



सत्यमेव जयते



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 200/PAN/2023

Assessment Year : 2016-17

Moureen Camara
Lonic Apartment, 1st Floor,
Albamar Road, Tiswadi,
Panaji, Goa-403001.
PAN : ABMPC9038M

..... *Appellant*

V/s

Income Tax Officer,
Ward-1(5), Panaji.

..... *Respondent*

Appearances

Assessee by : Mr D E Robinson ['Ld. AR']

Revenue by : Ms Rijjula Uniyal ['Ld. DR']

Date of conclusive Hearing : 11/08/2025

Date of Pronouncement : 26/08/2025

ORDER

PER G. D. PADMAHSHALI;

Present appeal is filed by the assessee challenging DIN & Order No. ITBA/NFAC/S/250/2023-24/1057640303(1) dt. 02/11/2023 passed by National Faceless Appeal Centre, Delhi ['Ld. CIT(A)/NFAC'] u/s 250 of the Income-tax Act, 1961 ['the Act'] which in turn stemmed from assessment order dt. 20/09/2021 passed u/s 147 r.w.s.



144 r.w.s. 144B of the Act by National Faceless e-Asstt. Centre, Delhi [**Ld. NFeAC**] for assessment year 2016-17 [‘AY’].

2. The dispute in the present appeal falls in a narrow compass ***‘as to whether re-assessment proceedings-initiated u/s 148 of the Act by application of provisions of section 5A of the Act presuppose the jurisdiction to re-assess the income without service of statutory notice u/s 143(2) of the Act?’***

3. Dexterously stated facts of the case are that;

3.1 The assessee an individual, filed her return of income on 24/02/2017 declaring total income of ₹6,72,450/- which was summarily processed u/s 143(1) of the Act on 03/06/2017 without variation.

3.2 The case of assessee’s spouse (husband) ‘Melwyn Camara (ABMPC9039L)’ was reopened u/s 148 of the Act and consequential re-assessment was completed u/s 147 of the Act wherein import/custom



duties payment amounting to ₹1,17,82,160/- was treated as unexplained expenditure u/s 69C of the Act and by virtue of section 5A of the Act only 50% of such unexplained expenditure i.e. ₹58,91,080/- was assessed in the hands of husband with a note that balance 50% of ₹58,91,080/- to be assessed as assessee's income.

3.3 In consequence of husband 'Melwyn Camara's assessment, the Income Tax Officer Ward-1(1), Panaji [**Ld. JAO**] recorded the reasons for reopening on 22/01/2019 which was approved by authority on 05/04/2019. Pursuant thereto the Ld. JAO vide notice dt. 26/04/2019 reopened assessee's case u/s 148 of the Act for making balance addition in assessee's hand. Vide reply letter dt. 20/05/2019 the assessee informed the Ld. JAO (offline & through e-proceedings) to treat the original return filed by her on 24/02/2017 as the return in response to notice issued u/s 148 of the Act and thereby also sought reasons of reopening of her case.



3.4 After receipt of reopening reasons the assessee vide online submission dt. 06/08/2021 objected the reopening proceedings which were much less dealt with in the body of assessment order. The online/e-proceedings notices issued u/s 142(1) of the Act calling upon the assessee to adduce documentary evidence when remained unattended, the **Ld. NFeAC** vide show cause notice dt. 27/08/2021 [‘SCN’] invoked provisions of section 144 of the Act. In the event of continued failure on the part of assessee to adduce convincing documents and explain to the satisfaction nature & source of such balance import/custom duty payment for the year under consideration, the Ld. NFeAC culminated the re-assessment proceedings wherein such balance import/custom duty of ₹58,91,080/- treated likewise as unexplained expenditure of the assessee and added same to total income in the hands of assessee while making an assessment u/s 147 r.w.s. 144 of the Act.



3.5 Aggrieved by the former solitary addition the assessee filed an appeal u/s 246A of the Act before the Ld. CIT(A) who in the absence of documentary evidence inveterated the addition and dismissed the appeal.

3.6 Aggrieved by the order of ld. first appellate authority, the appellant assessee filed this present appeal u/s 253(1) of the Act with following grounds;

1. The Learned Commissioner of Income Tax (Appeals) erred in confirming the impugned order made without compliance with the basic requirements laid down in provisions of section 147 and 148 of the Act.

2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.89,79,665/- as unexplained in purchase of goods ignoring the fact that no payment had ever been made against the purchases.

3. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.28,02,495/- being customs duty paid through bank as unexplained investment duly accounted in books.



4. The learned commissioner of Income tax erred in holding that the transaction of purchase and payment of customs duty were not accounted in books of accounts.

5. The Learned Commissioner of Income Tax (Appeals) has not adjudicated ground no.5 of the appellant requiring application of section 44AD.

6. The Learned Commissioner of Income Tax (Appeals) erred in not perusing the written response made online and the enclosures thereto.

4. We have heard the rival parties on the limited legal issue of non-issue/service of statutory notice u/s 143(2) of the Act and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position.

5. We note that, the re-assessment in this case was initiated by the **Ld. JAO** vide notice dt. 26/04/2019 in response to which the appellant communicated the Ld. JAO to treat her original return filed u/s 139 of the Act to be the return for the purpose of re-assessment.



6. The said communication was also filed online on 18/05/2020 annexing thereto the physical copy filed with Ld. JAO at the 'Dak Counter'. The **Ld. NFeAC** however ignoring the aforestated communication has advanced the re-assessment proceedings and completed the assessment to the best of judgment u/s 144 of the Act for appellant's twin failure (i) failure to file return of income in response to notice issued u/s 148 of the Act and (ii) failure to attend 142(1) & 144 notices and thus failed to explain satisfactorily nature & source of expenditure etc. By such best judgement assessment framed u/s 147 r.w.s. 144 r.w.s. 144B of the Act the Ld. NFeAC assessed the total income of the appellant assessee for the year under consideration at ₹65,63,530/- which inter-alia includes; (i) income of ₹6,72,450/- declared by the appellant in her original return and plus (ii) addition of ₹58,91,080/- as unexplained expenditure (being 50% of ₹1,17,82,160/-).



7. From written submission filed by the Revenue consisting copy of order sheet entries of assessment proceedings we observed that, the re-assessment proceedings was initiated by Ld. JAO and subsequently e-proceedings/Faceless regime coming into effect, the pending proceedings were assigned to Ld. NFeAC. Vide order sheet dt. 12/03/2021 the Revenue made request to Ld. PCIT for retransfer of appellant case to Ld. JAO so as to enable issuance of statutory notice u/s 143(2) of the Act. This request however never acted upon until reassessment proceedings saw sunset. In the course of physical hearing, adverting to written submissions the Ld. DR candidly solidified the fact that, owing to confusion on transition of pending physical proceedings to e-proceedings neither the Ld. JAO nor the Ld. NFeAC could actually issue and serve upon the appellant assessee a statutory notice which otherwise required u/s 143(2) of the Act for advancing reassessment.



8. Without resorting to *verbatim* re-production of provisions of section 143(2) of the Act, it shall purposive to state that, where a return has been furnished either u/s 139 of the Act or in response to a notice issued u/s 142(1) of the Act, the Assessing Officer or prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that assessee (i) **has not understated income** or (ii) **has not computed excessive loss** or (iii) **has not underpaid income tax** in any manner, **shall serve on assessee a notice** requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which such assessee may rely in support of return.

9. In a case where notice u/s 148 of the Act is issued to an assessee requiring him/her to file a return within prescribed date, in such case there is no provision in the Act, which empowers assessing officer on his own



volition to treat a return filed by assessee which was summarily processed u/s 143(1) of the IT Act, as a return filed pursuant to a notice issued u/s 148 of the Act. However, where an assessee by written representation declares or intimates that his/her earlier return which was processed earlier summarily u/s 143(1) of the Act to be treated as filed pursuant to notice u/s 148 of the Act, then assessing officer is left with no option but (i) **either** *to accept such returned income without variation* **or** (ii) *service of notice u/s 143(2) of the before resorting to scrutiny for making any variation to such summarily processed returned income in advancing to reassessment.*

10. It is well settled law that, where a valid return of income is filed by an assessee and is standing on record for the purpose of either regular assessment or re-opened assessment, for the purpose of making any variation therein *qua* scrutiny, not only mere issue of statutory notice u/s 143(2) of the Act is mandatory but more



importantly service of such notice to such assessee. Thus the service of statutory notice u/s 143(2) of the Act is ***sine qua non*** for non-acceptance of returned income in any assessment proceedings. That is say in absence of service of such statutory notice upon an assessee, both the scrutiny of such return and consequential variation (if any) *de-facto* suffers from jurisdiction and *per-se* renders invalid, therefore as such proceedings deserves to be quashed *in limine* .

11. The Hon'ble Bombay High Court in the case of 'ACIT Vs Geno Pharmaceuticals Ltd.' [2013, 214 Taxman 83 (Bom)] held that notice u/s 143(2) of the Act is mandatory, and in absence of such service, the Assessing Officer ***cannot proceed to make an inquiry*** on return filed in compliance with notice issued u/s 148 of the Act. In this case a new contention/ground 'that the notice u/s 143(2) of the Act is mandatory and it is not a procedural irregularity for the purpose of reassessment'



was raised for the first time before the Tribunal and the Tribunal accepted & allowed the new ground raised by assessee.

12. In '*CIT Vs Salman Khan*' [ITA 508 of 2010 (Bom)] their Hon'ble Lordship have reiterated its ratio laid in '*CWT Vs JM Scindia HUF*' [300 ITR 193] that, where a return in pursuance of reopening notice u/s 148 of the Act is filed & stands valid on record, it is mandatory for the assessing officer to issue statutory notice u/s 143(2) of the Act for making inquiries thereinto to vary the income returned for the purpose of reassessment. The failure to do so renders the re-assessment *void*.

13. No doubt, where any assessment or reassessment had an effect of increase in returned income or reduction in returned loss or otherwise underpayment of taxes is detected, and in view of section 5A of the Act only 50% of such variation is assessed in the hands of individual assessee and leaving balance 50% thereof to be assessed



in the hands of spouse of such individual assessee. The Revenue is free to do so u/s 147 of the Act. However while resorting to provisions of section 147 of the Act to assess such 50% balance variation in the hands of spouse of such individual assessee, the Revenue is duty bound to adhere to due process of law, which otherwise required for making any valid assessment under the Statute.

14. In the present case, in consequence of husband 'Melwyn Camara's assessment, the Ld. JAO after recording reasons and obtaining prior approval from competent authority has validly initiated & assumed the reassessment jurisdiction u/s 147 of the Act. Pursuant thereto the appellant assessee by written representation (physical & through e-proceedings) requested the Ld. JAO to treat original return filed by her as the return for the purpose of re-assessment. The reassessment making 50% of balance addition towards unexplained



expenditure u/s 69C of the Act however was made without first serving the statutory notice u/s 143(2) of the Act. The failure upon the Ld. JAO to issue and serve the statutory notice on appellant assessee separately in reopened assessment is fatal and cannot be validated by pressing into service the provisions of section 5A of the Act on the pretext that the statutory notice u/s 143(2) of the Act was validly served earlier in husband 'Melwyn Camara's assessment'.

15. The provisions of section 5A of the Act merely empowered the Ld. JAO for valid initiation of reassessment proceedings against the appellant assessee. Once initiated validly, such proceedings were separately subjected to all the necessary & statutory compliance of law for making reassessment in the hands of appellant assessee. Statutory compliance (if any) adhered in husband '**Melwyn Camara's assessment**' cannot ratify non-compliance in the appellant's case.



16. The Revenue's plea that by participation appellant waived-off service of notice in our considered view has no legs to stand because the appellant's participation in proceedings cannot be sacrosanct for the assumption jurisdiction. In the case of '*PCIT Vs Silver Line*' [2016, 383 ITR 455 (Del)] similar issue dealt with regard to issue of notice *vis-a-vis* participation on behalf of assessee in the proceedings without issue of 143(2) notice is worth noticing as could be seen from the following;

'The proposal to reopen an assessment under section 147 of the Income-tax Act, 1961, is to be based on reasons to be recorded by the Assessing Officer. Such reasons have to be communicated to the assessee. Merely because the assessee participates in the proceedings pursuant to such notice under section 148 of the Act, it does not obviate the mandatory requirement of the Assessing Officer having to issue to the assessee a notice under section 143(2) of the Act before finalising the order of reassessment. A reassessment order cannot be passed without compliance with the mandatory requirement of notice being issued by the Assessing Officer to the assessee under section 143(2). The requirement of issuance of such notice is a jurisdictional one. It does go to the root of the matter as far as the validity of the reassessment proceedings under section 147 / 148 of the Act is concerned.' (Emphasis supplied)



17. As solidified from the records by the Revenue there was no notice issued u/s 143(2) of the Act to the appellant assessee separately, in the event the reassessment proceedings were without jurisdiction, hence unsustainable in law and therefore deserves to be quashed in view of judicial precedents cited (supra), ergo ordered accordingly. Since the re-assessment proceedings on legal jurisdictional ground is held as invalid, void ab initio, all remaining contentions/grounds raised have become academic in nature, hence, the same are not adjudicated upon.

18. The appeal of the assessee in result stands ALLOWED.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

-S/d-
G. D. PADMAHSHALI
ACCOUNTANT MEMBER

Panaji/Dt: 26th August, 2025.

Copy of the Order forwarded to :

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|-------------------|--------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.