

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (SMC) BENCH, AGRA**

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 109/Agr/2024
Assessment Year: 2012-13**

Mr. Chand Khan, Near Airtel Tower, Lashkar, Gwalior-474001 (M.P.)	v.	Income-tax Officer, Ward 1(2), Gwalior-474011, M.P.
PAN : AOEPK6885P		
(Appellant)		(Respondent)

Assessee by	Sh. Satish Agarwal, Advocate
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	01.01.2025
Date of pronouncement	28.01.2025

ORDER

This appeal in ITA No.109/Agr/2024 for the assessment year 2012-13 has arisen from the appellate order dated 29.01.2024 [DIN & Order No. ITBA/APL/S/250/2023-24/1060220257(1)], passed by learned ADDL/JCIT(A)-1, Ludhiana, which appeal in turn has arisen from the assessment order passed by Assessing Officer u/s. 144 of the Income-tax Act, 1961.

2. Grounds of appeal raised by assessee in Memo of appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, read as under :

1. That the exparte order passed U/S 144 under the IT Act by the learned AO on which no date of order was mentioned which is a grave illegality because the case was time barred.
2. That learned CIT appeal has confirmed by passing order dated 29/01/2024 in want of proper service of notice is illegal and liable to be quashed.
3. That no proper and adequate opportunity was provided by the learned ITO and as well as CIT appeal and hence both the orders are illegal and liable to be quashed, in the light of the grounds of appeal and on after words the written submission was sent by acknowledgement number 735254461270723 dated 27/07/2023 in response to notice 14/07/2023, the said written submission was sent in view of the message which was required to filed on or before 30/07/2023. The photo copy of said written submission was sent to the CIT appeal and further reproduce before your honor. In the said submission the appellant prepared a chart of the bank statement and date was amount deposited for purchasing the mutual fund are mentioned para wise A to E. The learned CIT appeal not discussed regarding the said submission and totally ignored and passed the exparte order and confirmed the order of AO both orders liable to be quashed.
4. Affidavit of the appellant in which stated all the details in connection with the exparte order passed U/S 147/148 and a application also submitted for obtaining the certificate copy filed before the AO 1 (1) in view of the knowledge regarding the said exparte order came to the appellant.
5. That the written submission dated 14/07/2023 sent to the CIT appeal through e-proceedings response acknowledgement No 735254461270723 dated 14-07-2023. In the written submission the appellant in Para (a)
6. In the assessment year assesses purchases Mutual fund on 08/02/2011 RS. 280,000/- and 09/02/2011 Rs. 300,000/- thus the total purchases of the mutual fund worth of Rs. 5,80,000/- against the said amount mutual fund sold on 13/07/2011 and maturity amount received worth of Rs. 597,000/-.
7. That after the said maturity amount Rs. 597,000/- appellant repurchases the mutual fund on 19/07/2011 for Rs. 750,000/- and against sold on 19/10/2011 worth of Rs. 765,570/-. After that on 18/11/2011 the appellant repurchases the mutual fund worth of Rs. 840,000/-.
8. And further maturity amount received worth of Rs. 859,427/-.

9. That locking to the above facts the assessee purchases the mutual fund during the A.Y. 2012-13 worth of Rs. 840,000/- but the learned AO assumed the said debit and credit balance double amount and assets on an income of Rs. 15,90,000/-.

10. That during the A.Y. 12-13 the appellant has deposited in the bank account which is on record in the following manner :-

Cash Deposit on 25/04/2011 Rs. 40,000/-
 Cash Deposit on 30/04/2011 Rs. 90,000/-
 Through Cheque 09/07/2011 Rs. 15,000/-
 Cash Deposit 19/07/2011 Rs. 15,000/-
 Through Cheque 30/07/2011 Rs. 55,000/-

11. That the appellant relied the following case law in the facts and circumstance narrated in the appeal.

Case Law :-

(1) Baldeep Singh Vs. ITO ward 3(2) 2019 Taxman com 108 (Ludhiana Tribunal)

(2) Narayana Shivaroor Shivaraya Vs. ITO Appeal No. 684/2022 order dated 23/11/2022 (Bangalore Tribunal)

Held: The appellant first deposited the money and withdrawal from the bank the payment was deposited in reasonable time in bank account addition deleted.

(3) S.R. Ventakaraman Vs. CIT Karnataka and others 127 ITR Page 807 (Karnataka HC)

Held: One the assessee disclosed the source as having comes from the withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the assessee did with that money that can not chose to disbelieve the pele of the assessee nearly only surmise that it would not be provable for the assessee to keep the money unutilized.

12. That the learned CIT appeal in his exparte order on page 4 pera 4 it is mentioned Opportunity of hearing was provided in the following manner :-

S. N.	Hearing notice	Remark
1.	04/04/2023	No compliance
2.	06/12/2023	No compliance
3.	16/12/2023	No compliance

4.	21/12/2023	No compliance
5.	03/01/2023	No compliance

The learned CIT has not mentioned in the chart/order whether these notice were sent by which communication such as through mail or register post

or neither mentioned the date of notice issued/nor date of service, nor mode of service was mentioned. The appellant further requested he is a mechanic and he has no facilities of portal so could not reached the conclusion of the notice.

13. That the appellant was sent a bank statement of State Bank of India Branch Moti Mahal Gwalior, Saving Bank account 10380196639 the photo copy of the said statement is also attached here with. As per Bank Statement the following transition are mentioned as Under :-

(i) Maturity of the FDR in Bank Account on 13/7/2011 worth of Rs. 305,066/- and another maturity 14/07/2011 2,91,967/- thus the total payment received in FDR worth of Rs. 5,97,033/-.

14. That the learned CIT appeal required to file the submission vide notice dated 14/07/2023 which was reply filed by the appellant on 27/07/2023 the detail facts are mentioned in para 2. The learned CIT appeal has also not considered the written submission which was sent by the appellant but passed the exparte order on 29/01/24. &hence liable to be quashed.

15. That in the above in para 3 on S. N. 5 date of hearing was mentioned on 3/01/2023 the said finding is perverse in view of the written submission filed on 27/07/2023.

15. That the learned CIT appeal has confirm the exparte order to illegally support to the AO when the entire order of the AO dated NIL is absolutely illegal and without providing proper and adequate oppurnitey and entire order is time barred because no date of order is mention by the AO in his assessment order this illegality is confirmed by the CIT appeal., and passing the exparte order

16. That the whole proceeding clearly stated from the assessment order neither any notice issued U/S 148 nor served to the appellant. And department fails to prove issued of notice and served to the appellant which is mandatory requirement.

Case Law:-

1. Gandhi Realy India (P) Ltd. Vs. Assistant CIT 2022 327 CTR Page 18 (GUJ)

Held :- No service of show cause Notice.

2. Eshakti com (P) Ltd. Assistant CIT 2022 327 CTR Page 48 (Mad).

Held: The IT Act, does not any other contemplate issuance of a show cause Notice prior to finalization of scrutiny assessment as a matter of procedure and good office.

17. That notice issued U/S 148 is illegal and time barred in view of the following judgment 2016 248 CTR Page 210 (SC) Held: No assessment order passed on the return there can not be made reassessment.

1. That as regards notice issued U/S 142(1) as stated by the AO on 18/11/2019 which was also neither issued nor served to the appellant.

2. That the assessment order passed by the AO in which date of order is not mentioned in S.N. 12 on first page which clearly showed that whole proceeding are illegal and void completed by time barred, & hence the assessment order can not be sustained.

18. That the learned AO in the whole assessment order he has not mentioned that any notice U/S 143(2) was issued or served to the appellant thus without issuing any notice U/S 143(2) (1) and without servicing the notice no assessment order can be passed by the AO thus the whole assessment order is illegal in the eye of law.

Case Law:

1. CIT Vs Smt. Geeta Rani Ghosh 2013 260 CTR Page 186 (Gau).

Held :- Absence of service of notice U/S 143 (2) assessment was there for rightly illegal.

19. That the provision U/S 144 was not followed by the AO & hence the order is bad in law.

20. That the learned ITO no proper and adequate oppurnitey was provide to the appellant thus the order is illegal uncalled for and liable to be quashed.

21. That regarding the entire facts the appellant submitting the affidavit he has not received any notice for assessment and as well as passed the experty order.

22. That the appellant is requested the personal hearing will be provided so he can explain all the facts regarding non appearance either in the original assessment order or penalty order

23. That the appellant reserves his right to raise any grounds of appeal at the time of hearing.”

3. Brief facts of the case are that the Assessing Officer has received AIR information filed by SBI Mutual Fund. The Assessing Officer invoked the provisions of section 147 read with section 148 of the Act to reopen concluded assessment, and notice u/s. 148 dated 29.03.2019 was issued to the assessee. But there was no response of the assessee. Statutory notices u/s. 142(1) were also issued by the AO to the assessee during the course of reassessment proceedings, but the same remained un-complied with. Assessing Officer passed the best judgment assessment by making addition to the tune of Rs.15,90,000/- u/s. 69 of the Income Tax Act with respect to source of investment made in mutual funds which sources as per AO remained unexplained with respect to purchase of mutual funds to the tune of Rs.15,90,000/- by the assessee with SBI Mutual Fund, which stood added to the income of the assessee by the AO u/s. 69 of the Act being unexplained money.

4. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals). Ld. CIT(Appeals) issued as many as five notices to the assessee, but the same remained un-complied with, and learned CIT(Appeals) dismissed the appeal of the assessee ex parte and the order of the Assessing Officer was upheld.

5. Still Aggrieved, the assessee has filed second appeal with the Tribunal and learned counsel for the assessee submitted that no notices were received during the course of re-assessment proceedings, and it is an ex-parte best judgment assessment order u/s. 144 of the Act. It was further submitted that the Id. CIT(Appeals) also passed an ex-parte appellate order and no independent reasoning has been given by the CIT(Appeals) while confirming the addition made by the Assessing Officer. My attention was drawn to the statement of bank account No. 10380196639 of SBI, Motimahal Branch, Gwalior, MP which is placed on record in file. This is an additional evidence filed for the first time before the ITAT. It was submitted that the assessee has invested in the mutual funds, which got redeemed/matured from time to time during the year under consideration, and they were reinvested again in the mutual funds. Merely because there was re-investment in the mutual funds during the year under consideration, the Assessing Officer has erred in holding that the source of investment in mutual funds to the tune of Rs.15,90,000/- remained unexplained, which investment in-fact arose from the redeemed Mutual Funds. It was submitted that there is only cash deposits of Rs.2,15,000/- in the bank account while there was credit on account of maturity of mutual funds, which was again re-invested in fresh

mutual funds. It was submitted that the matter may be restored back to the file of Assessing Officer for fresh assessment, as additional evidences filed by the assessee as well contentions of the assessee taken for the first time before ITAT need verification/enquiry.

6. Learned Sr. DR, on the other hand, relied upon the order of Id. CIT(Appeals).

7. I have considered rival contentions and perused the material on record. I have observed that based upon AIR information received from SBI, Mutual Fund, the Assessing Officer invoked provisions of section 147 read with section 148 of the Act, and notice u/s. 148 dated 29.03.2019 was issued by the AO to the assessee seeking to reopen the concluded assessment. There was no response from the assessee to the notice u/s. 148. Further, statutory notice u/s. 143(2) and 142(1) were also issued to the assessee in the reassessment proceedings, but there was again no response from the assessee, which led to an ex-parte best judgment re-assessment order u/s 144 passed by the AO, wherein additions have been made to the income of the assessee by the AO with respect to investment made by the assessee for purchase of mutual funds to the tune of Rs.15,90,000/- as unexplained money u/s. 69 of the

Act. The assessee has challenged this addition in appeal before Id. CIT(Appeals). Ld. CIT(A) in the appellate proceedings issued as many as five notices, and the assessee has stated before the Bench(SMC) that the said notices were not received by the assessee. Ld. CIT(Appeals) dismissed the appeal of the assessee ex parte in limine without deciding the issues arising in appeal on merits and the reassessment order of the Assessing Officer was confirmed. I observe that the Id. CIT(Appeals) has not decided the appeal on merits. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as Id. CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id.

CIT(A) simply dismiss the appeal merely because the assessee did not comply with the notices issued by Id. CIT(A) in limine without adjudicating issues arising in the appeal on merits, such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6), and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits. The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating that the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents is not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO., which even includes power of enhancement. It is equally true that the assessee also did not complied with the notices issued by Id. CIT(A) and did not file the requisite details/documents to support his contentions. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) has to be set aside. Further, I have observed that the assessee has now filed bank statement of SBI, Moti Mahal, Gwalior with respect to his account No.10380196639 ,and claimed that the assessee is regularly investing money in mutual funds. The said mutual funds gets redeemed

from time to time as per the scheme, and were thereafter re-invested by the assessee from time to time, and hence, total amount of purchase consideration paid for the mutual fund cannot be added and only the profit element on redemption of mutual funds can be brought to tax as per scheme of 1961 Act and the relevant provisions as applicable and/or fresh sources of investments made in Mutual Fund during the year can be brought to tax unless duly explained. Since, the claim and contention of the assessee as to the reinvestment of the proceeds of redeemed mutual funds for purchasing fresh mutual funds was not subjected to enquiry/verification by the Assessing Officer as these are additional evidences and/or contentions taken for the first time before ITAT which requires verification/enquiry, it will be fair and proper in the interest of justice to both the parties that both the CIT(Appeals)'s order and reassessment order are set aside and the matter is restored back to the file of Assessing Officer for de novo assessment. The assessee on his part is directed to comply with the directions of the Assessing Officer during the course of de novo assessment proceedings, otherwise, the Assessing Officer will be free to decide the issue on merits in accordance with law. The Assessing Officer shall give proper opportunity to the assessee. I clarify that I have not commented on merits of the issues arising in this appeal. I order accordingly.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28/01/2025.

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 28/01/2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra