

आयकरअपीलीय न्यायाधिकरण में, हैदराबाद एस.एम-बी 'बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' SM-B ' Bench, Hyderabad

SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER
(Hybrid Hearing)

आयकरअपीलसं./I.T.A.No.1131/Hyd/2024
(निर्धारण वर्ष/ Assessment Year: 2015-16)

Sri Adiparashakti Boards, Khammam. PAN: ACCFS4077R	VS.	Income Tax Officer, Ward-1, Kothagudam.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	S. Rama Rao, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	D. Praveen, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	26.03.2025
घोषणा की तारीख/ Date of Pronouncement	:	03.04.2025

ORDER

PER MANJUNATHA G, AM:

This appeal filed by Sri Adiparashakti Boards, Khammam ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)"), dated 02/09/2024 for the AY 2015-16.

2. The assessee has raised the following grounds of appeal (Modified):

- “1. *The order of the CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) ought to have seen that according to the AO, the Form 26AS showed a receipt of Rs. 15,69,777/- from ITC Limited and Rs. 1,54,246/- from Andhra Papers Ltd., towards sale of scrap. The CIT(A) ought to have considered the fact that TCS is effected on purchases and not on sale.*
3. *The Ld. CIT(A) ought to have seen that no such sale was effected and even if the sale of scrap were to be effected to these institutions, the amount cannot be termed as income assessable U/s. 69A of the Act.*
4. *The Ld. CIT(A) ought to have considered the fact that the other two companies recorded sales against the assessee’s PAN wrongly through the assessee did not effect any purchases.*
5. *The Ld. CIT(A) ought to have seen that no payment was made and hence the Assessing Officer is not justified in making the addition.*
6. *The Ld. CIT(A) ought to have seen that the sale was not made by the appellant during the year under consideration as it closed its business activity and there may be an error in the accounts of the other concerns.*
7. *The Ld. CIT(A) ought to have directed the Assessing Officer to calculate tax payable on the income determined of Rs. 17,24,023/- and not Rs. 34,48,046/-.*
8. *Any other ground that may be urged at the time of hearing.*

3. Further, the assessee has also raised additional grounds of appeal as under:

9. *The Ld. CIT(A) ought to have seen that the notice U/s. 148A(b), the order U/s. 148A(d) and the notice U/s. 148 were issued by the Income Tax Officer, Ward-1, Kothagudem who has no jurisdiction.*
10. *The Ld. CIT(A) ought to have seen that the amount to be considered as escapement of income is less than Rs. 50 lakhs and, therefore, the notice is not valid.*
11. *The AO is not justified in initiating proceedings U/s. 148 of the Act when there are no such deposits as mentioned by him in the notice U/s. 148A(b) of the Act and as such he ought to have dropped the proceedings initiated U/s. 148A(b) of the Act.*

4. Brief facts of the case are that the assessee-firm has not filed the return of income U/s. 139 of the Income Tax Act, 1961 (in short “the Act”). The assessment has been reopened U/s. 147 of the Act for the reasons recorded, as per which, income chargeable to tax had been escaped assessment and accordingly, notice U/s. 148A(b) of the Act, dated 24/03/2022 was issued with the reason that as per the NMS Model of Insight Portal for FY 2014-15, relevant to the AY 2015-16, the assessee has entered into various financial transactions including the transactions for purchase of scrap and relevant TCS U/s. 206C of the Act and sale of immovable property valued at Rs. 30 lakhs or more. In response to notice U/s. 148A(b) of the Act, the assessee has filed its submissions on 30/03/2022 and explained that the firm had already closed its business activities w.e.f 1/4/2014 and hence, there is no business activity for the year under consideration. The AO passed order U/s. 148A(d) of the Act and rejected the explanation of the assessee and observed that it is a fit case for issue of notice U/s. 148 of the Act on the ground that income escaped assessment represented in the form of asset amounting to Rs. 3,15,18,299/- and since there is an income chargeable to tax of more than Rs. 50 lakhs in the form of asset, notice U/s. 148 of the Act should be issued. In the said order, the AO considered time deposit exceeding Rs. 2 lakhs with a banking company, deposit of cash of Rs. 10 lakhs or more in a savings bank account and deposit in cash aggregating to Rs. 2 lakhs or more with a banking

company. Accordingly, notice U/s. 148 of the Act dated 28/04/2022 was issued and served on the assessee. In response, the assessee has filed return of income on 18/05/2022 and declared NIL income. The assessment has been completed U/s. 143(3) r.w.s 147 of the Act on 18/03/2024 and assessed the total income at Rs. 17,24,023/-, by making the additions towards the amounts reported in Form-26AS U/s. 206C of the Act on the ground that although the assessee claims that it has not made any purchases from ITC Limited and Andhra Papers Ltd for purchase of scrap, but both the parties, in response to notice U/s. 133(6) of the Act, have not replied and therefore, the AO opined that the transactions reported in Form-26AS are true and correct and thus, made addition as unexplained money U/s.69A of the Act. In other words, although the AO initiated the proceedings U/s. 148 of the Act vide order U/s. 148A(d) of the Act, dated 28/04/2022, on the assumption that income escaped assessment is Rs. 50 lakhs or more, but, finally assessed the total income at Rs. 17,24,023/-.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated its submissions made before the AO and submitted that the firm has closed its business w.e.f 28/03/2024 and also bank accounts have been closed on the very same date and thus, the transactions reported in Form-26AS do not pertain to the assessee. The CIT(A), after

considering the relevant submissions of the assessee and also taken note of the Form-26AS and amount reported therein observed that the appellant did not furnish any supporting evidence to prove its claim that the amount reported U/s. 206C of the Act towards TCS from ITC Limited and Andhra Papers Ltd is not pertains to the firm. Therefore, CIT(A) rejected the arguments of the assessee and sustained the addition made by the AO. Aggrieved by the order of the CIT(A), the assessee is now in appeal before the Tribunal.

6. The Learned Counsel for the assessee, Sri S. Rama Rao, Advocate, submitted that the CIT(A) has erred in sustaining the assessment order passed by the AO U/s. 143(3) r.w.s 147 of the Act, dated 18/03/2024 without appreciating the fact that the notice issued U/s. 148 of the Act, dated 28/04/2022 in pursuant to an order U/s. 148A(d) of the Act is illegal, void-ab-initio because, the AO issued notice U/s. 148 of the Act on the presumption that income escaped assessment is in excess of Rs. 50 lakhs or more on the basis of incorrect information that the assessee has made cash deposit and time deposit into bank accounts, whereas finally concluded that no such deposit is made by the assessee into bank account and only made addition towards the amount reported U/s. 206C of the Act as per Form-26AS. He further submitted that as per the provisions of section 149 of the Act, no notice U/s. 148 shall be issued for the relevant assessment year, if three years have elapsed from

the end of the relevant assessment year unless the income escaped assessment amounts to or likely amount to Rs. 50 lakhs or more. In the present case, going by the preceding the amount escaped assessment is only to an extent of Rs. 17,24,023/- as per the assessment order itself and thus, the notice issued by the AO U/s. 148 of the Act, dated 28/04/2022 is without jurisdiction and consequent assessment order passed by the AO cannot be sustained. Therefore, he submitted that the assessment order by the AO should be quashed.

7. The Learned Sr. AR, Sri D. Praveen, on the other hand, supported the order of the CIT(A) and submitted that at the time of reopening of the assessment, the AO needs to consider *prima facie* information which suggests escapement of income to an extent permissible under law for issue of notice but, it is not required to prove the escapement of income. In the present case, going by the order passed by the AO U/s. 148A(d) of the Act, the income escaped assessment is in excess of Rs. 50 lakhs or more and thus, the AO has rightly issued notice U/s. 148 of the Act after satisfying the conditions prescribed U/s. 149 of the Act. He, therefore, submitted that the ground taken by the assessee on this issue needs to be dismissed.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant provisions of section 148 and 149

of the Act. As per section 149 of the Act, no notice U/s. 148 shall be issued for the relevant assessment year if three years have elapsed from the end of the relevant assessment year unless the case falls under Clause-(b) and as per Clause-(b), if income escaped assessment amounts to or is likely amount to Rs. 50 lakhs or more, the assessment can be reopened beyond three years and up to ten years. There is no dispute with regard to the fact that this case falls under the amended provisions of section 148 of the Act which is evidenced from the procedure followed by the AO by issue of notice U/s. 148A(b) of the Act and order passed U/s. 148A(d) of the Act. However, the fact remains that going by the notice issued by the AO U/s. 148A(b) of the Act and order passed U/s. 148A(d) of the Act, the AO has considered certain information which was not in existence at the time of issue of notice which is evidenced from the notice issued U/s. 148A(b) of the Act where the AO considered the issue of TCS reported U/s. 206C of the Act in Form-26AS and sale of immovable property valued at Rs. 58,76,000/-. However, in the order passed U/s. 148A(d) of the Act, the AO considered the income escaped assessment on account of time deposit and cash deposit in a banking company and savings bank account amounting to Rs. 3,15,18,299/-. Further, in the final assessment order passed U/s. 143(3) r.w.s 148 of the Act, the AO has accepted the fact that there is no such cash deposit in the bank account on the basis of inquiry conducted U/s. 133(6) of the Act to the State Bank of India and in

response, the Bank has replied that the bank account has been closed on 28/03/2014 as per accounts and there are no cash deposits / time deposits for the FY 2014-15 relevant to the AY 2015-16. If you exclude the time deposit / cash deposit considered by the AO for issue of notice U/s. 148 of the Act, then, the only amount left for AO to assume jurisdiction for reopening of assessment U/s. 148 of the Act is TCS reported in Form-26AS which is amounting to Rs. 17,24,023/- + TCS amount of Rs. 15,736/- only. If you consider the said amount for the purpose of reopening of the assessment, the income escaped assessment is less than Rs. 50 lakhs and thus, the case of the assessee falls U/s. 149(1)(a) of the Act where the assessment can be reopened up to three years if income escaped assessment is less than Rs. 50 lakhs.

9. In the present case, the AO has passed order U/s. 148A(d) of the Act on the basis of non-existent information which is evidenced from the final assessment order passed by the AO. Therefore, in our considered view if the AO is allowed to reopen the assessment on the basis of information which is not at all available in the file, then, the AO can reopen the assessment by referring some irrelevant information and stated that income escaped assessment exceeds Rs. 50 lakhs or more and the case is fit for issue of notice U/s. 148 of the Act beyond three years and up to ten years is contrary to the law provided U/s. 148 of the Act. This is because, for this reason alone provision has been made to issue notice U/s. 148A(b) of the Act for causing enquiries by calling

replies from the assessee to ascertain the correct facts with regard to the escapement of income and for issue of notice under the relevant provisions of the Act. In the present case, going by the proceedings U/s. 148 of the Act, the AO issued initial notice U/s. 148A(b) of the Act based on some information which is not existing at the relevant point of time which is evident from the subsequent order passed U/s. 148A(d) of the Act where the AO has dropped the earlier information considered for issue of notice but considered some other information which was also not in existence at that relevant point of time which is evident from the assessment order passed by the AO U/s. 143(3) r.w.s 147 of the Act, dated 18/03/2024 where in para 3.3 the AO candidly accepted that the said information is not correct. Therefore, we are of the considered view that the AO assumed jurisdiction by passing order U/s. 148A(d) of the Act on the basis of incorrect information and issued notice beyond three years from the end of the relevant assessment year even though the income escaped assessment does not exceed Rs. 50 lakhs or more. Thus, we are of the considered view that the notice issued by the AO U/s. 148 of the Act, dated 28/04/2022 is illegal, void-ab-initio and consequently the assessment order passed by the AO U/s. 143(3) r.w.s 147 of the Act, dated 18/03/2024 is liable to be quashed. Thus, we quash the assessment order passed by the AO.

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

Order pronounced in the Open Court on 03rd April, 2025.

Sd/- (VIJAY PAL RAO) उपाध्यक्ष/VICE PRESIDENT	Sd/- (MANJUNATHA G.) लेखा सदस्य/ACCOUNTANT MEMBER
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Hyderabad, dated 03.04.2025.

*****OKK/sps**

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Sri Adiparashakti Boards, H.No. 14-1215, Sastry Road, New Paloncha, Bhadrady Kothagudam District, Telangana-507115.
2.	राजस्व/ The Revenue	:	Income Tax Officer, Ward-1, Kothagudam.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad