

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 795/KOL/ 2015
Assessment Year: 2006-2007**

Income Tax Officer,.....Appellant
Ward-58(2), Kolkata,
169, A.J.C. Bose Road,
Bamboo Villa, 8th Floor,
Kolkata-700 014
-Vs.-

Sri Biswanath Banerjee,.....Respondent
79, SPB Block, Baghajatin,
Kolkata-700 086
[PAN: ADPPB 9285 Q]

Appearances by:

Md. Ghayas Uddin, JCIT, Sr. D.R., for the Department
Shri V.N. Datta, Advocate, for the assessee

Date of concluding the hearing : April 13, 2017
Date of pronouncing the order : June 07, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-18, Kolkata dated 31.03.2015, whereby he cancelled the assessment made by the Assessing Officer under section 147/144 of the Act holding the same to be invalid.

2. The assessee in the present case is an individual, who works as an Assistant Teacher of St. Lawrance High School. The return of income for the year under consideration was filed by him on 11.01.2007 declaring total income of Rs.99,428/-. The said return was initially processed by the Assessing Officer under section 143(1). Subsequently he entertained a belief about the escapement of the income of the

assessee from the assessment and accordingly the assessment was reopened by him after recording the reasons. There was, however, no response to the notice issued by the Assessing Officer in this regard under section 148 as well as the notices issued under section 143(2) and 142(1) during the course of assessment proceedings on the part of the assessee. The Assessing Officer, therefore, proceeded to complete the assessment to the best of his judgment on the basis of information available on record. In the assessment so completed under section 147/144 vide an order dated 30.12.2011, he made additions of Rs.4,25,079/- and Rs.8,55,208/- on account of credits appearing in the Bank accounts of the assessee with Bank of India, Baghajatin Branch and Syndicate Bank, St. Lawrance School Branch respectively by treating the same as unexplained since the assessee could not produce any documentary evidence to explain the source of the same. Similarly the amount of Rs.20,69,102/- found to be invested by the assessee in LIC Mutual Fund was added by the Assessing Officer to the total income of the assessee by treating the same as unexplained. The short-term capital gain of Rs.80,803/- earned by the assessee without payment of STT was also added by the Assessing Officer to the total income of the assessee. Undisclosed Bank interest of Rs.2,405/- was also further added by the Assessing Officer to the total income of the assessee. Accordingly, the total income of the assessee was determined by the Assessing Officer at Rs.36,61,490/- in the assessment completed under section 147/144 vide an order dated 30.12.2011.

3. Against the order passed by the Assessing Officer under section 147/144, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the said assessment as well as disputing the additions made therein on merit. After considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) found merit in the preliminary issue raised by the assessee challenging the validity of the assessment made by the Assessing Officer under section 147/144 and proceeded to annul the said assessment for the following reasons given in paragraph no. 4.3 of his impugned order:-

"4.3. I have considered the submission of the AR of the appellant in the backdrop of the action of the AO in reopening the case. I find that the AO had issued notice 148 dated 22.03.2011 pertaining to AY 2006-07 without being accompanied with the reasonable belief that income had escaped assessment. On being requested to supply

the reasonable belief for reopening the assessment by the appellant vide letter dated 29.06.2011, the AO vide letter dated 29.08.2011 supplied the information wherein it was stated that credit of Rs.4,25,079/- in the undisclosed SB bank a/c no. 9348 for the FY 2005-06 was not disclosed in the return. However on going through the reasons for reopening in the assessment order, the reasons seem to vary. I also find that the reason for reopening the assessment was never accompanied with the notice u/s 148. This I find is a breach of law. I find that based on the material on record and the AR's submission supra the AO's action is not sustainable on both facts and law. The assessment made in this regard is therefore directed to be annulled. The AO is directed accordingly".

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. The Id. D.R. submitted that the assessment made by the Assessing Officer under section 147/144 was cancelled by the Id. CIT(Appeals) vide his impugned order by holding the same to be invalid on two grounds, i.e. the reasons were not supplied by the Assessing Officer to the assessee along with the notice issued under section 148 and the reasons for reopening as communicated by the Assessing Officer to the assessee were different from the reasons actually recorded. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Limited –vs.- ITO [259 ITR 19] as well as the decision of the Hon'ble Delhi High Court in the case of A.G. Holdings (Pvt.) Limited –vs.- ITO [21 taxman.com 34 (Delhi)] to contend that there is no requirement either in section 147 or section 148 or section 149 that reasons recorded should also accompany notice issued under section 148. He contended that the only requirement is that if after issuance of notice under section 148, the assessee asks for the reasons, the same should be provided by Assessing Officer. He submitted that in the present case, notice under section 148 was issued by the Assessing Officer on 22.03.2011 and when the assessee asked for the reasons on 29.06.2011, the same were duly communicated by the Assessing Officer on 29.08.2011. As regards the alleged variation in the reasons recorded by the Assessing Officer and communicated to the assessee, the Id. D.R. referred to the letter dated 29.08.2011 issued by the Assessing Officer communicating the reasons for reopening to the assessee to point out that the credits of Rs.4,25,079/- appearing in the undisclosed Bank account of the assessee with Bank of India, Baghajatin Branch on the basis of which the belief about the escapement of income of the assessee from assessment was entertained by him, had been duly

communicated by the Assessing Officer to the assessee. He submitted that although other reasons were also communicated by the Assessing Officer to the assessee separately and there might be some variation therein, the reason communicated by the Assessing Officer to the assessee vide letter dated 29.08.2011 was very much sustainable. He contended that even if the other reasons are not found sustainable or there is some variation, the same will not invalidate the notice issued under section 148. In support of this contention, he relied on the decision of the Hon'ble Calcutta High Court in the case of Jameson & Magrudar Co. (P.) Limited -vs.- ITO [167 ITR 77 (Cal.)], wherein it was held that if a notice under section 148 is issued on more than one grounds, and one of such grounds is sufficient to uphold validity of notice, then even other grounds that are not sustainable, will not make the notice bad in law. The ld. D.R. contended that the notice issued under section 148 in the case of assessee thus was in accordance with law and the ld. CIT(Appeals) is not justified to annul the assessment made by the Assessing Officer under section 147/144 by treating the reopening to be invalid.

5. The ld. counsel for the assessee, on the other hand, strongly supported the impugned order passed by the ld. CIT(Appeals) holding the reopening of assessment by the Assessing Officer to be invalid and annulling the assessment made in pursuance thereof. He relied on the decision of the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. -vs.- CIT [308 ITR 38 (Delhi)] to contend that if the reasons recorded by the Assessing Officer are different from the reasons communicated to the assessee, the reopening of assessment is bad in law. He also relied on the decision of Delhi Bench of this Tribunal in the case of Shri Balwant Rai Wadhwa -vs.- ITO (ITA No. 4806/DEL/2010 dated 14.01.2011) in support of the assessee's case on this issue.

6. In the rejoinder, the ld. D.R. pointed out that the decision rendered in the case of Haryana Acrylic Manufacturing Co. (supra) and relied upon by the ld. counsel for the assessee in support of the assessee's case has been subsequently distinguished by the Hon'ble Delhi High Court in the case of A.G. Holdings (Pvt.) Limited (supra) relied upon by him in support of the Revenue's case.

7. I have considered the rival submissions and also perused the relevant material available on record. It is observed that the assessment made by the Assessing Officer in this case under section 147/144 has been annulled by the Id. CIT(Appeals) by holding the reopening of the said assessment itself as bad in law on the ground that the reasons recorded by the Assessing Officer for reopening were not supplied to the assessee along with the notice issued under section 148 and there was a variation in the reasons so recorded by the Assessing Officer and communicated to the assessee. To support this decision of the Id. CIT(Appeals), the Id. counsel for the assessee at the time of hearing has relied on the decision of the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (supra) as well as the decision of Delhi Bench of this Tribunal in the case of Balwant Rai Wadhwa (supra). It is, however, observed that the facts involved in the case of Haryana Acrylic Manufacturing Co. (supra) were materially different. In the said case, the reasons, which had been communicated for initiation of proceedings under section 147 were entirely different from the reasons which had been supplied to the assessee, inasmuch as, while in the reasons supplied to the assessee, there was no mention of the allegation that there was a failure on the part of the assessee to disclose fully and truly all material facts, in the reasons recorded by the Assessing Officer, there was a specific allegation that there was a failure on the part of the assessee to disclose fully and truly all material facts relating to the relevant accommodation entries. Moreover, in the said case, there was inordinate delay of about three years on the part of the Assessing Officer in supplying the reasons recorded by him for reopening and since the said reasons were communicated by the Assessing Officer to the assessee finally after the expiry of six years, the reopening was held to be invalid by the Hon'ble Delhi High Court. On the strength of this decision of the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (supra), the reopening of assessment in the case of Balwant Rai Wadhwa (supra) was held to be invalid by the Tribunal as it was found in the said case that although the notice under section 148 was issued within a period of six years from the end of the relevant assessment year, but the reasons recorded by the Assessing Officer for reopening were not communicated to the assessee along with the said notice and the same were supplied only after the expiry of six years.

8. In the present case, the facts involved, however, are materially different, inasmuch as after issuing the notice under section 148 within a period of four years from the end of the relevant assessment year, i.e. on 22.03.2011, the reasons were also communicated by the Assessing Officer to the assessee on 29.08.2011 in response to the request made by the assessee on 29.06.2011. In the case of A.G. Holdings (Pvt.) Limited (supra), cited by the Id. D.R., Hon'ble Delhi High Court has held that there is no requirement in section 147 or section 148 or section 149 that the reasons recorded should also accompany the notice issued under section 148. It has been held that the requirement in section 149(1) is only that the notice under section 148 shall be issued after recording the reasons and the Assessing Officer is duty bound to supply the reasons recorded for reopening the assessment to the assessee only after the assessee has filed his return in response to notice issued under section 148 and on making a request to the Assessing Officer to that effect as held by the Hon'ble Supreme Court in the case of G.K. Driveshafts Pvt. Ltd. (supra).

9. It is also noted from the letter dated 29.08.2011 issued by the Assessing Officer to the assessee communicating the reasons for reopening that it was specifically brought by him to the notice of the assessee that during the course of assessment proceedings for A.Y. 2007-08, undisclosed Savings Bank Account No. 9348 maintained by the assessee with Bank of India, Baghajatin Branch was found where there was credit of Rs.4,25,079/- appearing during the year under consideration. Since this reason communicated by the Assessing Officer to the assessee was very much there in the reasons recorded by the Assessing Officer and even addition of Rs.4,25,079/- was made by him to the total income of the assessee in the assessment completed under section 147/144, I find that there was no variation at least in one of the reasons communicated by the Assessing Officer to the assessee from the one recorded by him. In the case of Jameson & Magrudar Co. (P) Limited [167 ITR 77 (Cal.)] (supra) cited by the Id. D.R., it was held by the Hon'ble Calcutta High Court that if the notice under section 148 is issued on more than one ground and one of the grounds is sufficient to uphold the validity of the notice, then even the other grounds, that are not sustainable, will not make the notice bad.

10. Keeping in view the above discussions made in the light of the facts of the case and the legal position emanating from the various judicial pronouncements, I am of the view that there was no legal infirmity in the reopening of assessment made by the Assessing Officer by issuing notice under section 148 as allegedly pointed out by the Id. CIT(Appeals) in his impugned order while annulling the assessment made by the Assessing Officer under section 147/144. In that view of the matter, I set aside the impugned order of the Id. CIT(Appeals) on this issue and remit the matter back to him for deciding the other grounds raised by the assessee in his appeal disputing additions made by the Assessing Officer in the assessment under section 147/144 on merit.

11. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open Court on June 07, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 7th day of June, 2017

- Copies to :
- (1) ***Income Tax Officer,
Ward-58(2), Kolkata,
169, A.J.C. Bose Road,
Bamboo Villa, 8th Floor,
Kolkata-700 014***
 - (2) ***Sri Biswanath Banerjee,
79, SPB Block, Baghajatin,
Kolkata-700 086***
 - (3) ***Commissioner of Income Tax (Appeals)-18, Kolkata;***
 - (4) ***Commissioner of Income Tax ,Kolkata***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Senior Private Secretary,
Head of Office/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.