

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**
[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 249/PAT/2023
Assessment Year: 2015-16**

Kishori Capital Markets Pvt. Ltd.....Appellant
[PAN: AAACK 9877 E]

Vs.

ITO, Ward-2(1), Patna.....Respondent

Appearances:

Assessee represented by: Sunil Surana, CA.

Department represented by: Ajay Kr. Shukla, JCIT (Sr. DR).

Date of concluding the hearing : November 6th, 2024

Date of pronouncing the order : November 6th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The instant appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2015-16 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeal)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 06.07.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 27.12.2017.

1.1. The brief facts of the case of the appellant are that the assessee is a NBFC company registered with RBI and is carrying mainly the business of

trading of shares and securities. The company is engaged in inter-related and inter-dependent trading activities on the platform of recognized stock exchange through SEBI and earn profit out of fund deployed in the securities trading business. The assessee filed its return of income for the AY 2015-16 declaring total income of Rs. 27,80,140/-. The case of the assessee was selected for scrutiny u/s 143(3) of the Act, a notice u/s 143(2) of the Act was issued and served on the assessee by ITO, Ward-2(1), Patna. The learned AO after going over the documents filed by the assessee in support of the claim made by the assessee do not find satisfactory, as a result of which a sum of Rs. 40,34,780/- is disallowed u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. The ld. AO has further held that however, this sum is being restricted to the amount of exempt dividend income claimed i.e. Rs. 17,75,205/-. Accordingly, an assessment order was passed at the total income of Rs. 45,55,345/-. Demand notice was issued. The said order has been challenged by the assessee before the ld. CIT(A) wherein also the appeal of the assessee with regard to disallowance of Rs. 2,05,14,580/- has been dismissed but allowed the appeal of the assessee by allowing the credit for pre-assessment taxes paid and accordingly, the appeal has been dismissed.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.1. The ld. Counsel for the assessee challenges the impugned order on various grounds but his main ground was that the ld. CIT(A) erred in holding that notice u/s 148 of the Act and u/s 143(2) of the Act were valid ignoring the law that the AO who sent the notice had no jurisdiction. The ld. Counsel for the assessee further challenges the reopening of the assessment and according to him, that is also not in accordance with Section 147 of the Act as it is without an application of mind and on vague reasons ignoring the fact that reopening of the assessment was after four years and there was no whisper in the reasons recorded of any failure on the part of the assessee to disclose truly and fully all material facts. the ld. Counsel for the assessee has raised the issue of reopening of his case and further the issuance of notice that is without jurisdiction.

1.2. Contrary to that, ld. D/R supports the impugned order.

2. The assessee has raised two issues which are as follows:

a) Reopening of his assessment after four years.

b) The issuance of notice u/s 148 of the Act is without jurisdiction.

2.1. In this context, we have perused the record and find the following facts which are admitted facts.

a) Assessment order was passed on 27.12.2017

b) Notice u/s 148 of the Act for the AY 2015-16 was issued on 31.03.2021 by the office of the ITO, Ward-2(1), Patna that is after four years.

2.2. Now, we have gone through the judgments cited by the assessee in this context which are as follows:

a) *Kolkata ITAT - Rungta Irrigation Ltd vs ACIT - ITA no. 1224/Kol/2019 - 06.09.2019*

b) *Supreme Court - ACIT vs CEAT Ltd - 449 ITR 171 -10.10.2022*

c) *Calcutta High Court - Calcutta Club Ltd vs ITO - WP No. 719 of 2014 - 14.02.2020*

d) *Gujarat High Court - Hynoup Food & Oil Industries Ltd vs ACIT - 317 ITR 115 -07.07.2008*

e) *Kolkata ITAT - Samridhi Stocks Pvt Ltd vs ITO - ITA no. 75/Kol/2023 - 13.07.2023*

f) *Kolkata ITAT - DCIT vs Vantage Advertising Pvt Ltd - ITA no. 1319/Kol/2015 - 26.09.2018*

g) *Delhi High Court - PCIT vs Meenakshi Overseas P Ltd - 395 ITR 677 - 26.05.2017*

h) *Delhi High Court - CIT vs Insecticides (India) Ltd - ITA 608-609/2012 - 20.05.2013*

i) *Delhi High Court - CIT vs SFIL Stock Broking Ltd - 325 ITR 285 - 27.04.2010*

j) *Kolkata ITAT - Asit Kumar Patra vs ITO -ITA no. 2206/Kol/2019-21.02.2020*

2.3. We have gone through the judgment passed by the Hon'ble Calcutta High Court in the case of *Calcutta Club Ltd. (supra)* which has been filed by the assessee and find that the Hon'ble High Court has dealt this issue which are reproduced herein below:

"Before coming to the conclusion on the legal issues involved in the Writ Petition I would like to discuss the following provisions of law which are relevant for adjudication for the same:

Section 149 (1) (b) of the I.T. Act 1961 prescribes the time limit for issue of notice. This section states that no notice under section 148 shall be issued for the relevant assessment year -

(a) If four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) [or clause (c)].

(b) Clause (b) states that, if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

Explanation to Section 149 (1) of the I.T. Act 1961 provides that, "In determining income chargeable to tax which has escaped assessment for the purpose of this sub-section, the provision of Explanation 2 of section 147 shall apply as they apply for the purpose of that section."

Sub-section (2) of section 149 provides that, "that provision of sub-section (1) as to the issue of notice shall be subject to the provision of section 151 of the Income Tax Act, 1961.

Considering the relevant provisions of the I.T. Act 1961 as stated hereinabove, and as reference has been made to other provisions of the act, it is pertinent to mention those sections, which are under:-

In Explanation to section 149 (1) of the Act, reference has been made to the Explanation 2 to section 147 and the applicability of the same to the said section.

Before coming to the Explanation to section 2 to section 147, the provision of Section 147 with regard to the income escaping assessment needs to be referred to.

Section 147 provides that, "if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any

assessment year, he may, subject to the provisions of Section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section."

The first proviso to section 147 states that, where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 on in response to a notice issue under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Considering the submission of the parties, relevant records, Provisions of law and the decisions relied upon by the parties, in my considered view the impugned notices under Section 148 of the Income Tax Act, 1961 and the proceedings under Section 147 of the Act are not sustainable in law and should be quashed for the reason that admittedly impugned proceeding initiated under Section 147 and notices issued under Section 148 of the Income Tax Act, 1961, which were issued after the expiry of four years from the end of the relevant assessment year and in view of the fact that there is no whispering in the recorded reason that there was any omission or failure on the part of the assessee in disclosing fully and truly material facts for assessment and in view of the fact that the Assessing Officer could not establish that the information of alleged escaped income was not within his knowledge and was not considered at the time of passing of the assessment order under Section 143 (3) of the Income Tax Act, 1961 and it came to his knowledge subsequent to the assessment order passed under Section 143 (3) of the Income Tax Act, 1961 and that subsequent decision of the Hon'ble Supreme Court reversing the legal position prevailing at the time of regular assessment cannot be called an omission or failure on the part of the assessee in disclosing fully and truly the material facts necessary for relevant assessment.

In view of the discussion made above this Writ Petition is allowed and the impugned proceeding under Section 147 and notices dated March 26, 2014 under Section 148 of the Income Tax Act, 1961 are quashed."

2.4. In another judgment of the Hon'ble Apex Court, we further find that hac has also held that which are as thus:

"2, It is not in dispute that the assessment was sought to be reopened beyond four years. Therefore, all the conditions under section 148 of the Income-tax Act, 1961 for reopening the assessment beyond four years are required to be satisfied. Having gone through the reasons recorded for

reopening, we are of the opinion that the conditions precedent for reopening of the assessment beyond four years are not satisfied, the reassessment was on change of opinion. There are no allegations of suppression of material fact. Under the circumstances, no error has been committed by the High Court in setting aside the reopening notice under section 148 of the Income-tax Act. We are in complete agreement with the view taken by the High Court. The special leave petition stands dismissed.”

3. Now, look at the facts of the case as we have already discussed that reopening was beyond four years. Now, going over the copy of the reasons recorded, we find that there is no whisper of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. We further find that in course of original assessment vide notice u/s 142(1) of the Act, the ld. AO has asked some clarification from the assessee and the same was duly submitted vide detailed reply by the assessee. The assessee has filed the following papers in support of his argument which are as follows:

- a) Copy of notice u/s 148 of the Act.
- b) Copy of notice u/s 143(2) of the Act.
- c) Copy of reasons recorded and approval vide letter dated 05.07.2021.
- d) Copy of objection filed in response to notice u/s 143(2) of the Act and the reasons recorded along with acknowledgment of filing the same.
- e) Copy of disposal of objection received.

3.1. Going over the documents filed by the assessee it appears to us that after query by the ld. AO mentioned in the notice u/s 142(1) of the Act a detailed reply has been submitted by the assessee through his letter in response to the notice u/s 142(1) of the Act dated 20.06.20017. The reply of the assessee with regard to query made by the ld. AO is as follows:

“6 (iii),(iv),(vi) and (vii) The Company has been carrying out inter related and/or inter dependent trading activities on the platform of recognised stock exchanges through SEBI Registered Stock Brokers for past many years with a simple strategy to earn decent amount of profit out of fund deployed in the securities trading business and therefore, intraday transactions, derivatives

transactions, trading transactions and participations under various offers being inter related and inter dependent, should not be considered in isolation. Rather, all such transactions falls under one single reportable segment i.e. Income arising out of securities transactions carried out through recognized stock exchanges. We have already submitted item wise details of trading tractions, derivatives transactions and intra day transactions before your good self. Contract Notes shall be produced before your good self during the course of the proceedings.”

3.2. Keeping in view the above discussion, we are of this opinion that conditions precedent for reopening of the assessment beyond four years are not satisfied. There is no allegation of suppression of material fact. Accordingly, this issue is decided in favour of the assessee thereby holding that reopening after four years is bad in law. On this score only, the assessment proceedings and further proceedings of the Id. CIT(A) cannot be said to be valid, accordingly set aside.

4. The next issue which has been raised by the assessee with regard to issuance of notice. Ld. Counsel for the assessee submits that assessee has its business in Kolkata i.e. address of the assessee is of Kolkata that is apparent from the income tax return acknowledgement. Copy of income tax return has been filed by the assessee before us that goes to show that address of the assessee is of Kolkata. It is not in dispute that notice u/s 143(2) of the Act read with Section 147 of the Act has been issued by ITO, Ward-2(1), Patna. The notice u/s 143(2) of the Act has been issued on 06.07.2021 and it is apparent from the objection filed in response to the notice issued u/s 143(2) of the Act that it was filed on 10.07.2021 that is within a week. In the copy of objection filed in response to the notice u/s 143(2) of the Act the assessee has made an objection with regard to jurisdiction of issuance of notice and it has clearly been mentioned in the letter that with regard to the address of the assessee in Kolkata. We are reproducing the paragraph of the objection of the reopening of the assessment with regard to the jurisdiction which are as follows:

“1) It may kindly be noted that we are a NBFC registered with the RBI, Kolkata and has been carrying out fund based financial business from our registered office situated at R/N 325, 3rd Floor, Martin Burn House, 1 R N Mukherjee Road, Kolkata - 700 001, West Bengal. “Earlier the registered

office was situated at 116A Stephen House, 6th Floor, 4 BBD Bag (East), Kolkata - 700001, West Bengal which is duly noted in your records and therefore, in view of CBDT Notification issued under section 120(1) and (2) of the Income tax Act 1961, effective from 15th November 2014, the Assessing Officer ITO Ward 4(4), Kolkata under the jurisdiction of PCIT -2, Kolkata is holding charge over our case.

Kindly note that under the scheme of "e" filing of return, the assessee has to fill PAN in the return. It has to also fill its address and some of the details are picked-up by the assessee. If the Department's System fails to correctly transfer the return to the jurisdictional Assessing Officer and transfer the same to another Assessing Officer who has no jurisdiction as per the CBDT's notification, such mistake cannot confer the jurisdiction on such an Assessing Officer. Jurisdiction can be conferred only by notification issued u/ s 120(1) and 120(2) of the Act.”

4.1. The ld. Counsel for the assessee has also filed a decision passed by the Hon'ble Bombay High Court in the case of *PCIT v. Capstone Securities Analysis Pvt. Ltd.* reported in (2023) 457 ITR 775 (Bom)(HC) and Hon'ble ITAT, Delhi Bench in the case of *ACIT vs. U V Realtors Pvt. Ltd.* in ITA No. 6033/DEL/2016 order dated 17.05.2021.

4.2. We have gone through the disposal of objection with regard to the jurisdiction passed by ITO, Ward-2(1), Patna that reflects that the issue of jurisdiction has been denied only on this ground that earlier jurisdiction lies with AO, Patna since issue of the PAN and as per the AO since no objection whatsoever has been raised by the earlier, hence, jurisdiction lies on the AO, Patna. We have gone through the order passed by the ITAT, Delhi Bench (*supra*) that has been decided with regard to jurisdiction on the PAN and the Hon'ble Bench has passed order which is as follows:

“16. The entire case of the revenue hinges upon the interpretation that allotment of PAN is the criteria and foundation of deciding the jurisdiction of the Assessing Officer. However, nowhere in the statute it has been provided that PAN address will decide the territorial jurisdiction of the Assessing Officer. Section 139A merely provides who are the persons required to obtain PAN having regard to the nature of transaction of business and other conditions laid down that, Assessing Officer may allot a PAN and other procedure and mechanism of allotment of the PAN. The territorial jurisdiction is decided by the CBDT in terms of Section 120 only. Here, in this case, as discussed above, none of the parameters laid down for the territorial jurisdiction are applicable to the assessee. Even the Assessing Officer or the

Ld. CIT(A) has not made out any case that assessee's case falls in either of the given categories provided in sub Section (3) of Section 120. Allotment of a PAN from a particular place cannot provide jurisdiction to the Assessing Officer. The jurisdiction of the Assessing Officer over an assessee is decided by the CBDT on the basis of from where the assessee is either carrying the business in that area assigned to the Assessing Officer u/s.120 or the assessee is residing within that area. Admittedly, the assessee company does not only have registered office in New Delhi but also has been carrying out all its activities from which it has been earning income from New Delhi and has been filing the return of income from New Delhi. Even in the software of the Income Tax Department where return of income is uploaded online, the designation of the Assessing Officer as per the address has always been mentioned as Range-18, New Delhi. Had there been the allotment of jurisdiction by virtue of PAN, then the software of the Department would have assigned the jurisdiction as when assessee uploads the return of income electronically online. Be that as it may, nowhere in the statute it has been provided that allotment of a PAN would be the determinative factor for jurisdiction of the Assessing Officer. Thus, we hold that ITO, Ward-10(2)/DCIT, Circle-10(2), Kolkata did not have any jurisdiction over the assessee company and any order passed without jurisdiction is null and void. Accordingly, we hold that the impugned assessment order passed by Assessing Officer of Kolkata is without jurisdiction and hence the same deserved to be quashed as per the provisions of law. Accordingly, Cross Objection of the assessee is allowed.

17. Since, we have already quashed the assessment, the grounds raised in the Revenue's appeal on merits stands dismissed."

4.3. Going over the entire facts as discussed above, we hereby hold that the issuance of notice by the AO, Patna is bad in law and on this score also, order passed by the Id. AO as well as Id. CIT(A) is against the law and accordingly, both the orders are hereby set aside.

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

Order pronounced in the open Court on 6th November, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 06.11.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

1. **Kishori Capital Markets Pvt. Ltd., 116A, Stephen House, 6th Floor, 4, BBD Bagh (East), 700001.**
2. **ITO, Ward-2(1), Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata