

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE/HYBRID MODE/PHYSICAL MODE

श्री राजपाल यादव, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. RAJPAL YADAV, VP & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA Nos. 219 To 221 /Chd/ 2024
निर्धारण वर्ष / Assessment Years : 2014-15 To 2016-17

Asst. CIT Panchkula Circle, Panchkula	बनाम	Estate Officer , HUDA, Plot No. C-3, HUDA Complex, Sector 6, Panchkula- 134109
स्थायी लेखा सं. / PAN NO: AABFE8195K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

Cross Objections Nos. 33 To 35/Chd/2024

In

आयकर अपील सं. / ITA Nos. 219 To 221 /Chd/ 2024
निर्धारण वर्ष / Assessment Years : 2014-15 To 2016-17

Estate Officer , HUDA, Plot No. C-3, HUDA Complex, Sector 6, Panchkula- 134109	बनाम	Asst. CIT Panchkula Circle,
स्थायी लेखा सं. / PAN NO: AABFE8195K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri A.K. Jindal & Ms. Rattan Kaur, C.A's
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR (Virtual)

सुनवाई की तारीख/ Date of Hearing : 03/02/2025
उदघोषणा की तारीख/ Date of Pronouncement : 24/04/2025

आदेश/Order

PER KRINWANT SAHAY, A.M:

All the above appeals filed by the Revenue and Cross Objections filed by the Assessee are against the respective orders of the Ld. CIT(A)/NFAC, Delhi each dt. 08/01/2024 pertaining to Assessment Years 2014-15 to 2016-17.

2. Since the issues involved in all the aforementioned appeals filed by the Revenue, as well as the Cross Objections filed by the Assessee, are common and were heard together, they are being disposed of through this consolidated order for the sake of convenience and brevity.

3. With the consent of both parties, we shall treat the Revenue's appeal in ITA No. 219/Chd/2024 and the Assessee's Cross Objection in C.O. No. 33/Chd/2024 as the lead case for the purpose of discussion.

4. The Revenue has raised the following grounds in its appeal:

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has not erred in omitting to adjudicate each of the grounds of appeal filed by the assessee specifically and separately resulting in failure to record decision on various issues raised by the AO in the assessment order.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has not erred in deleting the additions on the grounds that AO has not pointed out anything contrary to the above in his remand report without considering the already recorded findings, deliberations, observations in the assessment order dated 31.03.2022 on same issues which was affirmed in Remand Report.

3. It is prayed that the order of the Ld. CIT(A) be set aside and that of the AO be restored.

4. The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and dispose of.

5. The brief facts of the case as given in the Appellate order by the Commissioner of Income Tax (Appeals) are as under :-

" That the appellant had not filed its ITR for the relevant assessment year and information was available with the Department that substantial cash was deposited in the bank account of the appellant besides rent received and contractual payment transactions. Letter was issued to the appellant through ITBA for submitting reply which was not received and therefore notice u/s 148 was also issued through ITBA after obtaining approval of the prescribed authority. The AO has not accepted the contentions of the appellant that it is not a separate legal entity but working the authority of HUDA (now known as HSVP). The appellant has submitted before NFAC that it came into existence on 13.01.1977 under the HUDA Act to undertake the urban development in the entire State of Haryana. It has been informed that the Chief Administrator at the Head-Quarter is the overall in-charge and responsible for discharging the functions of the Authority and that the Chief Administrator is assisted by 5 Zonal Administrators, posted at Faridabad, Gurgaon, Hisar, Panchkula and Rohtak and one Administrator at Head Quarter. The appellant has informed that the entire state is divided into 30 Urban Estates. The work of these Urban Estates is being supervised and monitored by 5 Administrators assisted by 18 Estate Officers. The Urban Estates are further divided into Estate Office and Divisions. The main functions of these Estate Officers are to manage the estates and divisions. The Estate Officers are responsible for sale of developed and undeveloped plots/properties of all categories of land through Estate Officers and Divisions. They are also responsible for pursuing the matters relating to the construction activities within the framework of construction and building byelaws applicable thereto. The Zonal Administrators acts as co-coordinators between various wings at zonal level engaged in the planned urban development of the respective areas and are responsible for the implementation of various schemes/projects being executed in these areas. The Estate Officer is an Officer in-charge of Estate Offices and divisions. Accordingly, the Estate Officer, Panchkula is also an Officer in-charge. The Estate offices and divisions are a part of HUDA and not separate or independent entities. All these estate officers and divisions cohesively form the Authority and work under the umbrella of HUDA. It has been informed that all the financial transactions of the estate offices and divisions are consolidated zone wise and thereafter zone wise financial transactions are consolidated together to form the financial statements of the HUDA. Thus, it has been claimed that each and every transaction undertaken at divisions and estate offices are consolidated to form the financial statements of HUDA. "

6. The Ld. CIT(A) in the Appellate order has given findings on issues mentioned by the AO in the assessment order, they are as under:

"The statement of facts, grounds of appeal, assessment order, submissions of the appellant, remand order and its rejoinder have been perused. Briefly stated the appellant has disputed the initiation of proceedings u/s 147 of the Act primarily on account of non-service of notice u/s 148 issued by the AO and has also disputed the additions made by the AO on the ground that it is a office of HUDA and not a separate legal entity and that its transactions are duly accounted for in the books of accounts of HUDA. The AO has not accepted the contentions of the appellant. Before NFAC, the appellant submitted various details and rebuttals to the stand of the AO. Since, many of these details were in the nature of additional evidences regarding which it was claimed that these evidences were relevant to the matter of dispute and the appellant was prevented by sufficient cause for not presenting the same before the AO, these details and evidences were forwarded to the AO for comments after admitting the same in the interest of natural justice.

That it has been claimed that there are 18 estate officers for the Haryana State and all the estate offices and divisions are part of HUDA and not separate or independent entities. The appellant has claimed that the figure of alleged cash deposits of Rs.6,50,38,172/-is incorrect and it is exactly the double of the amount deposited during the year amounting to Rs. 3,25,19,086/-. The appellant has enclosed copy of bank statements in support of the claim that the cash deposits have been reported twice. The appellant has also submitted additional evidence being certificate from the Chief Controller of Finance, HUDA wherein it has been certified that the cash deposits amounting to Rs. 3,25,19,086/- has duly been included in the financial statements of HUDA and due tax has been paid by HUDA. The certificate from the tax auditor is also enclosed herewith certifying that the Trial Balances of Estate Office, Division 1 and Division No.2, Panchkula are incorporated in Balance Sheet & Profit & Loss Accounts of HUDA. The appellant has also submitted detailed reconciliation with supporting evidences to claim that the rental income and contractual payments has been already accounted in the books of HUDA and taxes paid thereon which also includes the certificate from the Chief Controller of Finance,

Panchkula. The appellant has explained the facts of the case vis-a-vis the inconsistencies pointed out by the AO. All these details were forwarded to the AO for remand report. The remand report received and rebuttal of the appellant have been quoted above. It is noted that no adverse finding has been given by the AO in his remand report on the certificates provided by the Chartered Accountant as well as by Chief Controller of Finance of Chief Administrator, HSVP, Panchkula dated 15.11.2023. The AO has also accepted that there is no record of service of notice u/s 148 through ITBA. From the above, the stand of the appellant that it being an office under HUDA/HSVP was not a separate legal entity and not having separate statement of affairs and that all its receipts and transactions were duly reflected in the audited accounts of HUDA has been successfully demonstrated. The reason given by the appellant that an assessee can have multiple TANs for its different offices is found correct. The appellant had claimed that separate PAN under the wrong category of firm was inadvertently applied and wrongly allotted but the same does not make it a separate legal entity required to file separate ITR. The reasons given by the appellant in this regard are found satisfactory. Similarly, the appellant has submitted evidence to demonstrate that the rental and contractual receipts added by the AO were already accounted for in the books of accounts of HUDA and taxes paid thereon and the AO has not pointed out anything contrary to the above in his remand report. Therefore, the claim of the appellant that estate offices, Estate Officer and divisions etc. are part of HUDA itself and not separate offices and that all financial transactions of different offices, divisions are included in the consolidated financial statements of HUDA is found satisfactory. Therefore, the addition made by the AO of Rs. 6,50,38,172/- u/s 69 A and the addition of Rs. 2,80,850/- on account of rental income and contractual payment is directed to be deleted. Since the additions made by the AO are deleted, there is no reason to further adjudicate these issues regarding validity of proceedings initiated u/s 148 of the Act."

7. During the proceedings before us, the Ld. Counsel for the assessee placed reliance on the order passed by the learned CIT(A) and submitted a Paper Book, which had also been filed before the AO and the Ld. CIT(A). The purpose of filing the Paper Book was to demonstrate that the Estate Officer, HUDA, Panchkula is not a separate legal entity, but is a part of HUDA, now known as HSVP.

8. The Ld. DR has opposed the contentions of the Ld.Counsel for the assessee, disputing the claim that the assessee is a part of HUDA and not functioning as a separate legal entity. The learned DR relied upon the orders of the AO, stating that the assessee is operating independently, despite being associated with HUDA, now known as HSVP.

9. We have considered the findings given by the AO in his assessment order and we have also considered the arguments of the Ld. DR in the grounds of appeals filed by the Revenue.

10. We have also taken into consideration the grounds of appeal as discussed in the appellate order. During the proceedings before us, the Ld. Counsel for the assessee argued that the income of the assessee has been assessed in respect of each and every transactions, and that all such transactions have been duly recorded in the books of account maintained by HUDA, now known as HSVP.

11. The facts of the case indicate that the amounts in question have been added by the AO in the hands of the assessee, and these amounts were also declared by HUDA in its returns of income for the same year. The Ld. Counsel for the assessee argued that further assessment of the same amounts in the hands of the assessee would result in double taxation, we note that the Ld. CIT(A) has provided

detailed findings on this issue. Upon reviewing the findings of the learned CIT(A), we observe that it is a well-reasoned and speaking order, addressing the issues in detail. Therefore, we find no reason to interfere with the decision. Consequently, the appeals filed by the Revenue cannot be allowed.

12. Both the parties fairly submitted that the facts and circumstances of other two appeals i.e ITA No. 220 and 221/Chd/2024 are exactly identical to the Appeal in ITA No. 219/Chd/2024 and similar contentions raised therein may be considered, therefore, our findings and directions given in ITA No. 219/Chd/2024 shall apply mutatis mutandis to these two appeals which are accordingly dismissed.

13. Now we shall deal with the Cross Objection of the Assessee in C.O. No. 33/Chd/2024 wherein following grounds have been raised:

" 1. That the Ld. CIT(A) has erred in law and facts of the case in not adjudicating the issue regarding validity of proceedings initiated u/s 148 of the IT. Act and the order passed u/s 144 r.w.s. 147 dt. 31.03.2022 which is highly unjustified and uncalled for.

2. That the order passed u/s 44 r.w.s. 147 dt. 31.03.2022 is void ab-initio under the facts and circumstances of the case and needs to be quashed."

14. During the proceedings before us, the Ld. Counsel for the assessee raised Cross Objection and pointed out that although the assessee had filed appeal before the Ld. CIT(A), specifically challenging the validity of the proceedings initiated under Section 148 of the Income Tax Act, the Ld. CIT(A) did not adjudicate on

those issues. Consequently, the assessee has filed cross objection. In support of this issue, the Ld.Counsel for the assessee submitted written submissions before the Ld. CIT(A), which have also been placed on record before us. The statements filed by the Ld. Counsel for the assessee are as under:

" For the year under reference the assessee was issued the notice u/s 148 dated 30.03.2021 by the assessing officer which was uploaded on the Income Tax Portal but was not served on the assessee. Thereafter notices u/s 142(1) of the Income Tax Act were issued from time to time by the Assessing Officer/National Faceless Assessment Centre which were also uploaded on the portal and not served on the assessee except the notice dated 14.02.2022, which was duly complied with by the assessee. The assessment has been completed u/s 147 r.w.s 144 of the Income Tax Act assessing the income at Rs. 6,71,19,022/- of the Income Tax Act after making the following additions:-

Addition on account of Unexplained Money u/s 69A	Rs. 6,50,38,172/-
Rental Income and Contractual Payments	<u>Rs. 20,80,850/-</u>
Total :	Rs. 6,71,19,022-

The assessee aggrieved by the addition made has preferred an appeal before your goodself on the following grounds of appeal:

Ground No. 1 :- That the order passed u/s 147 is void ah initio, bad in law and needs to be quashed.

The information was received from the systems under the category "Multi Year NMS Case" regarding deposit of cash amounting to Rs. 6,50,38,172/- in the bank account of the assessee and payment to contractor of Rs. 1,02,050/- and rent received amounting to Rs. 19,78,800/- and the fact that the assessee having not filed the return of income for the AY 2014-15.

Accordingly, a letter was issued dated 16.03.2021 on the above issues which was never served upon the assessee, so couldn't be complied with by the assessee. Thereafter the notice u/s 148 dated 30.03.2021 was issued to the assessee by the Assessing Officer which was also not served on the assessee. The aforesaid notice was neither served physically nor on email nor any SMS alert was sent. The assessee was not even registered on the Income Tax Portal on the date of issuance of notice u/s 148 dated 30.03.2021 by the Assessing Officer.

Thereafter notices u/s 142(1) were issued on 02.11.2021 & 20.11.2021 by AO and Faceless Assessment Centre respectively which were also not served on the assessee. In the first week of February'2022, the Assessing Officer contacted the counsel of the assessee to request the assessee to register on the Income Tax Portal.

Thereafter, the assessee for the first time was registered on the Income Tax Portal on 11.02.2022(Copy enclosed). The fact that the assessee was not registered on the Income Tax Portal prior to 11.02.2022 is also evident from the copy of notice u/s 142(1) dated 14.02.2022 where in the AO himself has requested the assessee

to register on the Income Tax Portal. The notice u/s 142(1) dated 14.02.2022 was also sent by the Assessing Officer through the Notice Server(Copy enclosed). Thus, the very first notice which was served on the assessee was the notice u/s 142(1) dated 14.02.2022. Along with the notice u/s 142(1) dated 14.02.2022, the assessing officer attached the copy of notice u/s 148 dated 30.03.2021 and notice u/s 142(1) dated 02.11.2021 & 20.11.2021. Thus, the AO served the notice u/s 148 dated 30.03.2021 for the first time on 14.02.2022.

Thereafter, the notice u/s 142(1) dated 24.02.2022 was issued by the AO, in response to the same, the assessee filed the computation of income declaring Nil Income along with the letter from Chief Administrator, HUDA, requesting to treat the computation of income as return of income in response to notice u/s 148 as the PAN has inadvertently been allotted in the category of Firm and it was practically and technically not possible to file the return of income as Firm. (Copy enclosed). The assessee also requested the AO to provide the copy of reasons along with the proof of service of notice u/s. 148 dated 30.03.2021.

The AO on 17.03.2021 provided the copy of reasons recorded along with the letter containing the detail of all the notices issued from time to time. The assessee once again sought evidence for service of notice u/s 148 dated 30.03.2021 along with the sanction order u/s 151 of the Income Tax Act. On 20.03.2022, the AO provided the screenshot from the Portal which contains the detail of issue of notice as 30.03.2021 and date of service of notice as Blank i.e "-".(Copy enclosed)

Thereafter the assessee filed the reply in response questionnaire issued on 21.03.2022. The AO on 22.03.2022 issued the show cause notice proposing the various additions, which was duly complied with by fire assessee on 27.03.2022. The AO passed fire order u/s 147 r.w.s 144 of the Income Tax Act making addition of Rs. 6,71,19,022/-

The proceedings u/s 147 suffers from several defects which are enumerated as under:-

1. Non-Service of Notice u/s 148

The notice u/s 148 dated 30.03.2021 was neither served physically nor through email or SMS. The assessee was not even registered on the portal which means that Email ID or mobile no. was not available with the AO so there is no question of service through email or SMS. The screenshot from portal in respect of notice u/s 148 is enclosed herewith. On perusal of the same it can be seen that fire Email ID is left Blank The fact that the assessee was not registered on portal is evident from notice u/s 142(1) dated 14.02.2022 where the AO himself has directed the assessee to get the registration on the portal. The copy of email dated 11.02.2022 is enclosed herewith as evidence to show that the PAN was registered on the portal on 11.02.2022. The AO despite the request from the assessee to provide the proof of service of notice could not provide the proof of service except tire screen shot from the portal which only contains the detail of issuance of notice u/s 148 on 30.03.2021 and date of service on the same is blank, which further clarifies that the notice was never sent and served. The notice u/s 148 was not served is also evident from copy of order u/s 271(l)(b) where in the AO himself has mentioned that order u/s 148 was issued on 30.03.2021 and notice u/s 142(1) dated 14.02.2022 was sent through speed post and notice server. It does not specify about fire notice u/s 148 being sent through speed post or notice server. As per Section 148 of the Act of 1961, valid issuance of Notice is a jurisdictional requirement not just a mere procedural requirement. There is a heavy onus on the

Department to provide the date on which impugned Notices have been posted or the date and time on which the e-mail was sent from the e-mail ID of the JAO.

Thus, from the above, it is amply clear that the notice u/s 148 though was issued on 30.03.2021 but was not served upon the assessee. The service of notice is a pre-condition for validity of proceedings u/s 147 of the Income Tax Act.

It is pertinent to mention further that even if the notice u/s 148 of the Income Tax Act has been issued on the Portal and DIN has been generated would not be treated as validly issued as the assessee was not registered on the Portal on the date of issuance of notice. The notice u/s 148 of the Income Tax Act for the first time has been served along with notice u/s 142(1) dated 14.02.2022 as the same has been sent through speed post and notice server along with the notice u/s 142(1) dated 14.02.2022. Thus the date of issuance becomes 14.02.2022 and accordingly the notice u/s 148 issued after the expiry of 6 years from the end of the relevant assessment year and hence is barred by limitation. Therefore, the entire proceedings are void ab initio and bad in law and needs to be quashed.

15. Ld. DR has relied upon the order of the AO. We have considered the submissions filed by the Ld. Counsel for the assessee on this issue before the Ld. CIT(A) and we also found that the Ld. CIT(A) has categorically given his findings that the additions made by the AO of Rs. 6,50,38,172/- u/s 69 and the addition of Rs. 20,82,850/- on account of rental income and contractual payment were already deleted by him on merits. Therefore, there is no reason to further adjudicate the issues of eligibility of proceedings u/s 148 of the Act. We find that once all the grounds of appeal made on account of additions have been adjudicated by the Ld. CIT(A) on merits and additions deleted. No purpose would be served by deciding the validity of proceedings u/s 148 of the Act in all the cross objections. Therefore, without going into the merits of the issue, we concur the view adjudicated by the Ld. CIT(Appeals) and accordingly, the assessee's appeals in cross objections in all the three ITAs are hereby dismissed for statistical purposes.

16. In the result, the appeals filed by the Revenue are dismissed, and the Cross Objection filed by the Assessee in those appeals are also dismissed.

Order pronounced in the open Court on 24/03/2025

Sd/-

राजपाल यादव
(RAJPAL YADAV)
उपाध्यक्ष/VICEPRESIDENT

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)
लेखासदस्य/ ACCOUNTANT MEMBER

AG 24/03/2025

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar