

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **512/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2012-13

The DCIT, Circle (International Taxation), Chandigarh	Vs. बनाम	Shri Manjeet Singh, S/o Shri Harbir Singh # 1460, Ward Number-8, Gahlewal, Ludhiana 141008
स्थायी लेखा सं./PAN No: CDEPS4087A		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

AND

C.O. No. 13/Chd/2022

(In आयकर अपील सं./ ITA No. 512/CHD/2022)

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Manjeet Singh, S/o Shri Harbir Singh # 1460, Ward Number-8, Gahlewal, Ludhiana 141008	Vs. बनाम	The DCIT, Circle (International Taxation), Chandigarh
स्थायी लेखा सं./PAN No: CDEPS4087A		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04.09.2024

उद्घोषणा की तारीख/Date of Pronouncement : 15.10.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Revenue against the order dated 23.03.2022 of the ld. Commissioner of Income Tax (Appeals)-43, New Delhi [herein referred to as 'CIT(A)']

2. The grounds of appeal raised by the Revenue, are as under :

1. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts in annulling the order passed by the AO 147/143(3) of the IT Act 1961. In spite of the facts that the objections were raised by the assessee only at later stage which were disposed off through passing of speaking order 12.12.2019 before passing assessment order. The case law and judgments cited in the order does not apply in this case. The decision of the Apex court in the case of Homefinders Housing Ltd. Vs ITO (2018) 256 Taxman 59(SC) is also applicable since in this case order was already passed against the objections filed by the assessee.*
2. *Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts by considering the approval given by the Pr. CIT was in a mechanical manner inspite of the facts that the approval was given by the Pr. CIT after application mind by giving his inference that "Yes, I find this case fit for the issue of notice u/s 148 of the Act, for*

reasons recorded by the AO and the undisclosed/Unexplained facts of Cash deposit of Rs. 1.00 Cr.". The case law CIT Vs S.Goyanka lime and Chemical Ltd. and other judgments cited in the order does not apply in this case.

3. *The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before hearing of the appeal.*

3. In this case, there is a Cross Objection, i.e., **C.O. No. 13/Chd/2022 filed** by the Assessee. Grounds taken by the Assessee in his Cross Objection are as under:-

1. *That the Ld. CIT(A)-43, New Delhi has rightly quashed the assessment as framed by the Assessing Officer u/s 143(3)/148 on the issue of wrong reasons to believe and non-application of mind by the Assessing Officer as per the finding of the CIT(A) given in para 5.9 onwards of the order.*
2. *That the Ld. CIT(A) has also rightly held that the Assessing Officer had not-passed a speaking order on the valid objections raised by the assessee and, thus, since there was no valid reason to believe and the Assessing Officer only relied upon the report of the investigationWing, the same is not permissible in view of the judgment of Hon'ble Delhi High Court in the case of GG Pharma India Ltd., reported in 384*

ITR 147 and SFIL Stock Broking Ltd., reported in 325 ITR 285, which has been followed by the Amritsar Bench in the case of M/s Holy Faith International Pvt. Ltd. in ITA No. 181/Asr/2017.

3. *That even otherwise, the proceedings u/s 148 are also invalid as the notice u/s 148 was issued by the non-jurisdictional Assessing Officer and on the strength of the same notice u/s 148, the assessment as framed by the Assessing Officer, ' (International Taxation) is void abinitio as per the judgment of Jurisdictional Bench of the ITAT in the case of Sh. Manjit Singh as~ reported in (2020) 81 ITR Trib. 450 and of the Delhi Bench of the ITAT in the case of Sh. Trilok Singh, Kurukshetra in ITA No. 3995/Del/2018.*
4. *That the respondent craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off.*

4. From the records, we find that there is a delay of 57 days in filing the Cross Objections by the Assessee. During the proceedings before us, the ld. Counsel for the Assessee has filed a letter dated February 4, 2023 giving reasons, in detail, for the delay caused which is supported by an Affidavit dated 19.04.2023 submitted by Representative of the Assessee, which is reproduced as under: --

E-Stamp : Rs.50/-
Certificate No. : IN-PB91402226484366V
Certificate Dated : 19.04.2023
Issued by : Jaspal Singh, Stamp Vendor, ACC PB7046204

AFFIDAVIT

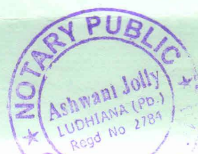
I, Vipam Kumar Gupta (Aadhaar No. 3430 5091 9829) son of Sh. Surinder Kumar Gupta, resident of 215, Canal Road, Sunview Enclave, Ayali Kalan, Ludhiana, do hereby solemnly state and affirm as under:-

1. That I had handled the case of Sh. Manjeet Singh S/o Sh. Harbir Singh R/o 518, Springvale Road, Great Palls, VA-22066, USA.
2. That I had argued the case of Sh. Manjeet Singh before the Ld.CIT(Appeals) 43, New Delhi for Asstt. Year 2012-13 and for which, the order, dated 23.03.2022 was passed by the Ld. CIT (A) and which was down loaded by me.
3. That I had received the departmental 'email' regarding the appeal filed by the department alongwith the grounds of appeal and, accordingly, I had dispatched the grounds of cross objections on prescribed form to Sh. Manjeet Singh, residing at USA R/o 518, Springvale Road, Great Palls, VA-22066 for his signatures.
4. That I came to know lateron that, Sh. Manjeet Singh had sent the grounds of appeals duly signed through courier on 12.10.2022 and my office staff had received the same on or before 20.10.2022, but the same was not in my knowledge, as my staff has kept the same in the file of Sh. Manjeet Singh, in my office without informing me.
5. That in the meanwhile, this filing of grounds of 'cross objections' was also forgotten by me and it was only on inquiry by Sh. Manjeet Singh through telephonic call, in the 1st week of December 2022, that he had also sent the grounds of appeal duly signed through courier.
6. That I became aware of the same and lateron on my checking of record in my office, I found that 'sealed courier' as sent by Sh. Manjeet Singh had been kept by my staff in the file of Sh. Manjeet Singh, without informing me.
7. That I immediately took the documents, for filing the appeal and ,accordingly filed the appeal before the Hon'ble ITAT, Chandigarh Bench on 06.12.2022 through Speed Post.
8. That the delay in filing this grounds of cross objections was there since my office staff had inadvertently kept the 'parcels' as received from USA without informing me in the file of Sh. Manjeet Singh, maintained in my office and, as such, the delay in filing the appeal is highly regretted due to the bonafide errors.

VERIFICATION:-

Contents of the above affidavit are true to the best of my knowledge and belief and nothing has been concealed therein.

Verified at Ludhiana
Dated: 19.04.2023



ATTESTED AS IDENTIFIED
NOTARY PUBLIC, LDH.

20 APR 2023

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5. A request has been made by the ld. Counsel to condone the delay of 57 days in filing the Cross Objections.

6. We have considered the facts and reasoning furnished by the Assessee in his aforesaid letter which was supported by an Affidavit. In view of the explanation and reasoning given, the delay of 57 days in filing the appeal is condoned and we proceed to hear the case on merits.

7. In his order, the ld. CIT(A) has decided the case on technical issue relating to issuance of Notice u/s 148 of the Income Tax Act, 1961 (in short 'the Act'). The relevant part of the findings given by the ld. CIT(A) in his order are as under: -

“5.9 I find force in the various legal issues raised by the appellant. As per the records, notice u/s 148 of the Act has been issued without material on record, without investigation and on wrong information. The appellant also has quoted various judgments in support of his contention. The case was re-opened u/s 148 with a reason that the assessee has given a sum of Rs.1.00 Cr. to M/s M.S Continental Pvt. Ltd., the source of which is unexplained - why the same may not be treated as - income of the assessee. The information was received from investigation wing. And the approval was given by the Pr CIT that the amount of Rs.

2,08 Cr is unexplained. This shows complete non application of mind by the AO.

....

Also, the AO has not passed a speaking order on the objections. The AO has summarily rejected the objections of the appellant which is against the legal proposition.

Further on the merits, the appellant has brought material on record, which was submitted in course of assessment proceedings. The evidences submitted were rejected by the AO without assigning any substantial reasons.

5.11 In this background, the assessment framed by the AO suffers from incurable flaws and is hereby quashed. It is directed accordingly. Since the matter is befog decided on legal issues in favour of the appellant, the grounds pertaining to merits are not being adjudicated. Therefore, the appeal is allowed.

8. Although this appeal has been filed by the Revenue against the order of the Id. CIT(A)-43, International Taxation, New Delhi, however, during the course of proceedings before us, the Id. Counsel of the Assessee brought the facts discussed below through a written submissions filed by the Assessee.

9. At the very outset, the Id. Counsel of the Assessee argued that in the cross-objections, the assessee had challenged the proceedings u/s 148 having been initiated by the non-jurisdictional Assessing Officer and, whereas, the assessment has been framed by the AO International Taxation on the basis of the same notice u/s 148 as issued by the non-jurisdictional A.O. and, as such, the assessment as framed by the Assessing Officer of International Tax, Chandigarh, is void-ab-initio and the assessment deserves to be quashed and, thus, made a request that the said ground may be adjudicated first before proceeding to the merits of the case.

10 After discussion with the DR, the request of the Id. Counsel of the assessee was proceeded to and the Id. Counsel of the assessee argued that the assessee is a non-resident which is borne out from the following facts:

“The assessee is a 'Non-Resident' which is evident from the following facts:

1. The letter was filed to the ITO Ward-3(4), Ludhiana, vide letter dated 24.04.2017 for the A.Y 2009-2010 filed on 24.04.2017, proof attached with the

letter dated 25.12.2019, filed to the Assessing Officer International Taxation.

2. There is order of the ITAT in FTA No. 546/CHD/2017 for the A.Y 2011-12, in which, there is categorical finding of the Hon'ble Bench, in para 7, page 3 of the 'Paper Book' submitted on 02.08.2024, that the assessee is residing out of India. Further, there is a letter dated 14.07.2017, addressed to the Hon'ble Bench in the appeal for the A.Y 2011-2012, asking for condonation of delay and in that application also, it has been stated, that the assessee is 'Non Resident' and permanently settled in USA and is having American Passport which is also a matter of record.

3. That the assessee had filed the original return for A.Y 2012-2013 on 18.01.2014, at nil income, in which, inadvertently the status had been mentioned as 'Resident'.

4. The assessee had filed return for A.Y 2011-12 on 28.11.2018 mentioning the status as 'Non-Resident Indian' (NRI).

5. Notices u/s 148 of the Act dated 28.2.2019 was issued by the ITO, Ward 3(4), Ludhiana though, it was well in the knowledge of the Department that the

assessee is Non-Resident Indian as per the documents available in the record of the Assessing Officer, as stated above.

11. The ld. Counsel of the assessee argued that the Assessing Officer Ward-3(4) had wrongly assumed the jurisdiction by issuing notice u/s 148 and relied upon the judgment of the Chandigarh Bench of ITAT in the case of 'Sh. Manjit Singh vs. DCIT' reported in 81 ITR (Trib.) 454 and that judgment was also followed by the ITAT Delhi Bench in the case of Tarlok Singh in ITA No. 3955/Del/2018, vide order dated 08.12.2021, for the proposition, that the status of the assessee being a NRI was very much on record and in the knowledge of the Assessing Officer and the Assessing Officer, International Taxation, having framed the assessment without issuing the fresh notice u/s 148 and completed the assessment only, on the basis of notice u/s 148 issued by the ITO, Ward-3(4), Ludhiana and, thus, it was argued that both the judgments are squarely applicable to the case of the assessee, and, thus, it was pleaded before us that the assessment as framed by the Assessing Officer, International Taxation, Chandigarh deserves to be quashed.

12. The ld. DR argued before us that originally the return of the Assessment year under consideration was filed in the status of resident, and, therefore, the ITO, Ward-3 (4), Ludhiana has rightly assumed the jurisdiction and also that the jurisdiction of the case was transferred u/s 127 of the Income Tax Act, 1961 vide order dated 13.12.2019 by the PCIT-1, Ludhiana to the ACIT, International Tax, Chandigarh and, thus, it was argued that Assessing Officer, International Tax, has rightly framed the assessment.

13. The ld. Counsel of the assessee in the rejoinder, argued that the return for A.Y. 2011-12 i.e. for the earlier year had been filed on 28.11.2018 in the status of NRI and notice u/s 148 for the Assessment Year 2012-13 was issued on 28.03.2019 and it was only an inadvertent mistake on the part of the Counsel of the assessee, that he mentioned the status on the return form as 'Resident' and further argued that the assessee has a passport issued by United State of America vide Passport dated 16.05.2014 and he is a citizen of USA and this fact was also there in the records of the Department in the earlier years. He had a bank account in USA. The Counsel relied upon the judgment of the ITAT Delhi in the case of 'Sh. Mukesh Kumar vs. ITO' in ITA No. 2358/Del/2012 vide order dated

12.06.2015, in which, similar issue was there and it was held that the notice as issued u/s 148 by the non-jurisdictional Assessing Officer is non-est in the eyes of law and Assessing Officer will not get valid jurisdiction, even though the case is transferred under the provisions of Section 127 of the Income Tax Act, 1961. The Counsel of the assessee pointed out that the notice having been issued by non-jurisdictional Assessing Officer and the assessment having been framed by the other Assessing Officer is squarely covered by the above order. He relied upon the following case laws:

a) *Mukesh Kumar Vs ITO, ITA No.2358/Del/2012 2015(6) TMI 1142, ITAT Delhi.*

"Validity of notice after case being transferred - Reopening of assessment - file transferred by ITO Ward-26(4) to ITO Ward -26(3) noticing jurisdiction over the appellant - Held that:- ITO Ward-26(3), New Delhi had proceeded with the framing assessment without issuing fresh notice u/s 148. It means that ITO Ward- 26(4), New Delhi had no valid jurisdiction over the appellant, at the time of issuing notice u/s 148 of the Act. In such circumstances, it was held by the Hon'ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid. The notice under Section 148

of the Act issued by the Income Tax Officer, Ward-26(4) is non-est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act.

Now, the question is whether the action of the Income Tax Officer, Ward-26(3) New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Ward-26(4) who had no valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. Thus no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case - Decided in favour of assessee."

While giving the judgment, the Hon'ble Bench have held as under:-

The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs.

Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.

b) Namir Kishore Mehta Vs. ACIT, Bombay High Court reported in [2024] 161 taxmann.com 553 (Bombay)

"Section 68, read with section 148, of the Income-tax Act, 1961 - Cash credit (Accommodation entries) - Assessment year 2016-17 - Assessee, a non-resident Indian (NRI), filed his return of income which was processed under section 143(1) - Thereafter, on basis of information that assessee had undertaken a financial transaction with a company which was providing accommodation entries of bogus sale/purchase and bogus unsecured loans to various entities in lieu of cash, Assessing Officer issued reopening notice under section 148 -Assessee submitted that assessee being NRI, jurisdiction would lie with Income Tax Officer (International Taxation) and thus Assessing Officer had no jurisdiction to issue notice under section 148A(b) - It was found that Assessing Officer had in effect admitted that he had no jurisdiction, but he issued notice because information and PAN of assessee were transferred to his charge at fag end of limitation period-Whether therefore,

impugned notice issued under section 148A(b) was to be set aside-Held, yes [Paras 8 and 17] [In favour of assessee]"

c) *Saroj Sangwan Vs Income Tax Officer, ITAT Delhi Bench as reported in [2024] 162 taxmann.com 704 (Del.Trib.)*

"Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Jurisdiction) - Assessment year 2011-12 - Assessee was resident of Gurgaon - Assessing Officer, Ward 69(1), New Delhi issued reopening notice in name of assessee - Subsequently, case of assessee was transferred to Assessing Officer, Ward 4(1), Gurgaon who completed reassessment - Assessee contended that since Assessing Officer, Ward 69(1), Delhi who issued reopening notice did not have jurisdiction to issue reopening notice, reassessment completed by Assessing Officer, Ward 4(1), Gurgaon was bad in law- Whether since Assessing Officer, Ward 69(1), Delhi who issued reopening notice had no jurisdiction over assessee, assumption of jurisdiction by him for reopening assessment by issue of notice under section 148 was bad in law - Held, yes - Whether since Assessing Officer, Ward 4(1), Gurgaon who had jurisdiction over assessee had not issued any notice under section 148, reassessment completed by Assessing Officer, Ward 4(1), Gurgaon was bad in law - Held, yes [Para 5] [In favour of assessee]."

14. Thus, in nutshell, it was pleaded before us that since, the file was transferred to the International Tax sue moto by the Assessing Officer Ward-3(4), Ludhiana through PCIT-1, Ludhiana, without any request from the assessee and, thus, the assessment as framed by the Assessing Officer, International Tax, deserves to be quashed.

15. We have considered the arguments of ld. Counsel of the assessee and the ld. DR as well as the brief synopsis and written submissions along with the judgments relied upon by both the sides and also the various case laws as cited before us. It is a fact borne out from record that prior to the issue of notice u/s 148 vide notice dated 28.03.2019 for the assessment year under consideration that the assessee is a non-resident as per the facts stated above by the ld. Counsel and the documents submitted before us for Assessment Year 2011-12. It is also a fact that the assessee is a citizen of USA and is holding American Passport and notice u/s 148 was issued by the non-jurisdictional ITO and as per the judgment of the Delhi ITAT in the case of Mukesh Kumar and of the Chandigarh Bench and Delhi Bench of the ITAT and the other judgments of the Bombay High Court and Rajasthan High Court, as cited supra, we have no hesitation in holding that the Assessing Officer Ward-3(4), Ludhiana did not have

valid jurisdiction to issue the notice u/s 148, since it was in the knowledge of the department earlier that the assessee was a non-resident and, even the return for AY 2011-12, had been filed, earlier to the notice issued u/s 148 for the year under consideration and the Assessing Officer, International Tax had proceeded with the framing of the assessment without issuing fresh notice u/s 148 and, thus, the assessment as framed by the Assessing Officer, International Tax, is bad in law. We are fortified by the judgment of co-ordinate bench in the case of Sh. Mukesh Kumar as cited supra in which it has been held as under:

"The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court- in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above . titled principle of law, we have no hesitation to quash the re-assessment it proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed."

16. Thus, considering the above facts and in case laws, we have no hesitation in holding that since the assessment has been framed by the AO of International Tax on the basis of notice u/s 148 issued by the non-jurisdictional AO, Ward-3(4), Ludhiana, the assessment as framed by the AO of International Tax is quashed.

17. Both the Department and the Assessee in their appeals have raised certain other grounds but since, we have quashed the assessment as framed by the Assessing Officer, International Tax, on the legal issue, the other grounds of appeal are not being adjudicated being academic in nature because the relief has been allowed to the assessee on legal ground.

18. In the result, Revenue's appeal is dismissed whereas, Cross Objections filed by the Assessee stand allowed on the legal issue.

Order pronounced on 15.10.2024.

Sd/-
(A.D. JAIN)
Vice President

“आर.के.”

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar