आयकरअपीलीयअधिकरण,ए,न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBERAND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.123/CHNY/2023**
निर्धारण वर्ष/Assessment Year:2011-2012

Shri Natarajan 353, Pudupettai Main Road, Indira Nagar, C. Puthupettai, Parangipettai Post, Cuddalore 608 502. **PAN: ANFPN 9506Q**	Vs.	The Income Tax Officer, International Taxation, Ward 2(1), Chennai 600 006
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. J. Saravanan, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Dr. Samuel Pitta, IRS, JCIT.

सुनवाईकीतारीख/Date of Hearing : 23.09.2024
घोषणाकीतारीख/Date of Pronouncement : 28.10.2024

आदेश /O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.71/CIT(A)-16/2018-19, Dated 28.02.2022. The assessment was framed by the Income Tax Officer, International Taxation, Ward 2(1),

Chennai for assessment year 2011-2012 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 28.12.2018.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 273 days. The order of CIT(A) dated 28.02.2022 was communicated to the assessee on 05.03.2022 as per Form 36. The assessee's brother has filed affidavit for condonation of delay stating the following reasons:-

> *''I, M.Kuppusamy, S/o. Mottayappan, Hindu, aged about 64 years, residing at 353, Pudupettai Main Road Indira Nagar, Cuddalore 608 502, do solemnly affirm and state as follows:*
> *1. That I am the brother of Shri. M.Natarajan who is a non-resident Indian and residing in London, U.K. since 1998 and my brother used to visit India only occasionally.*
> *2. That my brother had preferred an appeal before the Hon'ble commissioner of Income-Tax (Appeals)-16, Chennai ("CIT(A)", for short) against the order of the Income-Tax Officer, International Taxation, Ward-2(1), Chennai, passed under section 143(3) r.w.s.147 of the Income-Tax Act, 1961 ("Act") dated 28.12.2018 for the Ay 2011-12.*
> *3. That I received a closed cover by post from the Office of the CIT(A)-16, Chennai, on 05.03.2022, which borne the name of my brother (M.Natarajan) and this cover was not opened by me and I kept it in my house.*
> *4. That due to my own family commitments, I forgot to inform my brother the receipt of the closed cover when he used to speak to me over telephone from London occasionally.*
> *5. That on my brother visiting India on 17.01.2023 and staying in my house, I remembered the closed cover and handed over the same to him.*
> *6. That I then understood that the cover contained the order of the CIT(A)-16, Chennai, dated 28.02.2022 and that a delay in filing an appeal against the said order had occurred.*
> *7. That I submit that only due to genuine inadvertence, I forgot to inform my brother (M.Natarajan), the receipt of the closed cover from the O/o. the CIT(A)-16, Chennai, and that the default to inform my brother about the cover was not wanton or willful''.*

When these facts were confronted to ld.JCIT-DR, he objected for condoning the delay. We find the cause as reasonable and hence, interest of justice condone the delay and admit the appeal.

3. The assessee has raised the following grounds of appeal: -

> *‘’A. For that the order of the Ld. Commissioner of Income-Tax (Appeals)-16, Chennai ["CIT(A)"] and Assessing Officer ("AO"), is erroneous, bad in law, and was passed ignoring the facts and merits of the case, disregarding the evidences and the case laws relied on by the appellant.*
>
> *B. For that the Ld. CIT(A) dismissed the appeal by holding that the impugned lands which were sold by the appellant (7.97 cents + 4.96 cents), by virtue of two sale deeds, are not agricultural lands, ignoring the fact that agricultural operation was carried out in the said lands even till the time of sale of the impugned agricultural lands, and ignoring the kist receipt issued by the Village Administrative Officer (VAO).*
>
> *C. For that the Ld. CIT(A) dismissed the appeal by holding that it is difficult to take the view that appellant received on-money of Rs.3,00,00,000/- over and above the registered value of Rs.51,72,000/- by virtue of two sale deeds registered in Document Nos. 105/2011 (Rs.31,88,000/- for sale of 7.97 cents) and 298/2011 (Rs.19,84,000/- for sale of 4.96 cents), both dated 21.02.2011.*
>
> *D. For that the learned CIT(A) failed to appreciate that the appellant is a non-resident for the past 25 years and do not have any income generating source within the Indian territory (other than meager interest income from savings bank deposits), so as to earn an income of Rs.3 crore.*
>
> *E. For that the reassessment proceedings were initiated by issuance of notice u/s 148 of the Act by a non-jurisdictional assessing officer ("AO"), viz., ITO, Ward-3, Cuddalore, instead of the jurisdictional assessing officer [ITO, International Taxation-2(1), Chennai].*
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> *F. For these and other additional grounds that may be adduced before or at the time of hearing, the appellant prays that the appeal be allowed’.*

4. At the outset, the ld.AR for the assessee drew our attention to application for additional grounds raised regarding issuance of an unsigned notice by the AO dated 22.03.2018 u/s.148 of the Act and also notice dated 29.10.2018 issued u/s.143(2) of the Act who was not the jurisdictional

Assessing Officer of the assessee. The Additional grounds raised by the assessee reads as under:-

> *"G. For that the Income-Tax Officer, Ward-3, Cuddalore, erred in issuing an unsigned notice u/s 148 of the Income-Tax Act, 1961 (Act) dated 22.03.2018 which formed the basis for the reassessment order dated 28.12.2018, under which the impugned additions of Rs.45,54,130/- and Rs.3,00,00,000/- were made.*
>
> *H. For that the notice u/s 143(2) of the Act dated 29.10.2018 was issued by the Income-Tax Officer, Ward-3, Cuddalore, who was not the jurisdictional Assessing Officer of the Petitioner assessee".*

The ld.AR stated that the above raised additional grounds is purely legal issue which goes to the root of the matter and therefore, these needs to be admitted and adjudicated upon at the first instance. The ld.AR stated that all material and relevant facts for adjudication on this issue are very much available in the assessment order or the order of the ld. CIT(A).The ld. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd vs. CIT, 229 ITR 383 (SC)* where the Hon'ble Supreme Court had affirmed that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assesssee and remanded the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.

5. On the other hand, the ld.JCIT-DR opposed the admissibility of additional grounds and submitted copy of notice u/s 148 along with acknowledgment thereof with covering e-mail dated 23.08.2024.

6. We note that the above raised grounds are of question of law and fact. Hence admit the both grounds for adjudication.We find from the copy of notice u/s 148 dated 22.03.2018 along with acknowledgment thereofwhich clearly records the signature of the AO. Hence, we reject the additional grounds/issues (G). We will deal the additional ground No.(H) with main ground No.(E) together.

7. Now we will take up the jurisdictional issue raised by the assessee at main ground No.(E)& additional ground No.(H) together. The ld. counsel for the assessee submitted that the reassessment proceedings were initiated u/s 148 of the Act by a non-jurisdictional assessing officer ('AO') viz; ITO, Ward-3, Cuddalore, instead of the jurisdictional assessing officer viz; ITO, International Taxation-2(1), Chennai. The ld. counsel for the assessee also submitted that the notice u/s 143(2) of the Act was issued by a non-jurisdictional assessing officer ('AO') viz; ITO, Ward-3, Cuddalore, instead of the jurisdictional assessing officer viz; ITO, International Taxation-2(1). The ld. Counsel submitted a letter dated 09.11.2018 and argued that the assessee has taken the plea of non-jurisdictional issue before the AO. The ld. Counsel also filed case law paper book to bolster his arguments that the entire proceedings pursuant to notices u/s 148 or u/s 143(2) issued by non-jurisdictional AO is bad in law hence liable to be set aside.The ld. Counsel has referred the judgment of the Hon'ble jurisdictional High Court in the case of *Charu K. Bagadia Vs ACIT [2023] 146 taxmann.com 345 (Madras).*

8. Per contra, the ld.DR-PCIT, Dr. Samuel Pitta submitted that the entire proceedings pursuant to notices u/s 148 or 143(2) issued by the original AO is valid for the reason that the assessee participated in entire proceedings up to appellate forum and never raised this issue before the AO or first appellate authority as a jurisdictional ground. The ld. DR pointed out that even by the letter dated 09.11.2018, the assessee only sought transfer of file to 'NRI Taxation Circle'.The ld.DR relied upon the judgment of the Hon'ble Supreme Court in the case of *DCIT Vs Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC)*.

9. We have heard on the issue of jurisdiction raised by the assessee at main ground No.(E) and additional ground No.(H). We find that although the assessee uploaded the original Income Tax Return dated 01.03.2018 as Residential status 'NRI' which was verified by the assessee on 03.07.2018. In the Income Tax Return uploaded on 01.03.2018 and verified on 03.07.2018, the assessee himself has shown designation of AO as 'Ward-3, Cuddalore'. Thereafter, the assessing officer ('AO') viz; ITO, Ward-3, Cuddalore issued notices u/s 148 dated 22.03.2018 and u/s 143(2) dated 29.10.2018 of the Act. The assessee e-filed return of income in response to the notice u/s 148 on 20.09.2018. It is also discernible that by the letter dated 09.11.2018, the assessee sought only transfers of file to 'NRI Taxation Circle' from the 'AO Ward-3, Cuddalore'. The assessee has never challenged the notices u/s 148 dated 22.03.2018 or 143(2) dated 29.10.2018 of the Act on the ground that both notices are issued by non-jurisdictional Assessing Officer and participated

in entire proceedings up to appellate forum. We find that the assessee has never challenged the notice u/s 148 dated 22.03.2018 of the Act within 30 days as statutorily required u/s 124(5)(a) or 124(5)(b) of the Act.

10. The ld. Counsel has referred the judgment of the Hon'ble jurisdictional High Court in the case *of Charu K. Bagadia Vs ACIT [2023] 146 taxmann.com 345 (Madras)* wherein the Hon'ble Court held as under:

> *7. Heard both sides and perused the materials available on record.*
>
> *8. The subject matter of challenge before the writ court was the notice dated 28.03.2018 issued by the first respondent under section 148 of the Act and the consequential notice dated 14.12.2018 issued by the second respondent under section 143(2) r/w 129 of the Act, for the assessment year 2011~12. The learned Judge decided the same against the appellant / writ petitioner.*
>
> *9. In this writ appeal, the learned counsel for the appellant made elaborate contentions both on legal and factual aspects. Firstly, in law, it is submitted that the first respondent lacks jurisdiction to issue reassessment notice under section 148 of the Act; when the same was pointed out by the appellant, the first respondent transferred the entire files to the jurisdictional assessing officer / second respondent, who inturn, continued the reassessment proceedings by issuing notice under section 143(2) r/w 129 of the Act, without issuing any fresh notice under section 148 of the Act; and hence, the notices so issued by the respective respondents are invalid and the same vitiate the reassessment proceedings. Secondly, on facts, it is contended that the appellant disclosed fully and truly all the material facts necessary for her assessment for the relevant assessment year and there was no income omitted to be included by way of reassessment proceedings. However, the learned Judge failed to appreciate the same in a proper perspective and erred in dismissing the writ petition filed by the appellant herein.*
>
> *10. On the other hand, the learned senior panel counsel appearing for the respondents reiterating the averments*

made in the counter affidavit, justified the reassessment proceedings initiated by the respondents against the appellant, as affirmed by the learned Judge in the writ petition.

11. Before proceeding further, it is but relevant to refer to the provisions of law, based on which the notices impugned in the writ petition were issued by the respondent authorities, viz., section 148 and 129 of the Act, as follows:

Issue of notice where income has escaped assessment

148.(1)Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that in a case-

(a)Where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

b)Subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a)Where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
(b) subsequently a notice has been served under clause (ii) of sub section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

(2)The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Change of incumbent of an office:
129. Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned my demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.
On a plain reading of the aforesaid provisions, it is apparent that section 148 provides for issuance of notice where income has escaped assessment and the assessing officer intends to make assessment, reassessment or recomputation under section 147. Under sub~section (1) to section 148, the assessing officer shall issue notice to the assessee requiring him/her to furnish a return of income in respect of which he/she is assessable for the relevant assessment year; and under sub-section (2) to section 148, the assessing officer shall before issuing any notice under this section, record his

reasons for doing so. It is also crystal clear from the provisions of section 129 of the Act that the same is applicable, when there is a change of incumbent without any change of jurisdiction and one Assessing Officer is succeeded by another in the same office.

12. In the instant case, it could be seen that the assessment of the appellant was reopened upon receipt of credible information from the Directorate of Income Tax (I & CI), Mumbai, to the effect that she received a sum of Rs.53,50,000/- for transfer of her FSI right in the property at Mumbai. Pursuant to the same, the first respondent issued notice dated 28.03.2018 under section 148 of the Act stating that he has reasons to believe that the income of the appellant chargeable to tax for the assessment year 2011~12 has escaped assessment within the meaning of section 147 of the Act; and therefore, he proposed to assess/re-assess the income for the said assessment year and he directed the appellant to file her return of income in the prescribed form within 30 days from the service of notice. Upon receipt of the said notice, the appellant in her reply dated 26.04.2018, pointed out that she is a permanent resident of Chennai and her PAN is AAKPK7417K and an assessee on the file of the second respondent; and she therefore, requested the first respondent to drop the proposal. Consequently, the files pertaining to the reassessment of the appellant were transmitted to the second respondent. Thereafter, without issuing any fresh notice under section 148 of the Act, the second respondent / jurisdictional assessing officer continued the reassessment proceedings initiated by the first respondent, who lacks jurisdiction to issue notice under section 148 of the Act, and sent a notice dated 14.12.2018 under section 143(2) r/w section 129 of the Act to the appellant, calling upon her to appear either in person or through an authorised representative and produce the documents in support of the return of income filed by her. Thus, both the notices issued by the respondents 1 and 2 respectively were challenged by the appellant.

13. Reference was made by the learned counsel for the appellant to the following decisions:

(i)Shibani Dutta v. Commissioner of Income~tax [(2012) 26 taxmann.com 105 (Delhi), in which, it was held as under:

10....The period of limitation gets extended under clause (iii) of Explanation I only by the time taken to reopen the whole or any part of the proceeding or giving an opportunity to the assessee (to be reheard) under the proviso to Section 129. If we turn to section 129 of the Act we find that it provides for the procedure to be followed when there is a change of incumbent of an office . ...

11.We do not see how this provision helps the Revenue. It is applicable when in the same jurisdiction, there is a change of incumbent and one Assessing Officer is succeeded by another. In such a case, the main Section provides that the successor officer is entitled to continue the proceeding from the stage at which it was left by his predecessor subject to the caveat, expressed in the proviso, that if the assessee demands that before the proceeding is continued the previous proceedings or any part thereof shall be reopened or that before any assessment order is passed against him, he shall be reheard, such a demand has to be accepted. If as a result of accepting the assessee-s demand under the proviso to section 129 some time is taken and the assessment proceedings cannot be completed within the normal period of limitation, then the period of limitation gets extended by such time taken for giving the assessee an opportunity to reopen the earlier proceedings or for rehearing. Section 129 is applicable to normal assessments made under section 143(3) of the Act as well as the block assessments made under section 158BC of the Act....

(ii)Commissioner of Income-tax v. M.I.Builders (P) Ltd [(2014) 44 taxmann.com 360 (Allahabad)], wherein, it was observed as follows:

17. Having heard learned counsel for the parties and perusing the records, we are of the view that on 29.3.2004, when the notice under section 148(1) of the Act was issued, ACIT, Range-IV, Lucknow have no jurisdiction over the Assessee on the date of issuance of such notice as the jurisdiction over the Assessee was transferred to the Additional CIT, Range-I, Lucknow vide order dated 1.8.2001 passed under section 120 of the Act by the CCIT, Lucknow. Therefore, it cannot be situation where two Assessing Officer would have simultaneous

jurisdiction over the assessee, one being Additional CIT, Range-I, Lucknow and other being ACIT, Range-IV, Lucknow. In these backgrounds, the Tribunal has rightly held that the issuance of notice under section 148(1) of the Act by the ACIT, Range-IV, Lucknow was without jurisdiction.

(iii) Pr.Commisioner of Income Tax-II Lucknow v. Mohd. Rizwan Prop. M/s.M.R.Garments Moulviganj [ITA No.100 of 2015 dated 30.03.2017], in which, it was held as under:
34. Section 148 clearly talks of issue of notice by A.O. Meaning thereby, A.O. having jurisdiction over Assessee. In fact, it is his satisfaction which is to be recorded for justifying reopening of assessment / reassessment proceedings as contemplated under section 147 and recording of reasons for the same purpose is mandatory. The satisfaction of A.O. could not have been hired or be delegated to any other authority.

43. The reason for issuance of notice by Competent A.O. is quite obvious inasmuch as such notice could have been issued only when concerned A.O. has reason to believe that some income has escaped assessment and recomputation / reassessment is needed. Now such satisfaction can be of that A.O. only who has jurisdiction in the matter and not of any third party.

44.We, therefore, hold that in the present case, no valid notice under section 148 was issued by Jurisdictional A.O before making assessment / reassessment and, therefore, proceedings of reassessment pursuant to notice issued under section 148 by an incompetent officer are void and ab initio.

(iv) Pankajbhai Jaysukhlal Shah v. Assistant Commissioner of Income-tax Circle 2 [(2019)110 taxmann.com.51 (Gujarat), which was affirmed by the Hon-ble Supreme Court in Assistant Commissioner of Income-tax Circle~2 v. Pankajbhai Jaysukhlal Shah [(2020) 120 taxmann.com 318 (SC)] and the ratio laid down therein is as follows:
10.....while the reasons for reopening the assessment have been recorded by the jurisdictional Assessing Officer

viz., the Deputy Commissioner of Income Tax, Circle~2, Jamnagar, the impugned notice under section 148(1) of the Act has been issued by the Income Tax Officer, Ward 2(2), Jamnagar who had no jurisdiction over the petitioner and hence, such notice was bad on the count of having been issued by an officer who had not authority in law to issue such notice. As a necessary corollary it follows that no proceedings could have been taken under section 147 of the Act in pursuance of such invalid notice. In the aforesaid premises, the impugned notice under section 148(1) of the Act as well as all the proceedings taken pursuant thereto cannot be sustained.

The legal proposition laid down in the aforesaid decisions is that notice under section 148 is mandatory to reopen/ reassess the income of the assessee and such a notice should have been issued by the competent assessing officer, who has jurisdiction ; The jurisdictional Assessing Officer, who records the reasons for reopening the assessment as contemplated under sub section (2) of section 148, has to issue notice under section 148(1), then only, such a notice issued under section 148(1) would be a valid notice ; The officer recording the reasons under section 148(2) of the Act and the officer issuing notice under section 148(1) has to be the same person ; Section 129 is applicable when in the same jurisdiction, there is a change of incumbent and one assessing officer is succeeded by another ; and when once the initiation of reassessment proceedings is held to be invalid, whatever follows thereafter must also, necessarily be invalid .

14. Applying the provisions of law as well as the legal proposition laid down in the aforesaid decisions to the facts of the present case, wherein, admittedly, the appellant is an assessee on the file of the second respondent and hence, the first respondent has no jurisdiction over the appellant to issue notice under section 148 for reopening the assessment for the relevant assessment year, after recording the reasons to believe that some of the income of the appellant has escaped assessment, this court is of the opinion that the notice dated 28.03.2018 issued by the first respondent under section 148 of the Act, without jurisdiction, lacks legal sanctity and hence, the same is held to be invalid. As a sequitur, the continuation of the reassessment proceedings by the second respondent,

who is the jurisdictional assessing officer, without issuing any fresh notice as contemplated under section 148, but issuing notice dated 14.12.2018 under section 143(2) r/w 129 of the Act, which applies only for change in incumbent within the same jurisdiction, is also held to be invalid.

15. Pertinently, it is to be pointed out at this stage that if an order is passed by a judicial or quasi~judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside the order passed by the authority or forum having no jurisdiction [Refer: State of Gujarat v. Rajesh Kumar Chimanlal Barot and another, AIR 1996 SC 2664]. Therefore, the notice issued by the first respondent under section 148 as well as the consequential notice issued by the second respondent under section 143(2) r/w 129, cannot be allowed to be sustained. However, the learned Judge erred in directing the second respondent to continue the reassessment proceedings and granting liberty to the appellant to file objections and avail the opportunity of personal hearing to be provided, by the order impugned herein, which is liable to be set aside, in the considered view of this court.

16. As already held by this court, the first respondent, who recorded the reasons for reopening the assessment under section 148(2), has no jurisdiction over the appellant, to issue notice dated 28.03.2018 under section 148(1). Though the files pertaining to the reassessment proceedings of the appellant were transferred, the second respondent has no authority to continue the reassessment proceedings under section 129 and hence, the notice dated 14.12.2018 issued by him is also held to be invalid. The invalid notices so issued by the respondents vitiate the entire reassessment proceedings initiated against the appellant. Admittedly, no notice under section 148 was issued by the second respondent, who is the jurisdictional assessing officer, for reassessment of the return of income of the appellant, within the time frame stipulated under the Act. In this case, the limitation period of six years for reopening the assessment for the year 2011~12 under section 147 of the Act, came to an end on 31.03.2018. In such circumstances, there is no requirement for this court to go into the other issue based on the factual matrix projected by the appellant i.e., whether the appellant has disclosed fully

and truly all the material particulars that are necessary for assessment for the relevant assessment year.

17. In the ultimate analysis, the writ appeal stands allowed by setting aside the notices impugned in the writ petition and the order impugned herein. No costs. Consequently connected miscellaneous petition is closed'.

11. We sincerely, gone through the judgment of the Hon'ble jurisdictional High Court referred supra and find that the same is not applicable in this case as there is no discussion of embargo as enshrined under section 124(5) of the Act. The petitioner in the said case immediately challenged the jurisdiction by filing Writ Petition before the Hon'ble High Court. We also note that the judgment of the Hon'ble Supreme Court in the case of DCIT Vs Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) was not in existence when Hon'ble Jurisdictional High Court has passed the judgment. In fact, section 124 has been duly considered by the Hon'ble Supreme Court in the case of DCIT Vs Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) which held as under: -

''1. The impugned order set asides the assessment for A.Y. 2014-2015 on the ground that the jurisdictional officer had not adjudicated upon the returns. The jurisdiction had been changed after the returns were filed. However, the records also reveals that the assessee had participated pursuant to the notice issued under section 142 (1) and had not questioned the jurisdiction of the assessing officer. Section 124(3)(a) of the Income-tax Act precludes the assessee from questioning the jurisdiction of the assessing officer, if he does not do so within 30 days of receipt of notice under section 142 (1).

2. In the present case, the facts did not warrant the order made by the High Court. At the same time, this Court notices that the High Court had granted liberty to the concerned authority to issue appropriate notice.

3. It is clarified, therefore, that the assessing officer is free to complete the assessment (in case me assessment order has not been issued) within the next 60 days. In such event, the question of limitation shall not be raised by the assessee.
4. The special leave petition is allowed in the above terms.
5. Pending application, if any, are disposed of".

12. The case citation relied by the assessee of co-ordinate bench in ITA 904/Chny/2019 in the case of Mr. R. Murugappa @ Muruvappan Vs ITO is also not applicable in this case. In the said Tribunal order, there is no finding by the Tribunal on 30 days time limitation for raising objections as to jurisdiction as statutorily required u/s 124(5)(a) or 124(5)(b) of the Act despite plea taken by the revenue. Further, the judgment of the Hon'ble Supreme Court in the case of DCIT Vs Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) was also not in existence when the co-ordinate bench order was passed. Hence, following the judgment of the Hon'ble Supreme Court in the case of DCIT Vs Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) which is vividly applicable in this case, we dismiss the main ground No.(E) and additional ground No.(H) raised by the assessee.

10.**Adjudication on ground Nos. A, B, C and D.**

The ld. Counsel for the assessee submitted as under:

(a) That the IL and FS Tamilnadu Power Company Limited, had obtained the Environmental Clearance from Pollution Control Board on 31.05.2010, which is assumed by the Ld AO as date of conversion of classification of land;

(b) The Annexure 1 reproduced herein above (as per page No: 4 of the Assessment order) speaks about the Corrigendum to Environmental Clearance (EC), Amendments to EC, Extension of EC, EC for Captive Port and Desalination Plant and its Extension are between 2012 to 2018.

(c) The schedule following the above EC clearances, the conditions and compliances for keeping in force of the EC was also mentioned. The first specific condition is:

> (1) Environmental Clearance is subject to obtaining CRZ clearance for permissible activities to be located in CRZ areas Status: Complied / CRZ Clearance obtained. (this disclosure is without any date)

(d) The Paper Advertisement of Notice relied by the AO was only an Information to the public, that there is a proposal for setting up of Thermal Power Plant in Cuddalore disclosing the villages covered by it with description of the District, Taluk etc., This cannot treated as order of conversion of classification of land from agricultural to non-agricultural land as assumed by the Ld AO.

(e) The case law relied by the ld AO on the jurisdictional High Court A Lallchan vs PCIT 6 Chennai is distinguishable in facts as to that of the Appellant.In the case of the A Lalichan (supra) the Chitta and adangal

relled or provided did not have any entry regarding the crops cultivated to prove that there was no cultivation happened at all. However, In the case of the Appellant, the land was under cultivation by his brother for long duration till the date of sale took place. However, the Chitta and Adangal were not avallable from the office of Block Revenue authorities, l.e. Tahsildar, since the records of these villages were shifted to District Revenue Office, Cuddalore.

(f) The Appellant also submitted that the extracts of the TNREGINET the website which maintains the class of properties situated in any area which are available under the survey register maintained by the Revenue authorities.

(g) In the EXTRACTS relied as above, the classification of the lands belonging to the Appellant are classified as "Dry- Rainfed -Class 1" for all the lands except for Survey No: 4/2, 4/3 & 4/4 which are classified as "Dry-Special Type II". Therefore, the classification upto 31.03.2012 has been maintained as "Rainfed" revenue records is contrary to the opinion framed by the Ld. AO.

(h) The assessee further, submitted that as per the paragraph 2.6, the assumption of the assessing authority was without verification of the revenue records, but relying on the website information of the Purchaser, for which no authenticity was established to be applied on the case of the Appellant. In addition to the above, these information so obtained from the website of the Purchaser of the land were never

provided to the appellant for his verification or rebuttal, and is against the principles laid down by the Hon'ble Apex Court in the case Dhakeshwari Cotton Mills Ltd v. CIT, held that the assessee was not given a fair hearing as the Appellate Income Tax tribunal did not disclose the information supplied to it by the department. A person may be allowed to inspect the file and take notes. Every person before an administrative authority, exercising adjudicatory powers has right to know the evidence to be used against him. Hence, principles of natural justice were not made available to the appellant during the course of hearing proceedings.

(i) The Appellant also submits that the land covered under this subject matter is covered under section 2(14)(iilb) and cannot be regarded as capital asset. Hence, the assumption of the Ld. AO that the land was never put to agricultural use is only a surmise without bringing in any materials in this regard and the revenue records depict that these lands were only rainfed used in agricultural activities. However, the Assessing authority should have exercised its option to avail the particulars under section 133(6) of the IT Act, 1961 to ensure the actual nature of lands in the revenue records maintained by the VAO or District administrative officer.

(j) The Appellant also places on record the extract of the Annual Reports of the Purchaser Company for the previous year(s) 2010, 2011 & 2012 wherein it was mentioned that the activities of acquisition of lands under

progress and not completed for it to commence its construction activities.

Findings of the CIT(A) regarding agricultural land:

> *4.3 I have considered the matter. According to the AO, assessee did not produce revenue records showing the classification of land as agricultural. Assessee also did not produce evidences of actual cultivation being carried out on the land prior to date of sale. The purchaser intended to use the land for no-agricultural purposes. It had already obtained environmental clearance before execution of sale deed. Appellant's argument hinges on the fact that in the purchase as well as in the sale deeds, the land was mentioned to be agricultural. Per TNREGINET, the lands were classified as dry rain-fed. It was argued that the lands sold did not fall within clarification of asset as contained in section 2(14)(iiib) of the Act.*
> *4.3.1 In my humble opinion, whether a piece of land is agricultural or not is a matter of fact. In this regard the assessee should have filed evidences of agricultural activities being carried out in the said land. It is contention of assessee that agricultural operation was carried out in the land by his brother. But no shred of evidences regarding the actual agricultural operation being carried out by assessce's relatives have been furnished. Over and above that, appellant had not filed copies of patta/chitta and adangal to substantiate the claim of land being agricultural in nature.*

Findings of ld. CIT(A) regarding the cash deposits of Rs.3 crores:

Regarding the cash deposits of Rs.3 crores made in the SB Account the assessee claimed that the same was received at the time of sale of land to M/s.IL and FS Tamilnadu Power Company Limited. The details of sale consideration paid, mode

of payment and copy of sale deed was obtained from M/s.IL and FS Tamilnadu Power Company Limited. It is confirmed by them vide their reply dated 22/11/2018 that

- The total sale consideration in respect of the said land was Rs.51,72,000/- and the same was paid by way of Demand Draft dated 19/02/2011.

Hence it is clearly proved that the total sale consideration paid is Rs.51,72,000/-. Letter dated 30/11/2018 was issued asking the assessee to show cause why the cash deposit of Rs.3,00,00,000/- should not be treated as unexplained investments as envisaged u/.s.69 of the Income Tax.

The assessee submitted as under:

I. The fact that the Appellant had made this deposit into the bank account maintained with the ICICI Bank Limited, Portonovo branch (Prangipettal Branch) on 21.02.2011 which is the date of registration of the property. The Appellant had reached India only a day before the date of registration and had travelled to his native place only for registration and receipt of consideration.

II. The Ld AO had brushed aside the fact that the Appellant being resident elsewhere in United Kingdom (now) has no source of Income in India at all, cannot be said to have

made such an income of Rs. 3,00,00,000/- to be deposited into the bank account. Moreover, It Is relatable that the date of registration of property in the nature of agricultural lands to the IL&FS Tamilnadu Power Co Ltd, for its ensuing project, and the same day there is a deposit of the above referred sum, leads only to the conclusion that there is no other source other than the sale of agricultural land and the amount is deposited Into the bank simultaneously.

The ld. CIT(A) held as under:

'’5.3. I have considered the matter. The sale consideration per deed of sale for the land sold was Rs. 51,72,000/- The buyer had confirmed the said sum as sale consideration paid. In view of the above facts, it is difficult to take the view that assessee received on money of Rs. 3,00,00,000/- over and above the registered value. The appellant attempted to give a plausible explanation that he was an NRI and that he had no occasion of earning unexplained income to the tune of Rs.3,00,00,000/-. The money was stated to have been deposited in his bank account immediately after execution of sale deed. But this explanation cannot override the contents of documents in the record. One cannot ignore written documents available in the files. One cannot simply grope in the dark and assume that assessee must have received on money while selling his land. The thing can equally be viewed from another perspective. Assessee had claimed the income exempt from taxation. The possibility of trying to route undisclosed income of assessee or of other person under the garb of claim of receipt of on money through sale of agricultural land cannot be ruled ou’’t.

11. We have heard the rival contentions of the parties and perused the record. The Annexure to the two deeds registered vide Document No.(s):105/2011 and 298/2011 as relied by the assessee are as under:

Statement under Rule 3(1) of the Tamil Nadu Stamp (Prevention of under valuation of Instruments) Rules, 1968					
Kothattal Village					
Sl. No	Survey No	Extent		Classification	Market Value
		Acres	Cents		
1	232/5B	1	35	Punja	5,41,000/-
2	218/1C	3	04	Punja	12,16,000/-
3	218/2B2	1	06	Punja	4,24,000/-
4	231/1C	1	14	Punja	4,56,000/-
5	231/2A3	1	38	Punja	5,52,000/-
	Total	7	57		31,88,000/-

Statement under Rule 3(1) of the Tamil Nadu Stamp (Prevention of under valuation of Instruments) Rules, 1968					
Ariyaghosti Village					
Sl. No	Survey No	Extent		Classification	Market Value
		Acres	Cents		

1	2/1	1	10	Punja	4,40,000/-
2	2/2	0	66	Punja	2,64,000/-
3	2/3	0	24	Punja	96,000/-
4	4/2	0	87	Punja	3,48,000/-
5	4/3	1	07	Punja	4,28,000/-
6	4/4	1	01	Punja	4,08,000/-
	Total	4	96		15,84,000/-

The above documents as discernible speaks of Sl.No., Survey No., Extent, Classification and Market Value. If we accept the classification of land as 'Puja' as agricultural land then Market value mentioned therein is also to be accepted as genuine. Therefore, assessee cannot be allowed to blow hot and cold at same breath. We also note that vide letter dated 22.11.2018 M/s.IL and FS Tamilnadu Power Company Limited ('Purchaser' herein) has confirmed the total sale consideration of the aforesaid land was Rs.51,72,000/- and the same was paid by way of demand draft dated 19.02.2011. It is settled law that a registered document is presumed genuine unless proven otherwise. Section 54 of the Transfer of the property Act defines contract of sale as a contract wherein sale is on terms settled between the parties. In this case, the assessee has not discharged the onus of proving that the cash deposit of Rs.3,00,00,000/- was actually out of the sale of agricultural land. Since, we have accepted the Market value of land sold at Rs.51,72,000/- as table referred supra, therefore, we accept the

nature of land as 'Punja' which is agricultural land. We also reject the affidavit of a senior officer in ICICI Bank Ltd., Porto branch for the reason that the said affidavit being additional evidence and is self-serving document which has never been passed the test of cross-examination at the early stage. We also cannot endorse the aforesaid affidavit for the reason that there is no verification clause in the affidavit. Even the said person in affidavit is not identified.

12. Therefore, in the light of our above observation, we treat the aforesaid land as agricultural land and allow the ground No.(B) of the assessee, however, we reject the ground Nos.(C) and (D) of the assessee as discussed above.

13. In result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28th day of October, 2024 at Chennai.

Sd/-	Sd/-
एस.आर. रघुनाथा	**(मनु कुमार गिरि)**
(S.R. RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सस्य / JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated, the 28th October, 2024
KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.