

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

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.304/Nag./2023**  
(Assessment Year : 2015-16)

Yogesh Maganlal Chawda  
Plot no.40, Amber, Behind Jalaram Karyalay  
Hiwari Layout, Nagpur 440 008  
PAN – AAHPC7089A

..... Appellant

v/s

Income Tax Officer  
Ward-4(4), Nagpur

..... Respondent

Assessee by : Smt. Veena Agrawal  
Revenue by : Shri Sandeep Salonkhe

Date of Hearing – 18/09/2024

Date of Order – 20/09/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 11/07/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2015-16.

2. In its appeal, the assessee has raised following grounds:-

*“1. Whether in facts and laws of the case the Ld. AO is justified in passing an order dated 15/03/2022 making an addition of Rs.3,47,80,000/- without proper service of notice and against the principle of natural justice.*

*2. Whether in facts and laws of the case the Ld. AO is justified in passing an order dated 15/03/2022 making an addition of Rs.17,80,000/- as unexplained money under Sec 69A of the Income Tax Act, 1961.*

*3. Whether in facts and laws of the case the Ld. AO is justified in passing an order making an addition of Rs.30,00,000/- as salary income.*

*4. Whether in facts and laws of the case the Ld. AO erred in passing an order making an addition of Rs.3,00,00,000/- as unexplained investment under Sec. 69 of the Income Tax Act, 1961.*

*5. Whether in facts and laws of the case the Ld. AO is justified in passing an order in breach of principle of natural justice.*

*6. The appellant craves leave to add, alter, modify and withdraw any grounds before or during the course of appellate proceedings."*

3. As can be seen from the record, the assessee has not filed any return of income for the year under consideration. The Assessing Officer re-opened the assessee's case due to the reason that the assessee, during the year under consideration, has carried out huge financial transactions viz. cash deposit worth ₹ 17,80,000, payment made in respect of transfer of immovable property worth ₹ 3,00,00,000 and received salary of ₹ 30,00,000. From the above, the Assessing Officer was of the view that the ass failed to offer his income for taxation which manifest in taxable income of the assessee escaping assessment. The Assessing Officer re-opened the assessee's case under section 147 of the Income Tax Act, 1961 ("*the Act*") and notice dated 24/03/2021, under section 148 of the Act, was issued which was duly served upon the assessee, however, no return of income was filed by the assessee in response to notice under section 148 of t the Act. Multiple notices were issued to the assessee to explain the huge investment in purchase of immovable property worth ₹ 3 crore during the year under consideration, however, the assessee did not comply with the notices and failed to explain the source of investment which remained unexplained. Therefore, the Assessing Officer assessed the

income of the assessee at ₹ 3,47,80,000. Aggrieved, the assessee filed appeal before the first appellate authority.

4. The learned CIT(A) dismissed the appeal by holding as under:–

*5.1 I have gone through the assessment order and grounds of appeals of the appellant. The learned AO has carried out multiple adjustment against which the appellant has raised two ground of appeals which are revolving around non service of notice.*

*5.2 The appellant has not raised any issue specific of grounds of appeal apart from challenging the validity of notice being not served on correct email ID. The appellant also contested that he was suffering from covid in third wave of covid-19 pandemic and therefore he could not Tile responses to the notices.*

*5.3 The appellant alleged that he did not receive copy of notices on his registered email id. He also stated that the registered email id is no longer been used by him and thus the notices ought to have been issued on the email id mention in the income tax return which is info@vedbhumi.com. In this regard the appellant relied on Bombay high court judgement in case of Lok developers vs DCIT.*

*5.4 Apart from this, the appellant also filed couple of documents in support to his submission on merits of the case such as bank statements and copy of agreement pertaining to purchase of property.*

*5.5 I have perused the submission of appellant and have come across following observation:*

*5.5.1 The appellant claimed that his business was suffering from financial crisis therefore he had not filed his income tax return for the year under consideration.*

*5.5.2 He had not received notices because the email id mention was old and non-operative. It is also observed that though the appellant has claimed for non-receipt of notices, he has not uttered anything about mobile SMS notification which is usually been send when any notice/correspondence is issued by income tax department. He has also not explained that how he became aware about delivery of assessment order so that he could file appeal before CIT(Appeal) well within the permissible time limit as per Income tax act.*

*5.5.3 While filing appeal the email id mentioned is 'yogeshchawda04@gmail.com' however in the submission the appellant has stated that email id mention in his Income tax return for AY 2020-21 was info@vedbhumi.com.*

*5.5.4 On review of the assessment order it is observed that the learned AO has mentioned that notice was delivered on the email and was also*

*served upon the assessee. This indicates that the assessee was aware of the proceedings however did not choose to file the relevant information.*

*5.6 In respect of the Bombay high court judgement relied upon by the appellant it is held that AO ought to have send notice both i.e., on primary address and primary email id mentioned in the last return of income. It is worth noting that the correspondence address mentioned in the assessment order. Form 35 and the returned filed by the appellant for AY 2020-21 was same and as per assessment order the notice was served upon the assessee. Therefore, the condition stated by Bombay high court is also been satisfied. Moreover, the judgement of Bombay high court in case of Lok developers is more of notice to be served on primary email id or secondary email id (wherein the notice was served on email id as per PAN card and not on registered primary email id). In the underline case the appellant has not brought anything on record to demonstrate that he had informed the income tax department about change of his email id. Also the appellant has not explained that why he has mentioned his email ID as 'yogeshchawda04@gmail.com' while filing appeal in Form 35.*

*5.7 Moreover, it is observed that in the written submission the appellant has not filed anything concrete to demonstrate the genuineness of the funds received out of which it purchased property and made cash deposits.*

*5.8 In view of the above I am of the considerate opinion that the contention raised by the Appellant are not acceptable. It is evident that the appellant was aware of passing the Income tax order and it filed Form 35 mentioning a particular email id for communication well within statutory timelines. In the written submission he is claiming that the notices ought to be sent on other email id's and this appears to be after thought During appellate proceeding as well the appellant was served multiple notices but it failed to demonstrate the genuineness of the investments it made.*

*Therefore, the Grounds of Appeal for not serving notice on updated email id is not found acceptable and the addition made by the learned AO is been upheld.*

*5.9 Accordingly, the appeal of Appellant is Dismissed."*

The assessee being not satisfied with the order so passed by the learned CIT(A), is in appeal before the Tribunal.

5. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The learned Authorised Representative appearing for the assessee initially drew our

attention that she wants to submit a legal ground. She also placed a detailed writ-up in the form of legal submissions which are reproduced below:-

*"The appellant most respectfully in support of the first ground raised by him before this Hon'ble ITAT submits, reserving his right to submit written submission with leave of this Hon'ble Tribunal at the later stage of the hearing, as follows:-*

**GROUND NO.1: WHETHER IN FACTS AND LAWS OF THE CASE THE LD. AO IS JUSTIFIED IN PASSING AN ORDER DATED 15/03/2022 MAKING AN ADDITION OF RS. 3,47,80,000/- WITHOUT PROPER SERVICE OF NOTICE AND AGAINST THE PRINCIPLE OF NATURAL JUSTICE.**

*A. Notice issued under Sec 148 of the Income Tax Act, 1961, is sans satisfaction of proper authority defeating the mandate of Sec 151 of the Income Tax Act, 1961.*

*1. It is most humbly submitted that in the instant case the Notice is issued under Sec 148 dated 24/03/2021. A conspectus view of the Notice under Sec 148 shows that the authority whose necessary satisfaction is obtained is Addl./Joint CIT, RANGE-4, NAGPUR.*

*2. It is stated that the Sec 151, prior to amendment dated 01.04.2021, provides for as follows:-*

*Sanction for issue of notice.*

*151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*

*(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148. need not issue such notice himself.*

*3. In the instant case the Assessment year purported to open is AY 2015-16 and the notice is served on 24/03/2021 and hence the sanction accorded is for a period over 4 years.*

4. The sanction to be accorded as per Sec 151(1) is by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner but the sanction accorded is by Joint Commissioner. Therefore, the sanction accorded in the instant case is wrong and illegal and hence the notice issued under Sec 148 shall be quashed.

5. The proposition of law is hitting to the root cause of matter and is squarely covered in favour of the appellant by the judgment of Hon'ble Jurisdictional High Court in the case of Pinki Rajesh Modi v. Income- tax Officer, [2023] 153 taxmann.com 469 (Bombay), wherein the facts are akin to the facts of the present case and the Hon'ble jurisdictional High Court has held as follows:-

The aforesaid position has been reiterated in the subsequent decision in Johnson and Jonson (P.) Ltd. (supra). We therefore find that the stand taken by the respondents that by virtue of provisions of the Act of 2020, the approval of Assistant/Joint Commissioner of Income-tax as granted was valid has been turned down. In view of Section 151(1) of the Act of 1961 prior to its amendment it was only the Principal Chief Commissioner or the Chief Commissioner of Income-tax who could have accorded the approval. Thus a case for interference has been made out. (Para 6)

6. Further, in the case of Johnson and Jonson Private Limited Petitioner V/s. Deputy Commissioner of Income, WRIT PETITION (L) NO. 7733 OF 2022, the Hon'ble Bombay High Court has held that:-

In our view, since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31.03.2021 issued under section 148 of the Act, which is impugned in this petition. In view thereof, the consequent orders and notices will also have to go. (para 7)

7. In the case of Sidhmicro Equities (P.) Ltd. v. Deputy Commissioner of Income Tax [2023] 453 ITR 35 (SC), where the issue arises is from Sidhmicro Equities (P.) Ltd. v. Deputy Commissioner of Income-tax [2023] 150 taxmann.com 460 (Bombay) was since four years had expired from the end of the relevant assessment year as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Joint Commissioner of Income Tax, the Hon'ble Supreme dismissed the SLP.

8. Prayer: Therefore, in view of the above facts of the case and jurisdictional High Court ruling, it is most humbly submitted that the Notice issued is not proper as the sanction accorded as mandated by the Sec 141 is from wrong authority and hence the Notice and consequent orders shall quashed."

6. She, however, failed to furnish copy of approval which is an clinching evidence and, therefore, we are unable to comprehend that how she can harp upon the additional ground without being adequately armed with evidences to buttress her contentions. Accordingly, legal ground is dismissed. Anyway, we find that the impugned order passed by the learned CIT(A) is cryptic in nature and hence in the interest of justice and fair play, we hereby set aside the impugned order passed by the learned CIT(A) and the entire matter is restored to the file of the learned CIT(A) to pass a speaking order and in accordance with law by providing reasonable opportunity of being heard to the assessee. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/09/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 20/09/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur