आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 391/Ind/2015

निर्धारण वर्ष /Assessment Year: 2005-06

Income Tax Officer 2(2)
Bhopal :: अपीलार्थी /Appellant

Vs

Sandeep Kumar Dubey
Bhopal
PAN – AJVPD 3854B :: प्रत्यर्थी /Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
निर्धारिती की ओर से/Assessee by	Shri Sumit Nema
सुनवाई की तारीख Date of hearing	15.3.2017
उद्घोषणा की तारीख Date of pronouncement	20.3.2017

आदेश /O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the Revenue against the order of the learned CIT(A)-I, Bhopal, dated 30.3.2015 in First Appeal No.CIT(A)/BPL/IT-268/13-14 for the assessment year 2005-06.

2. The only ground raised by the Revenue–appellant reads as follows :-

> "*On the facts and in the circumstances of the case, ld. CIT(A)-I has erred in –*
>
> > *"Whether on the facts and circumstances of the case, the ld. CIT(A) was justified in the view that the assessment order for the A.Y. 2005-06 is not a legally valid issued by a non-jurisdictional Assessing Officer and hence annulled."*

3. The facts, in nutshell, are that the assessee did not file his return of income u/s 139 of the Act (in short 'the Act') for the assessment year 2005-06. The ITO, Ward-2, Sagar, received information that the assessee had made investment of Rs.71,50,000/- in Kisan Vikas Patra on 31.3.2005 with the Post Office, Sagar Cantt., Sagar, and received an amount of Rs.1,10,34,595/- on 9.5.2011 on maturity of these Kisan Vikas Patras and the amount was deposited in his bank account with Union Bank of India, Garhkota, Sagar. The ITO, Ward-2, Sagar initiated reassessment proceedings u/s 147 of the Act for the assessment year 2005-06 by issuing notice u/s 148 of the Act on 17.2.2012 after recording reasons on 1.2.2012 and obtaining satisfaction of the JCIT, Sagar Range, Sagar. In response to the

notice u/s 148 of the Act, the assessee furnished return of income before the ITO, Ward-2, Sagar, on 2.7.2012 declaring nil taxable income and agricultural income of Rs. 28,22,000/- under protest. The assessee requested the ITO, Sagar, that he was residing at Bhopal and his jurisdiction vested with ITO 1(1), Bhopal. Thereafter, the ITO, Ward 2, Sagar, transferred the records vide letter dated 5.9.2012 to ITO 1(1) Bhopal. The ITO 1(1), Bhopal continued with the assessment proceedings and issued notice u/s 143(2) of the Act on 4.10.2012. Subsequently, the ITO, Bhopal, also issued notice u/s 142(1) of the Act with detailed questionnaires and after considering the submissions of the assessee and making inquiries, completed the assessment u/s 147 of the Act read with section 143(3) of the Act on 5.3.2013 determining taxable income at Rs.71,50,000/- and agricultural income at Rs. 50,000/-.

4. Being aggrieved, the assessee carried the matter before the learned CIT(A)-I, Bhopal. The learned CIT(A), after careful consideration of the submissions of the assessee in the wake of the facts of the case, allowed the appeal of the assessee.

5. Since the learned CIT(A) has granted relief to the assessee and annulled the assessment order on legal ground, therefore, the aggrieved revenue has filed this appeal challenging the conclusion recorded by the learned CIT(A) on the ground as reproduced hereinabove.

6. The main crux of the contentions of the learned Departmental Representative (in short 'learned DR') is that when initiation of reassessment proceedings u/s 147 of the Act was made by the ITO, Sagar, by issuing notice u/s 148 of the Act and these proceedings were also continued by the ITO, Bhopal, by issuing subsequent notices u/s 143(3) and 142(1) of the Act at the request of the assessee himself then the assessee cannot challenge the validity of assumption of jurisdiction by the ITO, Bhopal. Per contra, the contention of the learned counsel for the assessee is that when the ITO, Sagar, has initiated reassessment proceedings by issuing notice u/s 148 of the Act in pursuance with the direction and approval of the JCIT, Sagar, then without an order transferring the jurisdiction to ITO, Bhopal, the ITO, Bhopal cannot assume valid jurisdiction for framing the reassessment order and in such a case

the reassessment order has to be treated as passed without having valid jurisdiction.

7. On careful consideration of the above submissions, we are of the view that the reassessment order u/s 147 read with section 143(3) of the Act dated 5.3.2013 for the assessment year 2005-06 has been passed by the ITO, Bhopal, in continuation to the reassessment proceedings initiated by the ITO, Sagar, on transfer of assessment record at the request of the assessee vide letter dated 5.9.2012. From the relevant operative part of the impugned order i.e. para 3.15 to 3.24, we observe that the learned CIT(A) has relied upon various judicial pronouncements of the orders of the Hon'ble Supreme Court, Hon'ble High Courts and ITAT including the decision of ITAT, Delhi, in the case of ITO vs. M/s Indus Valley Investment & Finance P. Ltd. dated 6.7.2012 in ITA No. 4239/Del/2011 for the assessment year 2002-03 wherein the Tribunal, upholding the findings of the learned CIT(A) quashing the reassessment order, has dismissed the appeal of the revenue with the following observations :-

"5. We have heard both the parties and gone through the facts of the case. The issue before us is as to whether the reassessment framed by the AO i.e ITO Ward-11(4),New Delhi, in pursuance to a notice dated 31.03.2008 u/s 148 of the Act, issued by Income-tax Officer, Ward-2, Gurgaon, who did not have jurisdiction over the case of the assessee, is valid one. A mere glance at the relevant provisions reveals that section 147 authorizes and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income has escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The reason to believe must be that of the concerned AO ,having jurisdiction over the case, who has relevant returns and other material in his possession. Section 148(1) of the Act envisages that before making the assessment, reassessment or recomputation u/s 147, the AO shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is 9 ITA no.4239/Del./2011 assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. Sub section (2) provides that the AO shall, before issuing any notice under this section, record his reasons for doing so. It is the assessing officer ,who has jurisdiction over the assessee and records reasons, who can issue notice u/s 148 of the Act. It is well settled that consent cannot confer jurisdiction upon the AO nor waiver by the assessee[CIT v. Ramsukh Motilal [1955] 27 ITR 54(Bom.)

5.1 In the instant case, indisputably ITO Ward-11(4),New Delhi had jurisdiction over the assessee company and the assessee is filing return in that ward regularly. The ITO Ward-2,Gurgaon,who did not have jurisdiction over the assessee, issued a notice u/s 148 of the Act on the basis of information from DIT(Investigation) that the assessee

was in receipt of accommodation entries. As soon as the assessee informed him that jurisdiction over his case was vested with ITO Ward-11(4),New Delhi, records were transferred to New Delhi. Thereafter, the said ITO proceeded to complete the assessment without even recording reasons to believe stipulated in section 147 or issuing any notice u/s 148 of the Act. As mentioned by the AO in his remand report, the ITO Ward 11(4),New Delhi never issued any notice u/s 148 of the Act .Thus ,he did not assume jurisdiction to reassess the income of the assessee even when original return declaring income of ``37,440/- was filed on 22.10.2002 by the assessee in his ward. Apparently, the ITO Ward 11(4),New Delhi committed an irregularity by not issuing notice u/s. 148 of the Act again and instead continued the proceedings u/s. 148 of the Act, initiated on 31.3.2008 by the ITO Ward- 2,Gurgaon. This was objected to by the assessee vide letter dated 3-12-2008. Apparently, the jurisdictional AO i.e. ITO, Ward-11(4),New Delhi never acquired jurisdiction to re-assess the income of the assessee under section 147 of the Act nor ever recorded the reasons in writing as stipulated in the said section. The 10 ITA no.4239/Del./2011 reasons for reopening of any assessment have to be recorded by jurisdictional AO alone because he maintains the relevant and primary records. The basic requirement u/s 147 of the Act is that the AO has reason to believe that any income chargeable to tax has escaped assessment. Such belief can be of jurisdictional AO alone and not of any other AO or authority. Reassessment proceedings initiated on the directions given by the CIT were held to be invalid in CIT v. T. R. Rajkumari [1973] 96 ITR 78 (Mad.) & Sheo Narain Jaswal & Ors. v. ITO & Ors. [1989] 176 ITR 352 (Pat.). Hon'ble Apex Court in CIT v. A. Raman & Co., [1968] 67 ITR 1 (SC) observed that whether on the information in his possession he should commence a proceeding for assessment or reassessment must be decided by the Income-tax Officer and not by the High Court. The Income-tax Officer alone is entrusted with the power to administer the Act; if he has information from which it may be said, prima facie, that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court, exercising powers under article 226 of the Constitution, to set aside or vacate the notice for reassessment on a reappraisal of the

> *evidence. The ITO referred to herein is ,ITO having jurisdiction over the assessee and not any other ITO. It is well-settled that if a notice under section 148 of the Act has been issued without the jurisdictional foundation u/s 147 of the Act being available to the AO, the notice and the subsequent proceedings will be without jurisdiction and thus, liable to be struck down . In view of the foregoing, we have no hesitation in upholding the findings of the ld. CIT(A), quashing the reassessment order. Consequently, ground no1 in the appeal is dismissed*

In view of the above, it is a very well settled legal position that if a notice u/s 148 of the Act has been issued by one Assessing Officer and when the assessee informed that the jurisdiction over his case was vested with another ITO and records were transferred to that another ITO and thereafter the said ITO proceeded to complete the reassessment proceedings without even recording reasons to believe, as required u/s 147 of the Act, or issue any notice u/s 148 of the Act then it has to be held that the subsequent Assessing Officer did not assume valid jurisdiction to reassess the income of the assessee u/s 147 read with section 143(3) of the Act. The basic requirement of section 148 of the Act is that the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment. Such belief can be only of the jurisdictional Assessing Officer and not of any other Assessing Officer or authority

who initiated reassessment proceedings and issued notice u/s 148 of the Act.

8. In view of the above legal position, it is also well settled that the consent of the assessee cannot confer valid jurisdiction upon the Assessing Officer nor waiver of right of the assessee to object confer valid jurisdiction to frame reassessment order. Hence, we are inclined to hold that the conclusion recorded by the learned CIT(A) on this first legal issue is quite correct and justified as per the scheme of the relevant provisions of the Act and we hold that the first appellate authority was right in annulling the reassessment order as having been made by the Assessing Officer without jurisdiction.

9. The next legal issue posed by the learned DR is that the learned CIT(A) has grossly erred in annulling the assessment on the ground that the ITO, Bhopal, has initiated reassessment proceedings u/s 147 of the Act in pursuance with the direction issued by the learned CIT and reassessment in such a case has to be treated as without jurisdiction. The learned DR further submitted that the learned CIT(A) has granted relief to the assessee

on the second legal ground by picking up last line of the reasons recorded and he has ignored the detailed reasons recorded by the ITO, Sagar, for initiation of reassessment proceedings. Therefore, the conclusion arrived at by the learned CIT(A) deserves to be dismissed.

10. Replying to the above, the learned counsel for the assessee, placing reliance on various judicial pronouncements including the decision of the Hon'ble Madhya Pradesh High Court in the case of Chunnilal Onkarmal Pvt. Ltd.; 139 ITR 380 (MP), submitted that the issuance of notice u/s 148 of the Act under the direction of the CIT to reassess the partner in the status of AOP or body of individuals is not valid. The learned counsel for the assessee vehemently contended that from the last line of reasons recorded, it is clear that the ITO, Sagar, has recorded reasons on the directions of the JCIT, Sagar, which is not permissible under the law. Therefore, the learned CIT(A) was also justified in annulling the reassessment order on this count.

11. On careful consideration of the above rival submissions, we observe that the learned CIT(A) has granted relief to the assessee on this legal issue with the following findings :-

> *"The power to take action in respect of escaped income u/s 147 of the Act vests exclusively with the Assessing Officer. The Assessing Officer has to initiate the proceedings if the conditions us 147 of the Act exists. The Hon'ble Madras High Court in the case of T.R. Rajakumari (1974) 96 ITR 78 (Mad.) held that initiation by the Assessing Officer for reassessment proceedings u/s 147 of the Act at the direction of the Commissioner is invalid. Similarly in the case of Sheo NarayanJaiswal vs. ITO (1989) 176 ITR 352 (Patna) it was held that where the Assessing Officer exercised jurisdiction u/s 147 assessment the behest of any superior authority, it must be held that the assessment of jurisdiction was bad in law. The Hon'ble M.P. High Court in the case of Chunnilal Onkarmal (P) Ltd. vs. ITO (1983) 139 ITR 389 (M.P.) also observed that discretion or judgment to be exercised u/s*

147 must be exercised by the A.O. Where ITO initiated assessment proceedings u/s 147 of the Act pursuance of direction issued by Commissioner, the reassessment in such a case had to be treated as without jurisdiction and could not, therefore, be sustained. Therefore, on this account also, the reasons recorded u/s 148 of the Act by ITO, Ward-2, Sagar, were also invalid."

12. From the above we decline to accept the contention of the learned DR that the Assessing Officer initiated reassessment proceedings at his own by application of mind to the facts and material came to his notice, as when we analyze the reasons recorded by the ITO, Sagar, in totality then it is clearly discernible that the ITO, Sagar, after mentioning the facts of the case, noted in the last of the reasons recorded that the JCIT, Sagar, vide communication dated 2.1.2012 has directed him to send proposal for initiation of reassessment proceedings.Therefore, in our considered opinion, where the Assessing Officer exercised the jurisdiction available to him u/s 147 of the Act on the directions of any superior authority then the reassessment proceedings u/s 147

of the Act, notice u/s 148 of the Act and the reassessment order passed u/s 143(3) read with section 147 of the Act in pursuance thereto, are bad in law and void ab initio. Our conclusion also gets strong support from the ratio of the decision of the Hon'ble jurisdictional High Court in the Chunnilal Onkarmal Pvt. Ltd., (supra).

13. In view of the above, we are unable to see any valid reason to interfere with the order of the learned CIT(A) on this count and thus we uphold the same. Accordingly, the sole ground of revenue, being de void of merit, is dismissed.

14. In the result, the appeal of the revenue is dismissed on both the counts.

The order has been pronounced in open Court on 20th March, 2017.

Sd/-	sd/-
लेखा सदस्य	न्यायिक सदस्य
(O.P.Meena)	(C.M. Garg)
Accountant Member	Judicial Member

March 20th , 2017.

Dn/