

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री के नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. 451/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)

Baanavatu Tulasi,
M.P.P. School, Kopthapet,
Kanchikacherla,
Krishna-521180.

PAN: AFCPT1634C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

Vs. Income Tax Officer,
Ward-1(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri MV Prasad, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing : 06/02/2025

घोषणा की तारीख/Date of : 07/03/2025

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi ("Ld. CIT(A)") in DIN & Order No. ITBA/NFAC/S/250/2024-25/1068419726(1), dated 06/09/2024 for the AY 2015-16 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 ("the Act").

2. Brief facts of the case are that the assessee, an individual, is a Teacher in Mandal Praja Parishad Upper Primary School. The assessee has not filed her return of income for the AY 2015-16 U/s. 139 of the Act. As per the information available with the Department, it was noticed that the assessee had deposited cash of Rs. 1,19,77,000/- in her savings bank account jointly held with husband Mr. B. Amar Nayak but did not file her return of income nor disclosed the transactions. Therefore, on the basis of these facts, the case was reopened by the jurisdictional Assessing Officer of the assessee U/s. 147 of the Act and issued notice U/s.148 of the Act on the assessee on 29/03/2021 wherein the assessee was requested to furnish the return of income for the AY2015-16 within 30 days from receipt of the said notice. But, it was found that the assessee has filed the return of income belatedly on 23/09/2021 and hence, the same was not taken on record and considered as non-est in view to the fact that the assessee has not furnished the return of income within the prescribed time limit in the said notice. Thereafter, notice U/s.142(1) of the Act was issued on various dates. In one of her reply dated 23/09/2021, the assessee stated that she and her husband are working as Teachers in Government School and explained the source of cash deposited in her bank account as

detailed in para 4(i) of the assessment order. Further, in another letter dated 17/12/2021, the assessee was requested to establish the amount of Rs. 47,17,000/- claimed to have arisen out of their accumulated savings which was deposited in her joint bank account. In response to that notice, the assessee replied on 11/01/2022 showing the salary receipts of both the assessee and her husband, yearly household savings and net savings. Further, the Ld. AO found from the submissions of the assessee that the assessee has taken a loan for the purpose of claiming deduction U/s. 24(b) of the Act in spite of the fact that the assessee has cash in hand of Rs. 47,17,000/-. The assessee was also requested to furnish the cash flow statement vide letter dated 14/03/2022 wherein the assessee has furnished the cash flow statement on 17/03/2022. Considering the submissions of the assessee, the Ld. AO did not accept the replies furnished by the assessee except for the receipt of Rs. 26,40,000/- wherein the assessee claimed to have sold the property on 12/03/2015 and received the entire sale consideration in cash. Thereafter, the Ld.AO proceeded to tax Rs.93,37,000/- [Rs. 1,19,77,000 – Rs.26,40,000] as unexplained investment U/s. 69 of the Act. On appeal, before the Ld. CIT(A), the assessee reiterated the similar submissions made before the Ld. AO. However, the Ld. CIT(A),

considering the replies, sought for the remand report from the Ld. AO under Rule 46A of the IT Rules, 1962 for admission of the additional evidence. The Ld. AO vide the letter dated 24/07/2024 furnished the remand report and requested the Ld.CIT(A) to dismiss the appeal of the assessee as the assessee failed to furnish the supporting evidence and to substantiate her claim with regard to cash deposited into the bank account. Further, the assessee also raised a legal issue before the Ld.CIT(A) that the statutory notice U/s. 143(2) of the Act was not issued to the assessee and hence the assessment proceedings are invalid. The Ld. CIT(A) after considering the submissions and the remand report of the Ld. AO, did not accept the objections raised by the assessee and thereby confirmed the additions made by the Ld. AO while dismissing appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *The Ld. CIT(A) is erred in facts and law while passing the order.*
2. *The Ld. CIT(A) is not justified in confirming the action of the Ld. AO in treating the return of income filed in response to the notice issued U/s. 148 of the Act as non-est since filed belatedly.*
3. *The Ld. CIT(A) is not justified in treating the assessment as valid even though such assessment was made without*

proper service of notice U/s. 148 of the Act and hence leads to be void ab initio and liable to be quashed.

4. *The Ld. CIT(A) ought to have appreciated that in the absence of issue of notice U/s. 143(2) of the Act the assessment made is to be treated as invalid ab initio.*
5. *The Ld. CIT(A) is not justified in confirming the total addition made U/s. 93,37,000/- under section 69 of the Act.*
6. *Any other legal and factual ground that may be urged at the time of hearing of the appeal.”*

3. Grounds No. 1 and 6 are general in nature and need no adjudication.

4. Grounds No. 2, 3 & 4 relate to the issuance of notice U/s.143(2) of the Act wherein the assessment was completed without proper service of notice U/s. 148 of the Act. On this issue, the Ld. AR argued that the assessee was issued a notice U/s. 148 of the Act on 29/03/2021 and in response to the notice U/s. 148 of the Act, the return was filed on 23/09/2021. The Ld. AR further submitted that since the return of income was filed beyond the date prescribed in the notice U/s. 148 of the Act, the Ld. AO treated the return of income as non-est and issued notice U/s. 142(1) of the Act calling for specific information. The Ld. AR argued that no notice U/s. 143(2) of the Act was issued to the assessee, and therefore in the absence of issuance of notice U/s. 143(2) of the Act the assessment made is void ab initio. In

support of his argument, The Ld. AR placed reliance on the following case laws:

- (1) Chirakkal Service Cooperative Bank Ltd. Kannur vs. Commissioner of Income Tax 92016) 68 taxmann.com 298 (Kerala)
- (2) Smt. Amina Ismil Rangari vs. ITO, ITA No. 6261/Mum/2013 (AY 2003-04), dated 15/09/2017 (Mumbai Tribunal)
- (3) M/s. Bhaval Synthetics (India) Limited vs. DCIT, ITA No.1043/JP/2019 (AY 2013-14), dated 28/10/2020 (Jaipur Tribunal)
- (4) Income Tax Officer vs. M/s. Shri Krishna Dutta Academy, ITA Nos. 565, 566 & 568/LKW/2011 (AYs 2004-05, 2005-06 and 2008-09), dated 28/05/2013 (Lucknow Tribunal).
- (5) Commissioner of Income Tax vs. Laxman Das Khandelwal (2019) 108 taxmann.com 183 (SC)

5. The Ld. AR vehemently argued that in the absence of issuance of notice U/s. 143(2) of the Act, the assessment proceedings are invalid ab initio. Further, the Ld. AR referring to the decision of the Mumbai Bench of the Tribunal in the case of Smt. Amita Ismil Rangari vs. ITO (supra) and brought our attention to para 8 of the said order of the Tribunal and mentioned that *“though the statutory obligation cast upon the assessee to comply with the notice U/s. 148 and file the ‘return of income’ in compliance thereto within the stipulated time of 30 days, however in case the same is filed by the assessee beyond the stipulated time period, then merely for the reason that the*

some delay is involved in filing of the said 'return of income' would not render the same as invalid and non-est". The Ld. AR therefore pleaded that the since the order of the Ld.AO is bad in law the same may be quashed.

6. Per contra, the Ld. Departmental Representative ("Ld. DR") vehemently argued in support of the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the case laws cited by the Ld. AR and the Ld. DR. It is an admitted fact that the assessee has not filed the return of income U/s. 139(1) of the Act but has filed the return of income belatedly beyond the stipulated time of 30 days in response to the notice U/s. 148 of the Act. In the case of Smt. Amita Ismil Rangari vs. ITO (supra) relied on by the Ld. AR, the coordinate Bench of the Tribunal at Mumbai vide para 8 of its order has held as follows:

"8. We shall first advert to the observation of the A.O that as the 'return of income' filed by the assessee pursuant to notice issued u/s 148 was filed beyond the specified time period of 30 days from the date of service of notice, therefore, the same would be rendered as invalid, and resultantly the claim of exemption raised by the assessee u/s 54F in the said non est 'return of income' could not be allowed. We are unable to persuade ourselves to accept the aforesaid observation of the lower

authorities. We are of the considered view that though a statutory obligation is cast upon the assessee to comply with the notice issued u/s 148 and file the 'return of income' in compliance thereto within the stipulated time period of 30 days, however, in case the same is filed by the assessee beyond the stipulated time period, then merely for the reason that some delay is involved in filing of the said 'return of income' would not render the same as invalid and non est. We are of the considered view that a 'return of income' filed by an assessee beyond the specified time period contemplated in the notice issued u/s 148, would though lead to characterizing the same as a 'return of income' filed beyond the stipulated time period, but however, the same would not cease to be a 'return of income' filed pursuant to the notice issued u/s 148, though involving some delay. We find that our aforesaid view is supported from the very fact that as per section 234A(3), where the 'return of income' in compliance to a notice u/s 148 is filed beyond the stipulated time period, then interest under the said statutory provision is imposed on the assessee till the date of furnishing of the same. We may herein observe that Clause (a) of Section 234A(3) clearly contemplates that a 'return of income' filed after the expiry of the stipulated time period shall still continue to be a 'return of income' filed by the assessee pursuant to the notice u/s 148. We find that our aforesaid view also stands fortified from the very fact that after the assessee had filed the 'return of income' pursuant to the notice u/s 148 on 10.08.2010, the same was acted upon by the A.O and a Notice u/s 143(2) was issued to the assessee, followed by culmination of the same into an assessment u/s. 143(3) r.w.s 147 of the 'Act'. We are of the considered view that now when issuance of a notice u/s 143(2) presupposes the availability of a 'return of income' of the assessee on record, therefore, now when in the present case the A.O acted upon the 'return of income' filed by the assessee, and issued a notice u/s 143(2), which thereafter had culminated into an assessment u/s 147 r.w.s 143(3), therefore, it would not be permissible on the part of the revenue to turn around and claim that no valid 'return of income' was filed by the assessee."

