

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER
AND
KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 2595/DEL/2018
Assessment Year: 2014-15**

Pamela Bhardwaj, H. No. 207, Sector-6, Urban Estate, Karnal. PAN: AKZPB 3402 G	<u>Vs</u>	Income-tax Officer, Ward-3, Karnal.
APPELLANT		RESPONDENT
Assessee represented by		Shri Somil Agarwal, Adv; & Ms. Shilpa Gupta, CA
Department represented by		Ms. Monika Singh, CIT(DR)
Date of hearing		03.06.2025
Date of pronouncement		25.07.2025

O R D E R

PER Ms. MADHUMITA ROY, JM:

The instant appeal, preferred by the assessee, is directed against the order dated 05.02.2018 passed by the Ld. Principal Commissioner of Income-tax, Karnal, Haryana, under Section 263(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), setting aside the assessment order dated 14.12.2016 passed by the Income Tax Officer, Ward-3, Karnal, under Section 143(3)/147 of the Act for Assessment Year 2014-15.

2. The matter relates to order issued under Section 263(1) of the Act dated 05.02.2018 passed by the PCIT, Karnal whereby and whereunder the reassessment order under Section 143(3) r.w.s 147 of the Act passed by the Ld. AO dated 14.12.2016 has been held to be erroneous in so far as it is prejudicial to the interest of revenue; the issue was set aside to the file of the Ld. AO for fresh adjudication of the same for Assessment Year 2014-15.

3. Brief facts leading to the case is this that assessee an individual deriving income from bank interest, tuition fees and agricultural income filed its return of income at Rs.1,96,530/- on 31.07.2013 in the regular course. The assessee declared Rs.2,00,000/- as agricultural income which was accepted under Section 143(3) of the Act. Thereafter, on 14.09.2015 notice under Section 148 of the Act upon recording satisfaction of escapement of assessment by the assessee on the issue that the cash deposit made by the assessee in her bank account to the tune of Rs.25.50 lakhs during the year under consideration remained unexplained/unverified and further that the source of purchase of property by the assessee amounting to Rs.1,14,92,625/- during the Financial Year 2012-13 remained unexplained/unverified reassessment was initiated. The same was finalised upon accepting the return filed by the assessee meaning thereby returned income of Rs.1,96,530/- and the agricultural income to the tune of Rs.2,00,000/- was accepted by the Ld. AO.

Thereafter, on 19.09.2017, a notice under Section 263 of the Act was issued by the Ld. PCIT, Karnal to reopen the case of the assessee in regard to the source of purchase of property made by the assessee. Upon

considering the explanation rendered by the assessee the Ld. PCIT came to a conclusion that order passed under Section 148 of the Act dated 14.12.2016 is erroneous in so far as it is prejudicial to the interest of the revenue in accepting the return filed by the assessee; the Ld. AO was therefore, further directed to consider the issue afresh and to pass orders accordingly.

4. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee has drawn our attention to the additional ground preferred by the assessee challenging the very assumption of jurisdiction under Section 263 of the Act since the reassessment order passed under Section 143(3) r.w.s 147 of the Act dated 14.12.2016 which was sought to be revised under Section 263 itself was invalid on very many counts as mentioned in the application for admission of additional grounds.

5. Having regard to the issue of assumption of jurisdiction under Section 147 of the Act as the reason recorded would not have led to the formation of belief of escapement of income by the assessee as alleged or that no valid satisfaction and/or approval under Section 151 was obtained or that the impugned reassessment order passed under Section 143(3) r.w.s 147 of the Act without complying the mandatory conditions of the provision envisaged under Section 147 to 151 of the Act since found to be legal in nature and goes to the root of the matter, fact of which is on record, considering the judgment passed by the Hon'ble Apex Court in the case of National Thermal Power Company Ltd., Vs. CIT reported in (1998) 229 ITR 0383 (SC), as the legal grounds have been

raised at the very threshold of the matter, we would like to address the same as follows:

(i) In order to substantiate this particular aspect of the matter whether jurisdictional aspect of the order passed in the primary proceeding, here the reassessment proceeding, initiated under Section 147 of the Act can be examined in the collateral proceeding also i.e. impugned proceeding under Section 263 of the Act, the Ld. AR relied upon the judgment passed by the ITAT Bombay Bench in the case of Westlife Development Ltd. Vs. PCIT, reported in (2016) 47 CCH 0305 (Mum) where it has been held that when the order passed under Section 143(3) was illegal and nullity in the eyes of law, the Ld. CIT has no valid jurisdiction to pass the order under Section 263 of the Act to revise the non-est assessment order because of the particular reason that it would prejudice the right of the assessee which has accrued in favour of the assessee on account of its income being determined.

(ii) Several judgments passed by different judicial forums were discussed in that particular case of Westlife Development Ltd. (Supra) and finally the order impugned under Section 263 of the Act whereby and whereunder the original order passed under Section 143(3) dated 24.10.2013 which was found to be null and void was ultimately held to be nullity in the eyes of law and therefore, reassessment proceeding initiated by the Ld. PCIT was quashed.

(iii) In the case in hand before us the return of income for the year under consideration was filed by the assessee on 17.04.2015. The same

was open for scrutiny upto 30.09.2016, whereas the notice under Section 148 of the Act as appearing at page 39 of the paper book filed before us was issued on 14.09.2015 when the original proceeding before the Ld. AO was pending.

6. In that view of the matter when the time period for issuance of notice under Section 143(2) has not expired in the original proceeding, issuing of notice dated 14.09.2015 under Section 148 of the Act during the pendency of such original assessment proceeding is found to be invalid. In this regard, the Ld. Counsel appearing for the assessee relied upon the judgment passed by Hon'ble Madras High Court in the case of CIT Vs. Qatalys Software Technologies Ltd., reported in (2009) 308 ITR 0249 (Mad) wherein the Tribunal took the issue as to whether the Ld. AO can take action under Section 148 of the Act when the time for issuing of notice under Section 143(2) has not expired and held in favour of the assessee following the judgment passed in the matter of CIT Vs. K.M. Pachayappan, reported in (2008) 304 ITR 264 (Mad) wherein the Court has been pleased to hold that no reassessment proceeding could be initiated so long as the assessment proceedings pending on the basis of return already filed by the assessee are not terminated.

7. We have further considered the judgment passed in the case of CIT Vs. TCP Ltd. reported in (2010) 323 ITR 0346 (Madras) wherein considering the plethora of judgments passed by different High Courts the Hon'ble Court has been pleased to observe as follows:

4. Following the abovesaid judgment, a Division Bench of this Court in the case of CIT vs. K.M. Pachayappan (supra) and the subsequent Division Bench of

this Court, in which one of us is a party (Raviraja Pandian, J.) in the case of CIT vs. Qatalys Software Technologies Ltd. (2009) 308 ITR 249 (Mad) has held the issue against the Revenue, by also relying upon the decision in the case of KLM Royal Dutch Airlines vs. Asstt. Director of IT (2007) 208 CTR (Del) 33 : (2007) 292 ITR 49 (Del), in which the Delhi High Court, following the Supreme Court judgments cited supra, considered the scope of the provision of ss. 139 and 147 of the Act and held as follows :

“Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no 'fresh evidence or material' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the AO for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under s. 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to s. 147, provided fresh material had been received by the AO after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the AO had attempted to travel the path of s. 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law.”

8. Having regard to the entire aspect of the matter when admittedly during the pendency of the original assessment particularly before the expiry of the time limit for issuance of notice under Section 143(2) of the Act i.e. before 30.09.2016 the notice under Section 148 of the Act dated 14.09.2015 was issued by the AO, the same is found to be an attempt to enlarge the time available for framing the assessment is bad in law. The entire proceeding, therefore, under Section 147 of the Act is, void-ab-initio and therefore, liable to be quashed.

9. Once, the reassessment proceeding under Section 147/148 of the Act is found to be void-ab-initio, the further proceeding initiated by the Ld. PCIT under Section 263 of the Act whereby and whereunder the

reassessment proceeding under Section 147/148 is sought to be reopened is found to have no legs to stand on and thus, quashed.

10. The appeal preferred by the assessee is allowed.

Order pronounced in the open court on 25.07.2025

Sd/-
(Khettra Mohan Roy)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 25.07.2025
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI