

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1687/Chny/2024
निर्धारण वर्ष/Assessment Year: 2011-12

Smt. Nithya Govindarajan, No.3, Father Randy Street, R.S.Puram, Coimbatore-641 018.	v.	The ITO, NCW-1(3), Coimbatore.
[PAN: ADHPG 7623 H]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms.L.Sweety, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Gouthami Manivasagam, JCIT
सुनवाईकीतारीख/Date of Hearing	:	26.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	04.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 19.01.2024 for the Assessment Year (hereinafter in short "AY") 2011-12.

2. At the outset, it is noted that there is a delay of '101' days in filing of the appeal. The assessee has filed an affidavit, contents of which has been perused and we find that there is a reasonable cause for the delay



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and therefore, we condone the delay and proceed to adjudicate the grounds of appeal raised by the assessee.

3. The assessee, inter alia, has raised legal issues on several fronts one of which is that the Assessment Order passed on 16.12.2019 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter in short "the Act") is barred by limitation u/s.153 of the Act since the notice u/s.148 of the Act was issued on 20.03.2018.

4. The brief facts relating to the legal issue are that the assessee a non-resident filed her return of income (RoI) for AY 2011-12 on 16.10.2018, and pursuant to the notice u/s.148 of the Act, she declared total income of Rs.6,19,650/- and the AO passed the Assessment Order on 16.12.2019 by determining total income at Rs.96,30,024/- and agricultural income for rate purposes at Rs.2,49,480/-. The AO in the Assessment Order dated 16.12.2019 has taken note of the fact of issuing notice u/s.148 of the Act on 20.03.2018 at Para No.1.1 of the Assessment Order by observing in his own words "*so as to assess the income that had escaped assessment within the meaning of section 147 of the Act, a notice u/s.148 of the Act dated 20.03.2018 was issued and duly served on the assessee*" and the AO have acknowledged that assessee had filed her RoI on 16.10.2018 pursuant to the notice u/s.148 of the Act on 20.03.2018. In the light of these facts, the assessee assails the action of



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the AO to have framed the Assessment Order on 16.12.2019 as bad in law, being barred by limitation. According to the Ld.AR for assessee, since the AO has issued notice u/s.148 of the Act on 20.03.2018 electronically, it can't be said that it has not been served on the same day and instead it should be presumed to have been served within a matter of seconds on the very same day. Accordingly, the Ld.AR submitted that the time limit for completion of the assessment u/s.147 of the Act is governed by sec.153 of the Act wherein sub-section 2 of section 153 reads as under:

"Time limit for completion of assessment, reassessment and recomputation.-

Sec.153(1) -

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

[Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted].

(3)...."

Thus, according to the Ld.AR, in the present case, since the notice was issued on 20th March 2018 which is well before 01.04.2019, the time limit for making assessment order, under section 147/143(3) of the Act should be within '9' months from the end of the financial year 2017-18.

Accordingly, the 143(3) assessment order should have been passed on or before 31.12.2018, but the order was passed belatedly only on 16.12.2019. Almost after 1 year past the deadline. Thus the order under Section 143(3) r.w.s.147 is time barred and bad in law.

5. The Ld.DR supporting the action of the AO submitted that the assessee having filed the RoI only on 16.10.2018, it can be presumed



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that assessee would have got the notice u/s.148 of the Act only few days before filing of return; and the assessee has also stated that she has been served such a notice only on 17.09.2018. Therefore, according to the Ld.DR, the AO has rightly passed the order on 16.12.2019 well within the time.

6. Having heard both the parties and after perusal of the records, in order to examine the aforesaid legal issue, we note from the contents of the Assessment order dated 16.12.2019, the AO has taken note of the fact of issuing notice u/s.148 of the Act on 20.03.2018 at Para No.1.1 of the Assessment Order by observing in his own words "*so as to assess the income that had escaped assessment within the meaning of section 147 of the Act, a notice u/s.148 of the Act dated 20.03.2018 was issued and duly served on the assessee*" and having acknowledged that assessee filed her RoI pursuant to the notice on 16.10.2018, the AO proceeded to frame the assessment on 16.12.2019 by making addition as noted supra. In this regard, it is noted that the notice u/s.148 of the Act was issued on 20.03.2018 *electronically*, which means it can be presumed to have been served upon the assessee on the same day. Therefore, section 153(2) of the Act prescribes the time limit to pass the assessment/re-assessment order after re-opening of assessment u/s.147 of the Act. As per sub-section (2) of section 153 of the Act, the AO is duty bound to frame the Assessment Order before the expiry of '9' months from the end of the



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financial year in which the notice u/s.148 was served which means that in the present case, the AO was duty bound to pass Assessment Order before 31.12.2018 and since, the AO has passed assessment order on 16.12.2019, the impugned Assessment Order dated 16.12.2019 is held to be time barred and hence, assessee succeeds on the legal issue. Therefore, the other legal issues of the addition has become academic in nature and therefore, not adjudicated.

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

Order pronounced on the 04th day of December, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 04th December, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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