

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 136/GTY/2024
Assessment Year: 2015-16

Sunita Choudhary,

Makum Road, Tinsukia,

Assam - 786125

[PAN: ABGPC9077L]

.....**Appellant**

vs.

Income Tax Officer,

Ward-1, Tinsukia,

Aayakar Bhawan,

Bardoloi Nagar, Tinsukia

Assam - 786125

..... **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 25.02.2025

Date of pronouncing the order : 06.03.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.04.2024, passed under Section 250 of the Income Tax Act, 1961 (hereafter 'the Act').

1.1 In this case, it is seen that the Ld. AO received information regarding alleged bogus Long Term Capital Gains claimed by the assessee. Thereafter, the assessee was admittedly unresponsive to the notices issued by the Ld. AO, leading to an ex parte assessment order.

1.2 It is seen that the assessee could not succeed before the Ld. CIT(A) largely on account of the fact that even at that stage the assessee did not respond to the notices issued from his office.

1.3 On the last date of hearing, none appeared on behalf of the assessee, however, it was decided to proceed ahead with the adjudication with the help of Ld. Departmental Representative. The following grounds of appeal are before us for adjudication:

“1. For that the Id. CIT(A) ought to have hold that the order of re-assessment passed by the Id. AO u/s 147 is bad in law, facts and procedure.

2. For that the Id. CIT(A) ought to have hold that the notice under section 148 of the Act having been issued, mailed and dispatched on 01.04.2021 without following the mandate of section 148A of the Act was bad in law and consequently, the order of re-assessment passed in pursuance thereof is untenable.

3. For that the Id. CIT(A) erred in not holding that no valid notice under section 148 of the Act was issued by the AO and consequently, the order of re-assessment was bad in law and untenable.

4. For that the Id. CIT(A) erred both in law and on facts in not holding that the assumption of jurisdiction to re-open the assessment in the instant case was without satisfaction of pre-requisite conditions of the law, only on the basis of borrowed satisfaction and flimsy ground and without recording any valid reasons to believe and only on the basis of suspicion and consequently, the order of re-assessment is liable to be cancelled.

5. For that there being no live nexus between the reasons recorded and purported believe formed in the recordings made under section 148(2) of the Act, the Id. CIT(A) ought to have hold that the assumption of jurisdiction to re-open the assessment was bad in law and hence, the order of reassessment is liable to be cancelled.

6. For that the Id. CIT(A) ought to have hold that the notice under section 148 of the Act having been issued on a factually incorrect and erroneous premise, the same is bad in law and consequently, the order of re-assessment is unsustainable.

7. For that the Id. CIT(A) ought to have also hold that the re-assessment proceeding having been initiated without obtaining any valid sanction of the competent authority under section 151 of the Act and consequently, the order of re-assessment is liable to be quashed.

8. For that in absence of notice under section 143(2) of the Act having been issued and served, the Id. CIT(A) ought to have hold that the order of re-assessment is without jurisdiction and bad in law

09. For that on the facts and circumstances of the case, the Id. CIT(A) was not justified in not holding that the arbitrarily made addition of Rs. 63,96,501/- by the

Id. AO by invoking provisions of section 68 of the Act is without jurisdiction and bad in law. For that the aforesaid addition is liable to be deleted.”

10. For that on the facts and circumstances of the case, the arbitrary addition of Rs. 63,96,501 made by the Id. AO and confirmed by the Id. CIT(A) is bad in law and untenable.

11. For that the Id. CIT(A) ought to have hold that the order of re-assessment has been passed by the Id. AO based upon irrelevant and inadmissible materials and relying upon the statements and materials which were gathered behind the back of the appellant without providing a copy of the same to the appellant and without providing any opportunity to cross-examine and therefore, the said order of re-assessment and additions made therein are unsustainable.

12. For that the Id. CIT(A) ought to have hold that the order of re-assessment was passed by the Id. AO in gross violation of principles of natural justice and therefore, the same is bad in law.

13. For that the Id. CIT(A) ought to have hold that the Id. AO has erred in treating genuine Long Term Capital Gain which is exempt under section 10(38) of the Act as income assessable under the head 'Income from Other Sources' merely on surmises and conjectures.

14. For that the impugned order passed by the Id. CIT(A) without allowing any reasonable opportunity of hearing to the appellant and therefore, the same is bad in law.

15. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

2.1 We have carefully gone through the documents before us and also heard the Ld. DR, who has explained the facts of the case. It is seen that the assessee has not been able to succeed mainly because there has been no compliance before any of the authorities below in terms of the impugned issues. It is also seen that through Ground Nos. 1 to 4, the assessee has also challenged the assumption of jurisdiction by the Ld. AO. In this regard, the Ld. DR relied on the orders of authorities below but also stated that the assessee did not avail of any opportunity to file a rebuttal to the reasons recorded by the Ld. AO, prior to issuance of notice u/s 148 of the Act and hence ideally this matter should be remanded back for fresh adjudication.

3. After a consideration of facts and circumstances, it is felt that this matter should go back to the Ld. CIT(A) for fresh adjudication. It would be

expected that not only the factual issues on merit but also the jurisdictional issues would also be adjudicated by the Ld. CIT(A), after giving an opportunity of being heard to the assessee. To this end, we set aside the order of Ld. CIT(A) and remand the same back to him for adjudication as discussed.

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

Order pronounced in the court on 06.03.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 06.03.2025
AK, PS

Copy of the order forwarded to:

1. Sunita Choudhary
2. Income Tax Officer, Ward-1, Tinsukia
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches