

**THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No. 2160/Del/2024
(Assessment Year 2011-12)**

Bharti Patwal F-814, Jalvuyu Tower, Sector 56, Gurgaon Haryana 122001	Vs.	ITO, Ward 44(3) New Delhi
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAOPP8338A		
Appellant	..	Respondent

Appellant by :	Sh. Vivek Bansal, Adv
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	24.10.2024
Date of Pronouncement	30.10.2024

ORDER

PER MADHUMITA ROY, JM:

The appeal is barred by limitation for 60 days and the assessee has filed an application seeking condonation of delay in filing the appeal before us supported by medical documents and affidavit. The reason for delay narrated by the assessee in the said application is on medical ground the assessee became ill and was advised for bed rest for a period of 2 months and hence, the appeal was filed late. Such submissions made by the assessee as pointed out by the Ld. A.R has not been controverted by the Ld. D.R with all his fairness. As the reason narrated by the assessee for filing the appeal late seems to be genuine, the delay is condoned, the appeal is admitted.

2. The assessee has filed an application for additional ground alleging that the notice dated 28.03.2018 under Section 148 since never been served upon by the assessee, the assessment order is void-ab-initio and thus, liable to be quashed.

3. Since, the issue raised is legal one and there is no change of facts, keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT, reported in (1998) 229 ITr 383 (SC), the ground of appeal is admitted.

4. The assessee's case is this that the initiation of proceeding though claimed to have been made by issuing of notice under Section 148 of the Income Tax Act 1961, dated 28.03.2018 by the Assessing officer on the ground of escaping assessment for Assessment Year 2011-12 due to failure on the part of the assessee to disclose and fully and truly all material facts after obtaining the necessary approval the said notice since remained unserved which has duly been mentioned by the Id. AO at paragraph 2 in his order dated 10.12.2018 passed under Section 144 r.w.s 147 of the Act, the initiation of assessment is invalid. Consequently, the order of assessment upon making addition of Rs.27,00,000/- is void ab initio and therefore, liable to be quashed. Such submission made by the assessee's counsel has not been able to be controverted by the Ld. D.R.

5. Thus, having regard to the facts and circumstances of the matter particularly taking into consideration the notice under Section 148 dated 28.03.2018 since, admittedly, having been not served upon the assessee as it is evident from the impugned assessment order dated 10.12.2018, the initiation of proceeding under Section 148 is found to have no basis

and thus, not sustainable in eyes of law. Consequently, the order of assessment is also found to be void ab initio and therefore, quashed.

6. The appeal of the assessee is allowed.

Order pronounced in the open court on 30.10.2024

Sd/-

(Madhumita Roy)
JUDICIAL MEMBER

Dated 30.10.2024

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI