

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA**

Before **Shri Mahavir Singh, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.135/Kol/2011
Assessment Year :2005-06

Income Tax Officer, Ward-2(2) Midnapore, Kshudiram Nagar, Paschim Midnapore	V/s.	Smt Sunita Jain Jain Building, Kharida Main Road, Kharagpur, Paschim Midnapore [PAN No. ACOPJ 2411 J]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Smt. Shreya Layalka, ACA
सुनवाई की तारीख/Date of Hearing	26-10-2015
घोषणा की तारीख/Date of Pronouncement	06-11-2015

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is arising out of order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata in appeal No.245/CIT(A)-XXXVI/Kol/37/Ward-2(2), Mid.08/09 dated 26.11.2010. Assessment was framed by ITO Ward-2(2), Midnapore u/s 144/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2008 for assessment year 2005-06 Revenue has raised following grounds:-

"1, On the facts and in the circumstances of the case the Ld. CIT(A)-XXXVI, Kolkata erred in deciding that the A.O was having no jurisdiction over the appellant at the time of re-opening the assessment and issuing

notice u/s 148 and therefore, reopening of the assessment was void authorities below-initio.

2. On the facts and in the circumstances of the case the Ld. CIT(A)-XXXVI, Kolkata has erred in deleting the additions of Rs.29,01,000/- which was made as investment from undisclosed sources made by AO without appreciating the facts that the assessee has failed to comply with the terms of notice u/s. 148 within 30 days from the date of receipt of the notice.”

2. At the time of hearing of this appeal, none appeared on behalf of Revenue. The Ld. DR sought for the bulk adjournment in 19 cases but we rejected the adjournment application in those cases where we find that the hearing can take place without the presence of the DR. So we decided to hear this case and proceeded after Smt. Shreya Loyalka, Ld. Authorized Representative appearing on behalf of assessee.

3. First ground of Revenue's appeal is regarding that Ld. CIT(A) has erred in deciding that Assessing Officer was having no jurisdiction over the appellant at the time of re-opening of assessment u/s. 147 of the Act.

4. Briefly stated facts are that assessee is an individual and has made investment of Rs.29.01 lakh in different mutual funds. During the financial year 2004-05 the AO found that assessee has not filed her return of income for the relevant assessment year i.e. 2005-06 and therefore he formed the belief that income has escaped assessment. So AO has issued a notice u/s. 148 of the Act requiring assessee to file its return of income, however, there was no compliance from the side of assessee in spite of several reminders issued on different dates. After that AO finally framed the income escaped assessment u/s 144 r.w.s 147 of the Act and raised demand accordingly. Aggrieved, assessee preferred appeal before Ld. CIT(A).

5. Before Ld. CIT(A) assessee demonstrated that assessment in A.Y 2003-04 being assessed with ITO ward 2(2) of Midnapore and after that assessee has shifted to New Delhi at the following address:-

“31 North Avenue Road, West Punjabi Bagh, New Delhi - 110026”

Assessee received a notice u/s. 142(1) dated 16.07.08 through its old neighbor at Midnapore. On receipt of said notice on 20.08.2008 assessee immediately informed the ITO ward 2(2) Midnapore that she had shifted to New Delhi and have already filed her return of income since 2003-04. On the basis of above, Ld. CIT(A) opined that AO (ITO Ward-2(2) Midnapore) was not having jurisdiction over the appellant at the time of reopening of assessment by issuing notice u/s. 148 of the Act and held that the reopening of assessment was void ab-inito. Aggrieved, Revenue is in appeal before us.

6. We have heard Ld. AR and perused the materials available on record. Ld. AR submitted paper book containing pages 1 to 9 and he relied on the order of Ld. CIT(A). From the aforesaid discussion we find that petitioner has shifts its business and residence from Midnapore to New Delhi and her return of income were duly filed before AO having jurisdiction over the area where business of the petitioner situated. Further, Ld. AR drew our attention that necessary details were submitted at appellate stage and it is clear the specifying that assessee has shifted its business as well as residence from Midnapore to Delhi and PAN of assessee has also been transferred from Ward 2(2) Midnapore to Ward 25(4) New Delhi. We are also relying on the judgment of Hon'ble Delhi High Court in the case of *K.K. Loomba v. CIT & Ors* Civil Writ Petn. 2983 of 1997 & Civil Misc. No. 5877 of 1998 dated 30-11-1998, wherein the head-note reproduced as under:-

“IT authorities – Jurisdiction of AO-Territorial jurisdiction – Petitioners shifted their business / profession and residence from Amritsar to Delhi – Return could have been filed only before an AO at Delhi and he would have jurisdiction to assess them – Therefore, the AO having jurisdiction over them would also have jurisdiction to issue notices under s. 148, though referable to the period when they were assessed or were

assessable at Amritsar by virtue of s. 124(1) and 124(5) r/ws. 120(1) – No order under s. 127 or s. 124(2) was called for”

In view of the decision of Hon'ble Delhi High Court in the case of *K.K. Loomba* (supra) we infer that Assessing Officer was having no jurisdiction on the assessee as he was shifted from Midnapore to Delhi and same fact was duly communicated to the I.T. Department. In terms of the above decision, we are inclined to quash the proceedings u/s 147 of the Act. This ground of Revenue's appeal is dismissed.

7. Since the jurisdictional issue for reopening of assessment in Revenue's appeal is dismissed, hence, remaining ground of Revenue's appeal does not require any adjudication.

8. **In the result, Revenue's appeal is dismissed.**

Order pronounced in the open court 06/11/2015

Sd/-
(Mahavir Singh)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 06/11/2015 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO, Ward-2(2), Kshudiram nagar, Paschim Midnapore
2. प्रत्यर्थी/Respondent-Smt. Sunita Jain, Jain Bldg. Kharida Main Rd., Kharagpur P.MID
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।