "eligible assessee" within the meaning of section 144C(15) with effect from 01/04/2020 by Finance Act, 2020 only and, therefore, the provisions of section 144C cannot be made applicable for the assessment of the A.Y 2014-15 in the appellant's case.</p>	14,77,304
5	<p>The Assessing Officer went wrong in adopting the documented value of Rs 7,62,000 as cost of acquisition in the place of actual consideration of Rs 29,62,000, evidenced by the bank statement and purchase agreement, in the computation of Long Term Capital Gains. He ought to have appreciated that while adopting the sale consideration at actual price received of Rs 55,09,525 as per bank statement, in the place of the documented value of Rs 8,00,000, it is quite reasonable to adopt the cost of acquisition also at Rs 29,62,000 which is the actual consideration paid as per bank statement .</p>	14,77,304

6	The Assessing Officer went wrong in not giving credit for Self Assessment Tax paid on 05/03/2022 to the tune of Rs 1,88,170 in computing the tax demand of Rs 14,77,304.	1,88,170
7	The Assessing Officer went wrong in law in initiating penalty proceedings u/s 271(1)© for concealment of particulars of income in the course of an assessment proceedings which were commenced and concluded not in accordance with the law.	14,77,304
Total tax effect		14,77,304

2.2 At the time of hearing, the ld. A.R. made an endorsement to the effect that they have not pressed ground No.1 and therefore, the same is dismissed as not pressed.

2.3 The ld. A.R. further strongly objected that the assessment order is barred by limitation for the reason that the direction of ld. DRP was received by the AO on 27.12.2022 and in support of this argument, the ld. A.R. also filed a paper book enclosing the copy of acknowledgement downloaded from the e-mail address of the assessee as well as the ld. AO.

2.4 The ld. A.R. therefore contended that as per section 144C(13) of the Act that the time limit for passing the assessment order is within one month from the end of month in which the acceptance is received or the period of filing of objections under sub-section (2) expires. The ld. A.R. brought to our notice that the ld. DRP direction was received by the ld. AO on 27.12.2022, whereas the assessment order was passed on 20.2.2023 and submitted that the same is clearly barred by limitation and prayed to allow the appeal.

3. The ld. D.R. relied on the orders of the lower authorities and prayed to dismiss the appeal.

4. We have heard the rival submissions and perused the materials available on record. As seen from the records, the ld. AO had passed a draft order on 31.3.2022 and communicated the same to the assessee. The assessee also filed his objections before the ld. DRP-2, Bangalore and thereafter the ld. DRP after granting an opportunity of hearing, had rejected the objections raised by the assessee and confirmed the draft order issued by the ld. AO by its proceedings dated 26.12.2022. Thereafter, the said proceedings were communicated to the ld. AO on 27.12.2022, through mail as evidenced from the acknowledgement downloaded from the e-mail. Therefore, as per section 144C(13) of the Act, the ld. AO should have passed the assessment order within one month from the end of the month in which such direction is received by him. Admittedly, in this case, the direction of the ld. DRP was received by the ld. AO on 27.12.2022 but the assessment pursuant to the direction of ld. DRP was made on 20.2.2023, which is beyond the one month period prescribed u/s 144C(13) of the Act. Therefore, it is a clear case that assessment order passed by the ld. AO is barred by limitation as per u/s 144C(13) of the Act. On that score, the entire assessment is not sustainable and liable to be set aside. Since the entire assessment is set aside based on the legal plea raised by the assessee, we are not given any finding on merit with regard to other grounds raised by the assessee.

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

Order pronounced in the open court on 14th Aug, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bangalore,
Dated 14th Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**