8. Further, in the case of M/s. Bhaval Synthetics (India) Limited vs. DCIT (Supra) the coordinate Bench of the Tribunal at Jaipur in para 8 of its order held as follows:

"8. There is no dispute on the legal proposition that where the return of income has been filed in response to notice u/s 148, the provisions of the Act shall apply as if such return was a return required to be furnished under section 139 of the Act. In the instant case, the Assessing officer has not taken cognizance of the return of income so filed by the assessee on 12.12.2018 stating that such a return of income has been filed beyond the stipulated time frame of thirty days as specified in the notice u/s 148 for filing such return of income. In our view, such a return of income even

though filed belatedly would still qualify as return furnished under section 139 of the Act and should therefore be taken cognizance of by the Assessing officer. Even where it is held that no return of income has been filed in response to notice u/s 148, the return of income so filed on 12.12.2018 shall be taken as return filed in response to notice u/s 142(1) dated 11.12.2018 and therefore, in either case, the return of income has to be taken cognizance of by the Assessing officer. Where the return of income has been filed u/s 139 or in response to notice u/s 142(1), where the Assessing officer finds that there are certain matters which require explanation by the assessee, then in such cases, he has to comply with the provisions of section 143(2) of the Act which reads as under:

“2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.”

9. In the instant case, the assessee has filed the return of income in response to notice U/s. 148 of the Act belatedly on 23/09/2021 after the receipt of notice U/s. 142(1) of the Act dated 7/8/2021. The contention of the assessee is that the assessee has not has received the notice U/s. 148 of the Act and hence has not complied with the filing of the return of income as prescribed within the time limit of 30 days stipulated in the notice U/s. 148 of the Act. Since the assessee has filed the return of income after the receipt of notice U/s. 142(1) of the Act, the return of income has not been taken cognizance by the Ld.AO. It is also the case of the assessee that where the return of income has been filed U/s. 139 of the Act, or in response to

notice U/s. 142(1) of the Act, where the Assessing Officer finds that there are certain matters which require explanation by the assessee, then the Ld. AO has to comply with the provisions of section 143(2) of the Act which reads as under:

“(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:”

10. In the instant case, the Ld. AO has not issued notice U/s.143(2) of the Act and has not considered the return of income filed in response to notice U/s. 142(1) of the Act. The above provisions of section 143(2) clearly stipulate the legal necessity of issuance of notice U/s. 143(2) of the Act to complete the assessment. It is an accepted legal proposition that where the return of income has been filed in response to notice U/s. 148 of the Act, the provisions of the Act shall apply as if such return was a return required to be furnished U/s. 139 of the Act. In the instant case, the Ld. AO did not consider the return of income filed by the assessee on 23/09/2021 stating that the return filed by the assessee is beyond the stipulated time frame of 30 days as

specified in the notice U/s. 148 of the Act for filing the return of income. In our opinion, the return of income even though filed belatedly would still qualify as return furnished U/s. 139 of the Act and should be taken on record by the Ld. AO. In the instant case, the Ld. AO in his order has stated that since the assessee did not furnish the return of income within the time limit specified in the notice U/s 148 of the Act, no notice U/s. 143(2) of the Act was issued to the assessee. The failure of the Ld. AO to issue notice U/s. 143(2) of the Act, prior to finalizing the re-assessment order, cannot be curable by the provisions of section 292BB of the Act. Further, the Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal (2019) 417 ITR 325 (SC) held that *"it is to be noted that the section 292BB of the Act does not save complete absence of notice. For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself (para-9)"*. Therefore, in the light of the facts and circumstances of the case, as stated in the foregoing paragraphs of this order and by relying on various judicial pronouncements wherein it was clearly held that notice U/s. 143(2) of the Act presupposes the assessment order, we are of the considered view

that the assessment order passed by the Ld. AO U/s. 147 r.w.s 144 r.w.s 144B of the Act, dated 29/03/2022 in the case of the assessee is bad in the eyes of law and cannot be sustained. We therefore quash the assessment order. Thus, the Grounds No.2, 3 & 4 raised by the assessee allowed.

11. Ground No.5 raised by the assessee is against the Ld.CIT(A)'s decision in confirming the addition of Rs. 93,37,000/- made U/s. 69 of the Act. While adjudicating the issues involved in Grounds No.2, 3 & 4, we have quashed the assessment order passed by the Ld. AO. Therefore, the adjudication of this grounds raised by the assessee on merits becomes infructuous. Hence, we dismiss this ground as infructuous.

12. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 07th March, 2025.

Sd/-
(श्री के नरसिम्हा चारी)
(K NARASIMHA CHARY)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 07/03/2025
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Baanavatu Tulasi C/o. CA MV Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh-520010.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), O/o. ITO, CR Buildings, 1st Floor Annex, MG Road, Vijayawada, Andhra Pradesh-520002.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam