

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C': NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No. 5818/Del/20113
Assessment Year: 2001-02

Goverdhan Financial Services Ltd., J-13, Udyog Nagar Indl. Area, New Delhi (PAN: AAACG0991P) (Appellant)	Vs.	ACIT, Central Circle-2, New Delhi (Respondent)
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Appellant by : Sh. Anil Jain, CA
Respondent by : Sh. A.K. Saroha, CIT(DR)

Date of hearing: 20.08.2015
Date of pronouncement: 30.09.2015

ORDER

PER INTURI RAMA RAO, A.M.:

This appeal by the assessee is directed against the order of CIT(A), dated 02.08.2013 passed for the assessment year 2001-02. The appellant raised the following grounds of appeal:

- i. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has failed to appreciate that initiation of proceeding u/s 148 and the assessment order passed by the Ld AO u/s 144/148 is illegal, bad in law, wrong on facts and without jurisdiction.
- ii. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has failed to appreciate that the assumption of the jurisdiction by the Ld AO on the basis of wrong centralization order passed u/s 127 is illegal and bad in law. Consequently the notices issued u/s 143(2) and 142 (1) on the basis of wrong centralization and assessment framed thereupon also becomes illegal.
- iii. That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has failed to appreciate that the notices issued u/s 143(2) and 142 (1) on 30.12.2008 fixing the hearing for 31.12.2008 are

illegal, bad in law and not properly served .Consequently assessment framed U /s 144/148 on the basis of invalid notices also becomes illegal.

- iv. That the Ld CIT Appeal has failed to appreciate that impugned assessment order passed by the learned assessing officer is against the principles of natural justice and has been passed without affording reasonable opportunity of being heard.
- v. That on the facts and circumstances of the case and the provision of the law the Ld CIT Appeal has erred in sustaining an addition of Rs.1600000/- as unexplained income from undisclosed sources.
- vi. That on the facts and circumstances of the case and the provision of the law the Ld CIT Appeal has erred in sustaining estimation of income from all sources at Rs.200000/- net of expenses against the loss of Rs.3320 /- as declared in the return of income.
- vii. That the appellant craves the right to amend, append, delete any or all grounds of appeal.

2. Brief facts of the case are that the assessee-company was issued notice under Section 148 of the Income-tax Act, 1961 (for short 'the Act') on 26th March, 2008 by the Income Tax Officer, Ward 3(2), New Delhi. This notice was issued based on the information received from the Director of the Income Tax (Investigation), New Delhi, that the assessee company had received accommodation entries for Rs. 16 lakhs from M/s S.K. Investment Ltd. Despite proper service of notice under Section 148 of the Act, the assessee company had chosen not to file the return of income. However, on 18.12.2008, when the assessment was about to be barred by limitation, the assessee-company filed a letter that the original return of income filed may be treated as return in response to the notice under Section 148 of the Act. Subsequently, the Income Tax Officer, Ward -12, issued notice under Section 143(2) of the Act on 10.07.2008 and 07.10.2008. The notices were not complied by the assessee company. Therefore, vide show cause notice dated 17.11.2008, the assessee was called upon to explain the nature of transaction entered by it with M/s S.K. Investments

and file confirmation letters along with income tax particulars and share application form and bank statements, and was specifically called to produce the above parties for examination. In response to this show cause notice, the assessee company stated that the details were under compilation and therefore requested for adjournment of the case for 26th of November, 2008. Again on 28th November, 2008, another notice was issued under Section 143(2) of the Act fixing the case for hearing on 4th December, 2008, on which date, no one attended. Subsequently, on 10th December, 2008, another letter was issued proposing to make addition of Rs. 18 lakhs and it was only on 18.12.2008 one Mr. Anil Jain, CA appeared on behalf of the assessee company. The case was adjourned for 24th December, 2008. On this date, Mr. Anil Jain, CA filed a letter challenging the order passed by the Commissioner of Income Tax under Section 127 of the Act. It was contended that the correct jurisdiction of the case was lying with Commissioner of Income Tax, Delhi -IV, New Delhi. Subsequently, the Commissioner of Income Tax, Delhi-IV, New Delhi, passed an order under Section 127 of the Act, dated 30.12.2008, centralizing the case with the Assistant Commissioner of Income Tax, Central Circle-2, New Delhi. The Assistant Commissioner of Income Tax, Central Circle-2, New Delhi, issued notice under Sections 143(2) and 142(1) on 30.12.2008 fixing the case for hearing on 31.12.2008. The Inspector of the Department was deputed to serve the notice who had reported that no person was present in the given address to receive the notice and therefore, the notice were served through affixture and it was stated that the AR of the assessee was duly informed of the same on

30.12.2008. On 31.12.2008, nobody attended the hearing and in this circumstances the Assessing Officer was forced to make the assessment under Section 144 of the act vide assessment order dated 31.12.2008, after making the addition of Rs. 18 lakhs.

2.1 Being aggrieved by the assessment order, an appeal was filed before the CIT(A) who vide order dated 2nd August, 2013, after calling for the remand report from the Assessing Officer, confirmed the order of the Assessing Officer. Hence, the appellant is before us with the present appeal.

3 It was contended by learned counsel for the assessee that the very initiation of the proceedings under Section 148 of the Income-tax Act, 1961 (for short 'the Act') is illegal. He further contended that the order passed under Section 127 of the Act by the Commissioner of Income Tax, Delhi-IX, is wrong, inasmuch as, the jurisdiction of the case vests with the Commissioner of Income Tax, Delhi-IV, New Delhi. Therefore, it was contended that the notices issued under Section 143(2) and 142(1) are bad in law. It was further contended that the assessment had been completed in utter disregard of principles of natural justice. On merit, it was argued that the assessee has discharged his onus that was lying upon him by filing the confirmation letters etc. before the CIT(A). He, therefore, prayed before us that the additions made may be deleted.

4. On the other hand, the learned CIT(DR) placed reliance on the orders of the lower authorities.

5. We heard the rival submissions and perused the material on record. Firstly, we shall deal with the first ground of appeal as it goes to the root of the

matter that challenges the very initiation of the proceedings under Section 148 of the Act. In this case, the reassessment notice was issued based on the specific information received from the Investigation Wing of the Department that the appellant received the accommodation entries from M/s S.K. Investments Ltd. The information received from the Department further reveals that the appellant had given cash to M/s S.K. Investments Ltd. and M/s S.K. Investments Ltd. after receipt of the cash, deposited the same amount into its bank account and issued cheques in favour of the appellant. We do not find any ambiguity in this information, and this had made the Assessing Officer to believe that the income got escaped assessment.

6. In the case involving identical facts of the case, the Honøble Jurisdictional High Court in the case of CIT Vs. Nova Promoters and Finlease (P.) Ltd., 342 ITR 169, held that the initiation of proceedings under Section 148 is valid in law.

Therefore, following the above decision of the Honøble Jurisdictional High Court, we hold that the proceedings initiated under Section 148 of the Act are valid in law.

7. Having held that the assessment proceedings are valid in law, we now proceed to adjudicated ground no. 2 which challenges the order passed under Section 127 of the Act. In our considered opinion, the provisions of Income Tax Act, 1961 does not provide for an appeal before this forum against the order passed under Section 127 of the Act. It is trite law that no appeal is

maintainable, unless statute specifically provides for it. Thus, this ground of appeal is dismissed as infructuous.

8. Ground no. 3 challenges the validity of notice issued under Section 143(2) of the Act. We find from the record that the notice under Section 143(2) was issued by the Assessing Officer who issued the notice under Section 148 of the Act because he was having valid jurisdiction over the case. It is not even the case of the appellant that the notice under Section 143(2) was not issued within the time. Hence, we hold that the notice issued under Section 143(2) was valid in law.

9. Ground no. 4 assails the orders of the Assessing Officer on the ground that the principles of natural justice were not followed while framing the assessment order, as the appellant was not given reasonable opportunity of being heard. We notice from the record that the jurisdiction over the case was transferred to the Assistance Commissioner of Income Tax, Central Circle-2, Delhi, by the Commissioner of Income tax, Delhi-IV, New Delhi under Section 127 on 30.12.2008 and on the same date the notice of hearing was issued by the Assistant Commissioner of Income Tax posting the case for hearing on 31.12.2008. Without going into the issue whether the service of this notice is valid or not, since the original notice issued was valid in law, we hold that subsequent notice dated 30.12.2008 fixing the case for 31.12.2008 i.e. very next date without giving any reasonable time to respond the notice, is not valid in law. In our considered opinion, this does not amount to reasonable opportunity to the assessee to represent his case before the Assessing Officer

who passed the assessment order. Therefore, in our considered opinion, the interest of justice would be met, if the matter is restored back to the file of the Assessing Officer for de novo assessment. Accordingly, the matter is restored to the file of the Assessing Officer for de novo assessment, after affording reasonable opportunity of being heard to the assessee company. Since we remit the matter to the file of the Assessing Officer, it is not necessary to adjudicate ground nos. 5,6 and 7, which are general in nature.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision is pronounced in the open court on 30th September, 2015.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 30th September, 2015.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi