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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.439/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2014-15)

Vanasowrabha Associates, Warangal. PAN: AAGFV7272H (Appellant)	Vs.	Asst. Commissioner of Income Tax, Circle-1, Warangal. (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri Pawan Kumar Chakrapani, C.A.
राजस्व द्वारा / Revenue by::		Shri Ashish Kumar Shukla, SR-DR
सुनवाई की तारीख / Date of hearing:		16/10/2024
घोषणा की तारीख / Pronouncement:		28/10/2024

आदेश/ORDER

PER SHRI MANJUNATHA G, A.M. :

This appeal filed by the assessee arising out of order of Learned Commissioner of Income Tax (Appeals)-11, Hyderabad dated 21.03.2023 for the Assessment Year 2014-15.

2. The assessee has raised the following grounds :

- “ 1. The impugned order of the learned Assessing Officer in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*
- 2. The order of re-assessment passed under section 147 of the Act is bad in law and void-ab-intio as the mandatory conditions to invoke the provision of section 147 did not exist and thereby issuing the notice under section 148 was not present under the facts and circumstances of the case.*
- 3, The order of assessment passed under section 144 r.w.s. 147 of the Act, is bad in law and void-ab-initio as the procedure laid down by the Honorable Apex Court in GKN Driveshafts India Private Limited, 259 ITR 19, has not been followed, under the facts and circumstances of the case.*
- 4. If at all any reasons are recorded for re-opening of assessment amount by the learned assessing officer it may amount to reason to suspect and do not amount to reason to believe and the said reason do not constitute belief, under the facts and circumstances of the case.*
- 5. No proper procedure has been followed by the learned assessing officer for issuance of notice under section 148 of the Act, as envisaged in the statute.*
- 6. The Appellant denies himself liable to be assessed on a total income of Rs. 2,23,00,000/-, under the facts and circumstances of the case.*
- 7. Whether the learned Authorities below are justified in making an addition of Rs. 2,23,00,000/-, under the head business, under the facts and circumstances of the case.*
- 8. Whether the learned Authorities below are justified in treating the amount received as advance being Rs. 2,25,00,000/-, as sale consideration and treating it as income of the Appellant, under the facts and circumstances of the case.*
- 9. Whether the learned Authorities below are justified in presuming that the amount received being Rs. 2,25,00,000/-, as sale consideration, even when it is demonstrated that the deed executed is only for providing security against the loan paid by M/s. Amrutamsha Infratech India Private Limited, under the facts and circumstances of the case.*
- 10. The Appellant denies himself liable to be charged to interest under section 234A, 234B and 234C of the Income-Tax Act, 1961, under the facts and circumstances of the case.*

11. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

12. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

3. The brief facts of the case are that the assessee is a partnership firm and engaged in the business of real estate. In this case, a survey u/s.133A of the Income Tax Act, 1961 ("the Act") was conducted on 14.10.2015. Till the date of survey the assessee has not filed the return of income for the Assessment Year 2014-15, even though the due date for filing of return was 31.7.2015 u/s.139(1) of the Act. The Assessing Officer issued notice u/s.148 of the Act dated 26.10.2015. The assessee filed return of income on 9.1.2016 admitting a total income of Rs.38,65,210. The return of income filed by the assessee was not considered by the Assessing Officer and completed the assessment u/s.144 r.w.s. 147 of the Act on 27.12.2016 and determined the total income of assessee of Rs.2,23,00,000. The assessee carried the matter before the first appellate authority and challenged the assessment order passed by the Assessing Officer on legal grounds in the light of notice issued u/s.148 of the Act dated 26.10.2015 and return filed u/s.139(4) of the Act on 9.1.2016 and argues that assessment order is bad in law and liable to be quashed. The Ld. CIT(A) rejected the legal ground taken by the assessee and also sustained addition made by the Assessing

Officer towards sale of property under the head 'business profit'. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

4. The learned counsel for the assessee submitted that the Ld. CIT(A) erred in not appreciating the facts that the order of reassessment passed u/s.147 of the Act consequent to notice issued u/s.148 of the Act dated 26.10.2015 is bad in law and void-ab-initio as the mandatory condition to invoke the provisions of section 147 of the Act did not exist thereby issuing notice u/s.148 was not present under the facts and circumstances of the case. The learned counsel referring to the provisions of section 139(4) of the Act submitted that the assessee can file valid return of income within two years from the end of the relevant assessment year and in the present case such date is upto 31.03.2016. The assessee had also filed return of income on or before due date prescribed u/s.139(4) of the Act. Therefore when the assessee had filed the return of income as per the provisions of section 139(4) and further the A.O. has time limit for issue of notice u/s.143(2) of the Act upto 30.09.2016, there is no reason for the A.O. to issue notice u/s.148 of the Act. In this regard, he relied upon the decision of ITAT, Dehradun Circuit Bench in ITA No.3129/Del/2018 Dt.23.06.2023 in the case of Uttrakhand Poorv Sainik Kalyan Nigam Ltd. Vs. ITO.

5. The Ld. DR, on the other hand, supporting the order of Ld. CIT(A) submitted that there is no lower time limit for issue of notice u/s.148 of the

Act. As per the provisions of section 147, the A.O. can issue notice u/s.148 if income escaped assessment for any relevant assessment year. In the present case, the A.O. had issued notice u/s.148 of the Act on the basis of findings of survey conducted u/s.133A of the Act on 14.10.2015 and thereafter the assessee had filed return of income u/s.139(4) of the Act. Therefore the A.O. has rightly rejected the return filed by the assessee and completed the assessment u/s.144 r.w.s. 147 of the Act. Therefore he submitted that there is no merit in the legal ground taken by the assessee and same needs to be rejected.

6. We have heard both the parties, perused the material on record and gone through the orders of authorities below. There is no dispute with regard to the fact that a survey u/s.133A of the Act was conducted on 14.10.2015 and consequent to survey the A.O. issued notice u/s.148 dated 26.10.2015 giving 30 days time for filing of return of income. The assessee has filed return of income in response to notice u/s.148 of the Act on 9.1.2016 admitting total income of Rs.38,65,210/- and admittedly the said return was filed on or before due date provided u/s.139(4) of the Act. The provisions of section 139(4) of the Act provides for filing belated return before expiry of one year from the relevant assessment year or before completion of the assessment whichever is earlier. Once there is valid return filed on or before the due date prescribed u/s.139(4), then same

needs to be considered while assessing the total income of the assessee for any assessment year. In the present case, the A.O. ignored valid return filed by the assessee on 9.1.2016 and completed the assessment u/s.144 r.w.s. 147 of the Act only on the ground that the return filed by the assessee is beyond 30 days from the date of notice issued u/s.148 of the Act. Otherwise, there is no valid reason for the A.O. to ignore return of income filed by the assessee which is otherwise valid as per section 139(4) of the Act. Therefore, we are of the view that once there is provision for filing valid return upto 31.03.2016 and ;further when the assessee has furnished return of income on 9.1.2016, u/s.139(4) of the Act then the A.O. should have considered said return of income for the purpose of assessment instead of issuing notice u/s.148 of the Act. Although as claimed by the Ld. DR, there is no lower limit time for issuing notice u/s.148 as per law, but fact remains that when time limit available for issue of notice u/s.142(1) or 143(2), then in our considered view the A.O. should have exercised his power in accordance with law rather going for reassessment of income. Therefore, we are of the considered view that notice u/s.148 of the Act dated 26.10.2015, in the instant case is premature and the A.O. cannot resort to reopening the assessment merely because a particular return is not selected for scrutiny. In our considered view, for valid reopening of assessment there should be formation of belief of escapement of income

based on tangible information that income of assessee had escaped assessment. In the present case, this is conspicuously absent. Therefore in our considered opinion, reopening of assessment u/s.148 of the Act for the assessment year in question is bad in law when there is time limit for filing of return u/s.139(4) or taking up the case for scrutiny u/s.143(2) of the Act.

7. The assessee has relied upon the decision of ITAT, Dehradun Circuit Bench in the case of Uttrakhand Poorv Sainik Kalyan Nigam Ltd. Vs. ITO (supra) in support of his argument. We find that an identical issue has been considered by the Tribunal in the light of provisions of sections 139(4) and 148 of the Act and after considering the relevant facts it was held that notice issued u/s.148 of the Act, is to be assumed as if there was no notice under said section when there is time limit for filing of return u/s.139(4) of the Act and also time limit for taking up for scrutiny u/s.143(2) of the Act. The relevant findings of the Tribunal are as under :

“4. We have heard rival submissions and perused the materials on record. We find that the assessee has filed its return of income for the assessment year 2014-15 belatedly under section 139(4) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on 06.10.2015 declaring total income of Rs. Nil, after claiming exemption for the profit of Rs.5,11,44,966/- under section 10(26BBB) of the Act. This return was not selected for scrutiny by learned Assessing Officer. But we find very strangely, the learned Assessing Officer issued a

notice under section 148 of the Act on 22.01.2015 itself, which is prior to the date of filing of return of income by the assessee. We find that the assessee has got time to file the return belatedly in terms of section 139(4) of the Act till 31.03.2016. While this is so, there is absolutely no need for learned AO to issue reopening notice under section 148 of the Act. The learned Assessing Officer could have as well selected the belated return filed by the assessee for scrutiny and proceeded to determine the total income of the assessee in the manner known to law. Without doing so, when the due date for filing the belated return of income under section 139(4) of the Act was available to the assessee, the learned AO prematurely reopened the assessment by issuing notice under section 148 of the Act on 22.01.2015 much before the end of the assessment year itself. Against the belated return of income filed by the assessee under section 139(4) of the Act on 06.10.2015, learned AO had time to issue notice under section 143(2) of the Act till 30.09.2016.

5. Learned DR before us vehemently argued that since the assessee had not filed the original return of income under section 139(1) of the Act, the learned Assessing Officer was duly justified in reopening the assessment under section 147 of the Act. We are unable to comprehend ourselves to accept these arguments of the learned DR in view of the fact that when the return of income is not filed within the due date prescribed under section 139(1) of the Act, learned Assessing Officer is entitled as per the statute to issue notice under section 142(1) of the Act calling for the return of income. Without resorting to this statutory provision, the learned AO cannot directly proceed to reopen the assessment. In any case, when the due date for filing the

return of income is available in terms of section 139(4) of the Act to the assessee, how there could be any satisfaction on the part of the learned AO to conclude that the income of the assessee has escaped assessment. Hence, the very basis of reopening deserves to be quashed for want of any satisfaction that could be legally recorded. The reopening made by learned AO deserves to be quashed on this count also.

6. We find that the assessee has raised this issue of reopening notice, being issued before the end of the assessment year itself before the learned CIT(A), which is evident from the written submission filed before the learned CIT(A). The relevant portion thereof is enclosed in pages 14 and 33 of the order of learned CIT(A). Strangely, the learned CIT(A) remains completely silent on this legal issue and simply relying on the order of his predecessor for assessment year 2009-10, passed in assessee's own case, he proceeded to uphold the addition made by learned AO on merits. In this regard, it is pertinent to note that against the order of learned CIT(A) for assessment year 2009-10, the assessee preferred an appeal before this Tribunal and this Tribunal vide its order passed in ITA No. 3070/Del/2016 dated 31.05.2021 had quashed the reassessment proceedings. Since, for assessment year 2014-15, i.e., the year under consideration, the learned CIT(A) had merely relied on the order of the predecessor for assessment year 2009-10, which stood subsequently quashed by this Tribunal, the assessee deserves to get relief on merits also for the year under consideration.

7. As stated earlier, the return filed by the assessee on 06.10.2015 is a return filed belatedly u/s 139(4) of the Act. Nothing prevented the learned Assessing Officer to select this return for scrutiny and frame the assessment in accordance with law. When this provision is available with the learned Assessing Officer, where is the need for him to issue reopening notice that too before the end of the assessment year itself. Hence the reopening notice issued u/s 148 of the Act in the instant case is to be declared premature. In any case, the revenue cannot resort to reopening proceedings merely because a particular return is not selected for scrutiny. Reopening of an assessment cannot be resorted to as an alternative for not selecting a case for scrutiny. There should be conscious formation of belief based on tangible information that income of an assessee had escaped assessment. This is conspicuously absent in the instant case before us. With regard to the legal issue raised by the assessee vide ground no. 4, we find that the issue in dispute has already been adjudicated by the Coordinate Bench of Delhi Tribunal in the case of ITO Vs. Momentum Technologies Pvt. Ltd. in ITA No.5802/Del/2017 dated 31.03.2021 for assessment year 2011-12, wherein, the Tribunal held as under:

"17 The above provisions does not make any distinction between return of income filed u/s 139(1) or U/s 139 (5) of the act. If the return filed u/s 139[5] is a valid return, then the notice u/s 143(2) of the act can be issued to the assessee within expiry of six months from the end of the Financial Year in which revised return of income is filed. In this case, Revised return is filed on 12/2/2013, so 143 (2) notice could have been issued to the assessee on or before 30/9/2013. Therefore, the assessment proceedings were pending before Id AO.

However, Id AO issued notice u/s 148 of the act on 15/04/2013, i.e. when the original assessment proceedings were pending as time limit for issue of notice u/s 143 (2) did not expire. Section 142(1) and Section and Section 148 of the Act cannot operate simultaneously. There is no discretion vested with the Assessing Officer to utilize any one of them. The two provisions govern different fields and can be exercised in different circumstances. If income escapes assessment, then the only way to initiate assessment proceedings is to issue notice under Section 148 of the Act. In fact, the proceedings are pending u/s 143 of the act, it looks in appropriate to call for a return under Section 148 of the Act because income cannot be said to have escaped assessment when the assessment proceedings are pending. Such is also held by Honourable Madras High court in COMMISSIONER OF INCOME-TAX V QATALYS SOFTWARE TECHNOLOGIES LTD. [2009] 308 ITR 249 (Madras) where in following the decision of the Honourable High court in COMMISSIONER OF INCOME-TAX v. K. M. PACHAYAPPAN in 304 ITR 264 (Madras) held that:

"7. Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated under section 147 of the Act, when there is a pendency of the return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference."

18. Same is also the mandate of Honourable Delhi High court in [2007] 292 ITR 49 KLM ROYAL DUTCH AIRLINES v. ASSISTANT DIRECTOR OF INCOME-TAX where in it has been held that Where an

assessment has not been framed at all, it is not possible to posit that income has escaped assessment.

8. *Similar view was also addressed by the Coordinate Bench of Bombay Tribunal in the case of Bakimchandra Laxmikant Vs. Income-tax Officer, reported in [1986] 19 ITD 527 (Bombay), wherein it was held as under:*

9. *Question now remains what is the effect of the notice under section 148. Does the return filed after issue of notice under section 148 cease to be a return under section 139 or any loss determine in pursuance of such a return could be denied to be carried forward and set off? The department's contention is that recourse to section 148 is a remedy available to the department to assess or reassess the income which had escaped assessment and in such a recourse the assessee cannot be granted a benefit to the prejudice of the revenue. It may be true that the assessee cannot be benefited in a proceeding under section 148 as this provision is meant to safeguard the interests of the revenue. It is an enabling provision to assess or reassess the income which escaped assessment. But at the same time we cannot overrule the right of the assessee to file the return within two years from the end of the assessment year under section 139(4). This right of the assessee, in our opinion, cannot be taken away or whittle down by the revenue by issuing a notice under section 148. We would have agreed with the contention of the department if the return in this case was filed beyond the prescribed limit under section 139(4). The notice under section 148 as aforesaid is issued to assess or reassess the escaped income and the notice should be deemed invalid if ultimately the alleged income is found to have not escaped. If in the case of income*

having escaped it is found ultimately that there was a loss, the whole basis of issue of notice under section 148 falls down and the notice, therefore, becomes for all practical purposes invalid. It should be deemed as if it were never issued. As a natural consequence, therefore, it is to be assumed that there was no notice under section, 148 in this case and the return filed on 15-12-1982 was not a return in pursuance of the notice under section 148. We, therefore, hold that it was a return under section 139(4) and in view of the Bombay High Court decision (supra), the assessee would be entitled to carry forward the loss.

9. In view of the above, respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to quash the reassessment proceedings framed by learned AO as void abinitio. Accordingly, ground no. 4 raised by the assessee on legal issue is allowed.”

8. In this view of the matter and by respectfully following the decision of co-ordinate bench of ITAT in *Uttrakhand Poorv Sainik Kalyan Nigam Ltd. Vs. ITO (supra)*, we are of the considered view that notice issued u/s.148 of the Act, in the present case is bad in law and liable to be quashed. Thus we quash the notice issued u/s.148 of the Act and consequent reassessment order passed by the A.O. u/s144 r.w.s. 147 of the Act dated 27.12.2016.

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

Order pronounced in the open Court on 28th Oct., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MANJUNATHA G)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 28.10.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. Vanasowrabha Associates, 6-3-24, Pinjarala Street, Vijaya Talkies Road, Hanamkonda-506001
2. ACIT, Warangal.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,