

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH “B” CHANDIGARH**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

ITA No. 695/Chandi/2024
Assessment Year : 2012-13

Sukhminder Kaur 69, Ward No.10, Banur , Punjab – 140 601	Vs.	Income Tax Officer, Ward – 2, Jagroan
TAN/ PAN : AHFPK 0713 J		
(Appellant)		(Respondent)

Applicant by:	Shri Tejmoohan Singh, Adv.		
Respondent by:	Dr. Ranjit Kaur, Adll. CIT, Sr. D.R.		
Date of hearing:	02	01	2025
Date of pronouncement:	20	01	2025

ORDER

PER MAHAVIR SINGH – VICE PRESIDENT :

This appeal by assessee is arising out of order of learned Commissioner of Income Tax, NFAC, Delhi (hereinafter referred as ‘the CIT(A)’, in Appeal No. NFAC/2011-12/10031376 vide order dated 06.06.2024. The assessment was framed by the Income Tax Officer, Ward – 2, Jagraon, under sections 144 read with section 147 of the Income Tax Act, 1961 (hereinafter as ‘the Act’) vide order dated 28.12.2019 for Asst. Year 2012-13.

2. The first issue raised by assessee is as regards to the order of CIT(A) erred in confirming the action of the AO in assuming jurisdiction under section 147 r.w.s 144 of the Act. For this, assessee has raised following ground nos. 2, 3 & 4 as under:

“2. That the Ld. Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and framing the assessment under section 147 r.w.s 144 of the Act framed without satisfying the statutory pre-conditions required for

initiation of proceedings and completion of assessment and as such, the same are without jurisdiction and hence deserve to be quashed as such.

3. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the initiation and thereafter framing of assessment under section 147 of the Act in as much as the assessment has been framed u/s 147 by the non-jurisdictional officer without any service of notice u/s 148 and in view thereof the assessment framed is illegal, untenable and therefore unsustainable.

4. That the reasons recorded are based on incorrect facts wherein it is mentioned that it was a non-PAN case and no return was filed by the assessee when in fact the assessee had filed her return for the year under consideration having PAN-AHFPK0713J and as such the assessment framed on the basis of incorrect facts is illegal, arbitrary and unjustified.”

3. Brief facts are that the Assessing Officer received information that the assessee has purchased immovable property for a sum of Rs.1,00,21,000/- and sale deed was registered with Sub-Registrar, Rampura Phul office during the F.Y. 2011-12 relevant to A.Y. 2012-13. Consequent to the information, the AO issued verification letter under section 133(6) of the Act. In response to this notice, nobody attended the office nor any written submission received from the assessee. Accordingly, reasons were recorded for initiating proceedings under section 147(a) of the Act and thereafter, notice under section 148 of the Act dated 29.03.2019 was issued and served upon the assessee through registered post on 30.03.2019. Subsequently, notice under section 142(1) of the Act was issued to the assessee fixing the case for hearing on 30.08.2019. On 30.08.2019, nobody attended and thereafter, another notice was issued to explain the source of immovable property of Rs.1,00,21,000/- registered through Sub-Registrar, Rampura Phul. Since, nobody attended, the Assessing Officer assessed the entire purchase consideration of Rs.1,00,21,000/- as income from undisclosed source under section 69 of the Act.

4. Aggrieved, assessee preferred appeal before the CIT(A). Before CIT(A), assessee raised the ground of reopening vide ground nos.2.2 to 2.5 as under:

“2.2 That the notice under section 148 was sent to a place which never had any link with the appellant. No service was affected. That re-opening is bad in law and the order be quashed.

2.3 That the Ld. A.O. framed the assessment which is beyond jurisdiction and be quashed.

2.4 That the Ld. A.O. framed the assessment which is beyond jurisdiction and be quashed.

2.5 That there in nexus between the material facts and the satisfaction recorded the satisfaction is based on material available the re-opening is bad in law, the assessment framed may be quashed.”

5. The assessee before CIT(A) contended that the assessee is resident of Ward No.11- C/O Guru Nanak Public School, now Ward No.10, Banur Dist. Mohali Punjab had regularly been filing returns of Income, had filed the return of income for the year under consideration and few returns before that, at the Banur address. The husband of the assessee had sent e-mail to the ITO for transfer of the case to ITO Mohali as the assessee had been keeping ill. The assessee came to know about the assessment only when the son of the assessee came to India from Canada and opened the mail for his father in the month of January, 2021. In the e-mail a communication from the learned A.O. in response to the request sent in Feb, 2020, after a Gap of 10 months was found. Immediately the ITO was contacted on 19.01.2021. On contacting the ITO, it came to the knowledge that the case, which was re-opened under section 148 of the Act and the notice for which was issued at V and P.O. Acharwal Tehsil Raikot-Ludhiana Punjab, has been decided *ex-parte*. The certified copy of the order was obtained on 25-01-2021, which had the address of village and post office Achharwal in Ludhiana. It was claimed that the assessee had no link with the place in address mentioned. From the assessment order it is revealed that correspondence by the A.O. was made at the address where the assessee

never resided and had no link with the address. She is staying at Banur-Mohali, which is about 150 Kms. away. The notice under section 148 of the Act was never served upon the assessee. The assessment has also been framed by a non-jurisdictional ITO and is based on conjecture and surmises. The purchase of land was made by two persons Smt. Sukhminder Kaur and Smt. Jagdish Kaur, as joint owners. The purchase price has been considered as unexplained in the hand of the assessee alone. The Ld. A.O. did not attempt to serve the notice at the address of the assessee by sending notice server or the inspector, nor summoned the purchase deed which had the names and address of the co-owners and their permanent address of Banur. He could have easily served the notice at the right address upon the assessee. In the absence of service, notice under section 148 of the Act and assessment proceedings and reopening is bad in law and the assessment deserves to be quashed.

6. The CIT(A) after going through the facts of the case confirmed the action of the AO in reopening the assessment and addition made by observing as under:

“5.5 I have considered the facts of the case and whatever material available on record. It is seen that the appellant failed during assessment proceedings to file replies to the notices / show cause notices issued by the AO. From the assessment order it is amply clear that 04 notices were issued to assessee but assessee responded to none of them and finally AO was left with no option but to make addition of Rs.1,00,21,000/- u/s 69. In spite of the fact that sufficient number of opportunities had been provided to appellant. The appellant has not been able to provide any legible answer explanation.

5.6 The service of notice as challenged by the assessee does not hold merit either. The assessee has herself submitted that when her son opened the email ten months later, the notice was present in the email. Section 282 of Income Tax Act, 1961 read with Rule 127 clearly establishes it to be a case of service of notice by electronic communication and also by registered post. Minimum requirement of electronic service of notice has already been met in this case & all grounds of appeal challenging the service of notice are dismissed.

5.7 *The assessee cannot challenge that she didn't open her email. That excuse is unacceptable as per the legal provisions of Income Tax Act, 1961. I have reasons to believe that the appellant has no concrete defence in support of her grounds of appeal. Even during the appellate proceedings, the assessee has chosen not to file any submission or reply on merit, on the substantive ground of addition. Rather the assessee has been only harping on notice not being served at her current address. There is no denying that the sale deed has the assessee as one of the purchase parties & she has failed to elaborate & mention the source of 1,00,21,000/- spent on purchase of property. Her deliberate silence on this part is evident of her complicity in the matter.”*

7. Aggrieved, assessee is before the Tribunal.
8. We have heard the rival contention and gone through the facts and circumstances of the case. The relevant A.Y. involved is 2012-13. The Assessing Officer reopened the assessment by issuing notice under section 148 of the Act which reads as under:

“Annexure – I

<i>Name and address of the assessee</i>	<i>Smt. Sukhminder Kaur 9815489575 VPO, Accharwal, Raikot 141203</i>
<i>PAN</i>	<i>Non-PAN</i>
<i>Status</i>	<i>Individual</i>
<i>Assessment Year</i>	<i>Individual</i>
<i>Details of the Assessing Officer having jurisdiction over the case.</i>	<i>Income Tax Officer, Ward – 2, Jagraon.</i>

Reasons for reopening of the assessment in the case of Smt. Sukhminder Kaur 9815489575 VPO. Accharwal, Raikot Lodhiana 141203 for Asstt. Year 2012-13 u/s 147 of the Income Tax Act, 1961

1. *As per information available with this office, the assessee has no PAN. Therefore, the assessee has not filed Income Tax Return for the A.Y. 2012-13. Therefore, details of the assessee, nature of business activity, details of return of income filed earlier and the details of processing of return/Scrutiny assessment/reassessment proceedings are not known/available.*
2. *As per Annual Information Report, the assessee has deposited cash of Rs.10021000/- for sale/purchase deed registered with Tehsildar Rampura Phul, Tehsil Complex 151001 Phul Bathinda*
3. *The AIR information was received in this office. The assessee made transaction value of Rs. 10021000/- for sale/purchase deed registered with Tehsildar Rampura Phul, Tehsil Complex 151001 Phul Bathinda during the year 2011-12 relevant to the assessment year 2012-13.*

4. *The letter u/s 133(6) of the Income Tax Act to the Tehsildar Rampura Phul, Tehsil Complex 151001 Phul Bathinda was issued. As the assessee has no PAN, information on ITBA on ITS/360 degree profile cannot be ascertained. Letters to the assessee were issued from time to time but till date, no reply has been received.*

5. *A perusal of the file reveals that though the assessee was allowed sufficient opportunities to explain the source of immovable property, but he failed to do so. Therefore, there is nothing on record which establishes the genuineness of sale/purchase deed.*

6. *I have gone through the information/documents available on file and found that the assessee made transaction value of Rs.10021000/- for sale/purchase deed registered with Tehsildar Rampura Phul, Tehsil Complex 151001 Phul Bathinda, but the source of the same has not been disclosed by the assessee till date. I have therefore reasons to that the income on immovable property transaction value of Rs.10021000/- has escaped assessment because the failure on the part of the assessee to disclose its income truly and fully.*

7. *As this is a Non-PAN case, the details of assets, nature of income earned in relation to the assets including financial interest in any entity located outside India, are not known.*

In this case, no return of income was filed for the year under consideration accordingly, in this case, or assessment was made and the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above paragraph 6.

It is pertinent to mention here that in this case the assessee has chosen not to the return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed in paragraph 6 above and the assessee was assessable under the of tax in view of the above, the provisions of clause (a) of Explanation 2 to be a case where income chargeable in the escaped assessment.

In this case, more than four year have lapsed from the end of the assessment year under consideration. Hence, necessary action to issue notice under section 148 is being obtained separately from the Pr. CIT as on provisions of section 151 of the Act.”

9. It seems from the above reasons that name and address of the assessee mentioned is Smt. Sukhminder Kaur resident of VPO, Accharwal, Raikot, Ludhiana 141203. The notice under section 148 of the Act dated 29.03.2019 was issued and Revenue claimed that the same was served upon the assessee through registered post on 30.03.2019. From the very assessment year and the reasons recorded the Revenue's claim is that the assessee has no PAN and

assessee has not filed its Income-tax Return for the A.Y. 2012-13. The reasons recorded are as per AIR information received in the office of Income-tax Officer, Ward-2, Jagraon that the assessee has made transaction for a value of Rs.1,00,21,000/- for purchase of property and deed registered with Tehshildar Rampura, Phul Bathinda. The Assessee's main contention is that the assessee never lived in village Accharwal, Raikot 141203 and she had no connection with that place or even with Ludhiana district. Assessee claimed and filed copy of purchase deed along with English translation enclosed at her paper book pages 27 to 32 and clearly purchase deed mentions the residential address of the assessee and details of purchase of property as under:

“That I am the owner and in possession of 127 Kanals 5 Marla, Khewat No 610/809,611/810, khasre No 118/20(8-0),21(2-0) 106/11(8-0) 20(8-0) 106/9(5-16) 12(7-12) 19(7-12) 21(7-11) 22(7-11) 27(7-13) 118/1 (6-18) 2 (8-0) 10(6-0) 11/1(7-8) 11/2(0-12) 12 (8-0) 19(7-12) 22(1-8) 26 (3-2) situated at Dyal Pura Bhaiaka vide Jamanbandi for 2006-07 and Mutation sale no. 4155,4137, which is free from all sorts of encumbrances. For which no proceedings are pending in any honorable court and neither any order of attachment or order of recovery has been issued .I need the money for which I with my full given to the purchaser senses and with my free Will I have sold this above-mentioned land to Sukhminder Kaur wife of Satnam Singh son of Santokh Singh, 2080/2545 share and Jagdish Kaur wife of Gurjit Singh son of Sh. Santokh Singh 465/2545, share, resident of Ward 11, Banur, District Mohali (phone No 98154-89575)in consideration of Rs 1,00,21,000/- in words One Crore twenty-one thousand half of which is 50,20,500/ and declare that the possession of the above said land sold has been handed over to the purchaser and the ownership of the land, right to possession, all right to water of canal water, irrigation right to passage of passage of water, standing trees, shed and Bore tubewell including 12.5 BHP motors and electric connection number AP 12/0383 and one more motor electric connection 10BHP bearing ledger No (meaning thereby 2 motor connections) The purchaser shall have all the rights like I had. No agreement to sell has been executed between the parties. The expenses on the sale deed have been borne by the purchasers. The sale consideration amounting to Rs. 1,00,21,000 has already been received. Therefore, have executed this sale deed so that it is part of the evidence of sale.”

10. In view of above, learned Counsel for the assessee explained before us that the assessee's resident address is actually Ward No. 11, Banur, District Mohali and she is holding PAN No. AHFPK 0713 J. As pointed out by the learned Counsel for the assessee this property is not purchased by assessee herself rather it is purchased in joint ownership with one Jagdish Kaur wife of Gurjit

Singh as 50% share. The learned Counsel for the assessee stated that notice issued under section 148 of the Act and consequent assessment framed by ITO, Ward-2, Jagraon is bad in law whereas assessee's actual jurisdiction lies with ITO, Ward No-2(5), Chandigarh. To prove this point, the assessee's Counsel filed a copy of return of income relevant to A.Y. 2018-19, which was filed on 31.08.2018 i.e. much before reopening of assessment by issuing notice under section 148 of the Act dated 29.03.2019. It means that the assessee's jurisdiction actually lies with ITO, Ward-2(5), Chandigarh because the assessee's residential address is 69, Banur, Punjab. When these facts were confronted to learned Sr. D.R. she cannot confronted the above facts but she argued only on the premise that once notice under section 148 of the Act was issued it is the responsibility of the assessee to file the details. We noted that the notice issued under section 148 of the Act on 29.03.2019 and consequent assessment made by ITO, Ward – 2, Jagraon for the A.Y. 2012-13, neither the 148 nor the assessment order passed under section 144 r.w.s 147 of the Act is served on assessee and that also out of jurisdiction. Hence, we quash the notice issued under section 148 of the Act for reopening assessment and consequent assessment order. Accordingly, the order of AO and that of CIT(A) is set aside and this appeal of assessee is allowed on this very jurisdiction issue.

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

Order pronounced on this day 20th January, 2025

Sd/-

**[KRINWANT SAHAY]
ACCOUNTANT MEMBER**

Sd/-

**[MAHAVIR SINGH]
VICE PRESIDENT**

DATED: 20/01/2025

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar