IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.2071/Bang/2024
Assessment Year: 2018-19

Vividhodhesha Prathamika Gramina Krushi Sahakara Sangha Ni Gejjalagere, Maddur, Mandya – 571 428. **PAN – AABAP 8943 P**	Vs.	The Income Tax Officer, Ward – 1 & TPS, Mandya.
APPELLANT		RESPONDENT

Assessee by	:	Shri Tarun Kothari, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept. (DR)

Date of hearing	:	19.02.2025
Date of Pronouncement	:	21.04.2025

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 31/08/2024 in ITA No.ITBA/NFAC/S/250/2024-25/1068216880(1) for the assessment year 2018-19.

2. The assessee before me raised the following grounds of appeal:

"1. The order of the authorities below in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.
2. The appellant denies itself liable to be assessed to a total income of Rs. 8,84,405/- for the impugned assessment year 2018-19 on the facts and circumstances of the case.

3. The authorities below have erred in disallowing the claim of deduction made under section 80P of the Act in the return of income filed in response to the 148 notice, on the facts and circumstances of the case.
4. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.
5. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered and the appellant shall be awarded cost in prosecuting the appeal and also order for the refund of institution fees as part of the cost."

3. Further the assessee, through later dated 29-10-2024 raised the following additional ground of appeal:

"a. The notice issued under section 148 of the Act is bad in law, on the facts and circumstances of the case.
b. The notice issued under section 148 of the Act by the learned Income Tax Officer, Ward-1 & TPS, Mandya is without jurisdiction subsequent to the 'faceless assessment scheme', on the facts and circumstances of the case.
c. The notice issued under section 148 of the Act in invalid for failure to strike off the irrelevant portion, on the facts and circumstances of the case.
d. The learned assessing officer has failed to follow the mandatory procedures for assessment under section 147 of the Act, on the facts and circumstances of the case.
e. The learned assessing officer has failed to obtain sanction under section 151 of the Act. Without prejudice, the sanction obtained if any, is mechanical and without application of mind, on the facts and circumstances of the case."

4. The assessee, in the application for admission of additional grounds, argued that the issues raised were legal in nature and fundamental to the resolution of the case. Consequently, the assessee's learned AR requested that these additional grounds be admitted for adjudication.

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5. On the other hand, the learned DR opposed the admission of the additional grounds of appeal, arguing that these grounds had not been raised before the lower authorities.

6. I have heard the rival submissions of both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT reported in 229 ITR 383 has held as under:

> *" Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.*

6.1 From the above, it is evident that the view limiting the Tribunal's jurisdiction to issues arising solely from the appeal before the Commissioner (Appeals) is too restrictive to define the Tribunal's powers. The Tribunal undoubtedly has the discretion to permit or decline the raising of a new ground. Since the issue raised in the additional ground of appeal is purely legal in nature, and in light of the judgment cited above, I admit the additional ground raised by the assessee. The issue raised in additional grounds of appeal are legal in nature and pertain to validity of the assessment order therefore I proceed to adjudicate the additional ground of appeal first.

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7. The facts in brief are that the assessee is a primary agricultural society and primarily engaged in providing credit facility to its members. The assessee for the year under consideration i.e. A.Y. 2018-19 has not filed return of income. The AO received information regarding cash deposits and cash withdrawal by the assessee society for Rs. 2,12,56,200/- and Rs. 1,54,13,000/- respectively. Accordingly, a notice under section 148 of the Act was issued for income escaping assessment as on 1st April 2022. The assessee in response to the notice issued under section 148 of the Act filed return of income as on 29th April 2022 wherein declared income at NIL after claiming deduction u/s 80P(2)(a)(i), 80P(2)(a)(iv) & 80P(2)(c) of the Act for the sum of Rs. 8,84,405/- only.

8. The AO during the assessment proceedings accepted the assessee explanation regarding the cash deposits and withdrawal made by the assessee society. However, the AO found that the assessee has not filed the return of income on or before the specified/due date of filing of return as per the provision of section 139(1) of the Act. Accordingly, the AO by invoking the provisions of section 80AC(ii) of the Act held that the assessee is not eligible to claim the deduction u/s 80P of the Act. Hence the AO disallowed the assessee's claim and assessed the income at Rs. 8,84,405/- vide order dated 8th March 2024 passed under section 147 r.w.s. 144B of the Act.

9. The aggrieved assessee preferred an appeal before the learned CIT(A) and contended that it is eligible to claim deduction under section 80P of the Act. The assessee in support of its contention relied on the

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decision of this Tribunal in the case of M/s Prathimika Krushi Sahakara Sangha vs. ITO ward-2 Hassan bearing ITA No. 614/Bang/2012. The assessee claimed that in the said case the deduction was allowed in identical facts and circumstances.

10. However, the learned CIT(A) dismissed the ground of appeal of the assessee and confirmed the disallowances made by the AO. The relevant finding of the learned CIT(A) is extracted as under:

> ***5.2*** *As per provision of section 80AC of the Act, if the assessee makes his claim for deduction under section 80P in a return filed within time under sections 139(4), 142(1) or section 148 of the Act, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1) of the Act. Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the IT Act only if it is made in a return recognized as such under the IT Act, and after 1-4-2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. The amendment to section 80AC however mandated that for an assessee to get a deduction under section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in section 139(1) of the IT Act. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-condition for claiming the benefit of deduction under the Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee. The similar view has also supported by the Hon'ble Kerala High Court in case of Nileshwar Rangekallu Chethu Vyavasaya Sahakarana Sangham vs. Commissioner of Income-tax [2023 152 taxmann.com 347 (Kerala), (IT APPEAL NOS. 120 OF 2019/11 OF 2022 MARCH 14, 2023) wherein it is held as under:*
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> ***5.3.*** *In the present case, it is evident from the record that the appellant has failed to file return of income for the AY 2018-19 as per provision of section 139(1) of the Act. Therefore keeping in view of provision of section 80AC and respectively following the above judicial pronouncement, I am of the view that the appellant would not be eligible for deduction claimed u/s 80P of the Act. Accordingly, the observations and the findings of the AO appears to be in order which does not permit me to take a divergent view. Accordingly the disallowances of deduction claimed u/s 80P of Rs. 8,84,405/- is upheld and ground No 1 to 4 raised are dismissed.*

11. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before the tribunal.

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12. The learned AR before me submitted that the assessment framed under section 147/144B of the Act is not sustainable as the AO has not provided the minimum time for making the reply in response to the notice issued under section 148A of the Act.

13. On the other hand, the learned DR before me submitted that the assessee has participated in the proceedings initiated on account of income escaping assessment and therefore no defect can be pointed out before the Tribunal in the notice issued for initiating the proceedings under section 147 of the Act. The learned DR vehemently supported the order of the authorities below.

14. I have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the AO received information about cash deposits and withdrawal by the assessee society in the year under consideration and as the assessee has not filed return of income, notice under section 148A(b) of the Act as on 20-03-2022 showcasing the assessee to explain why the assessment should not be reopened by issuing notice under section 148 r.w.s. 147 of the Act. The AO in the notice issued under section 148A(b) required the assessee to make a reply on or before 25th March 2022. The assessee society before me argued that the notice issued under section 148A(b) of the Act is not valid as the same is in violation of conditions prescribed under the provision of said section and accordingly the consequent notice under section 148 of the Act for making the assessment is invalid and without jurisdiction.

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14.1 In this regard I have perused the provision of section 148A of the Act which is reproduced as under:

> ***148A.*** *The Assessing Officer shall, before issuing any notice under section 148,—*
> *(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
> *(b) provide an opportunity of being heard to the assessee, 23[***] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*
> *(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*
> *(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

14.2 From the perusal of the above provision, it is transpired that the AO before issuing notice under section 148 of the Act for income escaping assessment is required to conduct inquiry from the assessee regarding the information received suggesting the income escaped. In order to conduct such an inquiry, the AO is required to issue a notice under section 148A(b) of the Act and the assessee shall be provided with the opportunity of being heard, which shall not be less than 7 days from the date on which such notice is issued. In the case on hand, the notice under section 148A(b) of the Act was issued on 20-03-2022, requiring the assessee to file a response on or before 25-03-2022 which means the assessee was provided with only 5 days of time to make reply as against the minimum of 7 days' time as provided under the law. Now the

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question arises whether the notice issued under section 148A(b) of the Act providing less time than the time provided under statute to the assessee will invalidate the notice and thereby invalidate the consequent proceeding under section 147 r.w.s 148 of the Act. I find that this question has been answered by the Hon'ble Bombay High Court in the case of *Mukesh J. Ruparel* vs. *ITO* [W.P.No.15268 of 2023, dated 25-07-2023], wherein it is held as under:

> ***3.*** *Petitioner received a notice dated 15th March 2023 under Clause 148A(b) of the Act from Respondent No.1, stating that Respondent No.1 has information which suggests that income chargeable to tax for assessment year 2016-17 has escaped assessment within the meaning of section 147 of the Act. Petitioner was provided with information/ enquiry on which reliance was placed in the form of annexure to the notice and Petitioner was called upon to show cause on or before 28th March 2023 as to why a notice under section 148 of the Act should not be issued. The information which suggested that there has been an escapement of income from assessment provided details of a property that Petitioner had purchased. Petitioner was directed to provide head-wise computation of income, details of purchase of immovable property during Financial Year 2015-16 supported with copy of registered agreement with annexure II, details of payment made and source of acquisition of said immovable property.*
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> ***4.*** *Petitioner submitted an elaborate reply on 18th March 2023 and also raised certain objections. The main objection raised was that under the provision of section 148A(b) of the Act, the assessee should be provided an opportunity of being heard by serving upon the assessee a notice to show cause within such time as may be specified in the notice being not less than seven days but not exceeding thirty days from the date on which said notice has been issued. Since the notice dated 15th March 2023 provides only for five days when the law requires minimum seven days to be given, the notice itself was bad-in-law.*
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> ***5.*** *Alongwith reply, Petitioner also provided a photo copy of the notarized affidavit of Petitioner's brother affirmed on 18th March 2023, in which the brother has confirmed of giving gift of Rs.75 lakhs to Petitioner on 26th March 2019, which is much beyond the relevant Assessment Year.*
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> ***6.*** *Respondent No.1 has passed the impugned order dated 31st March 2023 under Clause D of Section 148A of the Act. In the order, Respondent No.1 states that from the statement issued by HDFC Bank for the period 1st April 2018 to 31st March 2019 of the brother, it is seen that there is a credit entry of Rs. 1 Crore on 19th March 2019, out of which Rs. 75 lakhs has been paid to Petitioner on 26th March 2019. Respondent No.1 also states that the gift deed submitted by Petitioner from the brother has not been notarized.*
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> ***7.*** *Moreover, Respondent No.1 states that income chargeable to tax has escaped assessment without mentioning what is the amount of income that has escaped assessment. Further, the approval under Section 151 of the Act which is annexed to the impugned order is of one Poonam Vijay Chhabria whose PAN number is also entirely different from the PAN number of*

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Petitioner. Respondent No.1 is totally silent about the objections raised by Petitioner of minimum seven days notice required. Mr. Gandhi states that on each of these grounds not only the impugned order dated 31st March 2023 but also the notice dated 31st March 2023 itself should be quashed and set aside.

8. *No reply has been filed though Petition was served more than a month ago. We have, therefore, decided to go ahead and consider the matter and dispose it since we were, prima facie, satisfied that there was merit in Petitioner's submissions.*

Section 148-A(B) of the Act reads as under:-

" provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a)."

9. *The notice dated 15th March 2023 gives time only upto 20th March 2023 to show cause. We have to note that even the guidelines dated 1st August 2022 for issuing of notice under section 148 of the Act also provide that if the result of an enquiry/ information available suggests that income chargeable to tax has escaped assessment, the Assessing Officer shall provide an opportunity of being heard by assessee by issuing the show cause notice under section 148A(b) of the Act and the notice shall provide between seven to thirty days time for the assessee to submit their reply. A template of the show cause notice is also annexed to the guidelines. Therefore, in view of the guidelines, we would also read that the minimum seven days required to be made as a mandatory requirement and failure to comply with would render a notice itself invalid. Therefore, on this ground alone, the notice requires to be quashed and set aside.*

Perhaps, being aware of this position, Respondent No.1 has chosen not to deal with these objections raised by Petitioner in the reply to the show cause notice.

10. *We also found in the said guidelines a provision that the order under section 148A(d) of the Act shall be sent to assessee along with the approval of the specified authority for such order under section 148A(d) of the Act. In the case at hand, the approval that has been sent is of some other assessee and not Petitioner. This also indicates non-application of mind by Respondent No.1. On this ground also, the order dated 31st March 2023 impugned in the Petition is required to be quashed and set aside.*

11. *Further, in the guidelines to which is annexed a template of the order to be passed under section 148A(d) of the Act provides for mentioning of amount escaped based on the information and how this amount is represented in the form of assets. It also provides that the Assessing Officer will specify the quantum of income/assets/ expenditure/ entry which has escaped assessment. This not stated in the order under Clause D of section 148 of the Act. On this ground also, the said order dated 31st March 2023 is required to be quashed and set aside.*

12. *Further, there is a factually incorrect statement made in the order that the affidavit of Petitioner's brother that was submitted was not notarized when it was factually a notarized affidavit.*

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> ***13.*** *Further, in the impugned order, it is stated that the HDFC statement/document do not substantiate the credit worthiness and genuineness of the lender of the gift, i.e., brother of Petitioner.*
> *Mr. Gandhi states that if only Petitioner was called upon to submit, Petitioner would have submitted evidence towards credit worthiness of the brother because in the show cause notice issued, Petitioner was only directed to call upon to disclose the source from which he got money to pay for the flat.*
> *In our view, therefore, on this ground also, the impugned order dated 31st March 2023 is required to be quashed and set aside.*
> ***14****. Accordingly, we hereby quash and set aside the notice dated 15th March 2023 issued under clause (b) of section 148-A of the Act, the impugned order dated 31st March 2023 issued under clause (d) of section 148A of the Act and consequent notice dated 31st March 2023 issued under section 148 of the Act.*
> ***15****. Petition disposed. There shall be no order as to costs.*

14.3 The above ratio was further followed by the Hon'ble Karnataka High Court in the case of Iravatha Souharda Credit Cooperative Limited vs. ITO in WP No. 26893 of 2023, wherein it was held as under:

> *8. In the instant case, it is an undisputed fact that the Notice at Annexure - A dated 21.03.2022 is not signed either physically or digitally but the impugned notice also prescribes a period of four days, which is lesser than the minimum prescribed period of seven days as contemplated under Section 148A(b) of the IT Act. Under these circumstances, in the light of the judgment of this Court in Begur's case and the judgment of the Bombay High Court in Mukesh's case supra, I am of the considered opinion that the impugned notice at Annexure - A and also consequential proceedings, orders, notices, etc., deserves to be quashed by reserving liberty in favour of the respondents to take recourse to such remedies as available in law.*

14.4 Before parting it is important to note that the learned DR at the time of hearing before me argued that the assessee has participated in the assessment proceedings and has not agitated, the issue of time limit provided against the notice issued under section 148A(b) of the Act. Therefore, the assessee in accordance with the provision of section 292BB/292B cannot object the validity of the same at the Tribunal stage. In this regard, I find that failure to afford a reasonable opportunity of being heard under section 148A(b) of the Act, prior to passing the order under section 148A(d) of the Act and issuing the consequential notice under section 148 of the Act, constitutes a violation of mandatory

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statutory requirements and principles of natural justice. Such a defect is substantive in nature and not a mere procedural irregularity. Therefore, the said defect cannot be cured by invoking the provisions of section 292B or 292BB of the Act. The jurisdictional error arising from non-compliance with section 148A(b) renders the entire proceedings initiated under section 148A(d) and section 148 of the Act **null and void** in the eyes of law. In holding so, I also draw support and guidance from the judgment of Hon'ble Delhi High Court in the case of Monish Gajapati Raju Pasupati vs. ACIT reported in 171 taxmann.com 874 where it was held as under:

> *It is pertinent to note that section 292B is couched in a negative language and saves any invalidity to the return of income, assessment, notice, summons or other proceeding, merely by reason of any mistake, defect or omission, if any of the above is, in substance and effect, in conformity with or according to the intent and purpose of this Act. This provision would enure to the benefit of the respondents only to the extent of excluding the error of furnishing information relating to some other individual annexed to the impugned notice under section 148 while saving the notice itself. This however, shall not save the impugned order. [Para 16]*

14.5 In view of above and respectfully following the ratio laid down by the Hon'ble Bombay High Court and Hon'ble Karnataka High Court I hereby quash the notice issued under section 148A(b) of the Act in the case of the assessee society and thereby quash the consequent order passed under section 148A(d) of the Act, notice issued under section 148 of the Act and assessment order famed under section 147 r.w.s 143(3) of the Act.

14.6 Further, I note that the appellant assessee in memo of appeal and in the application for additional ground of appeal has raised various grounds of appeal on merit as well as on law. In my considered opinion, the other issues raised become redundant and do not require any

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separate adjudication as I have already quashed the assessment order. Hence, the other issues raised by the assessee in the memo of appeal and along with application for additional ground of appeal are hereby dismissed as infructuous.

15. In the result appeal of the assessee is partly allowed.

Order pronounced in court on 21st day of April, 2025

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 21st April, 2025
/ vms /
Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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