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आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गाराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.252/Vizag/2013**
(निर्धारण वर्ष **/ Assessment Year: 2008-09)**

Medapati Venkayamma W/o Sri Bhaskara Rao Sivalayam Street Ubalanka, Ravulapalem Mandalam E.G. Dt.	Income Tax Officer Ward-2 Amalapuram
[PAN : BKSPM4895G]	
(अपीलार्थी / Appellant)	**(प्रत्यर्थी / Respondent)**

अपीलार्थी की ओर से / Appellant by : Shri G.V.N.Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri D.J.P. Anand, DR

सुनवाई की तारीख / Date of Hearing : 11.08.2017
घोषणा की तारीख/Date of Pronouncement : 18.08.2017

आदेश / **O R D E R**

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), [CIT(A)]-11, Mumbai holding concurrent jurisdiction of CIT(A), Visakhapatnam vide ITA No.CIT(A)-

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11/M/IT-649/2011-12 dated 26.02.2013 for the assessment year 2008-09.

2. The assesseee filed appeal with five grounds on merits along with appeal memo in Form No.36. Subsequently the assessee filed additional ground stating that the order passed u/s 143(3) on 29.12.2011 is barred by limitation. In this case, the assessee has not filed return of income, hence, the assessing officer issued notice u/s 142(1) on 29.01.2010 and the same was served on assessee on 15.02.2010. As per the notice issued u/s 142(1) the assessee has to file return of income before the due date mentioned in the notice, but the assessee choose not to file the return of income. The assessing officer issued notice u/s 148 on 16.11.2010 which was served on the assessee on 22.11.2010. In response to the notice issued u/s 148, the assessee filed return of income on 09.03.2011 declaring total income of Rs.Nil and agricultural income of Rs.40,000/-. The assessing officer issued notice u/s 143(2) and was served on the assessee on 30.05.2011. The assessing officer concluded the assessment on total income of Rs.51,01,400/- u/s 143(3) of I.T.Act. The assessee filed appeal against

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the order of the AO and the Ld.CIT(A) confirmed the assessment order of the assessing officer and dismissed the appeal of the assessee. The Ld.CIT(A) dismissed the technical ground in relation to issue of notice u/s 147 in para 4.3 which reads as under :

> *"4.3. I have carefully considered the facts of the case, the submissions of the appellant and assessment order. In view of the facts on record, it is noticed that the assessee did not file its return of income suo-moto. In spite of several reminders by the AO, the assessee was not filing its return of income. The conduct of the assessee clearly shows that had the AO has not initiated the reassessment proceeding, the assessee would have evaded the tax that it was supposed to pay and therefore, the action of the AO in taking recourse to section 147 is upheld and claim of the appellant is dismissed. Ground No.1&2 is dismissed."*

3. Appearing for the assessee, Ld.AR argued that in this case, notice u/s 142(1) was issued by the assessing officer on 29.01.2010 directing the assessee to furnish the return of income. Though the assessee has not filed return of income response to notice u/s 142(1), the assessing officer had initiated the assessment proceedings by issue of notice u/s 142(1) and has to complete the assessment u/s 144 by issue of show cause notice before 31.03.2011. There is procedure laid down in the Act for completion of the Best judgement assessment u/s 144 in case of non cooperative assessee. Therefore, the assessing officer is duty bound to complete the assessment within the time allowed under

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the Act for completing the assessment. By issue of notice calling for the return of income u/s 142(1), the assessing officer has initiated the assessment proceedings and during the continuation of the proceedings u/s 142(1), the assessing officer cannot issue notice u/s 148 calling for the return of income which is nothing but initiation of parallel income tax proceedings under two different sections for the same source of income for the same assessment year and the same is not permitted by law. As per the law laid down under Income Tax Act, the assessing officer is allowed to call for the return of income and other relevant information for completing the assessment u/s 142(1) of the Act. If the assessee files return of income, the scrutiny assessment proceedings would commence by issue of notice u/s 143(2) and in case of non furnishing the return of income, the assessing officer should resort to Best judgement assessment u/s 144 by issue of a show cause letter for making ex-parte assessment as per the information available with the assessing officer. Ld.AR further argued that when the assessment proceedings are already initiated by issue of notice u/s 142(1) and called for the return of income, no notice u/s 148 is required. Once the notice u/s 142(1) is issued, the assessment is required to be completed within

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the time limit allowed u/s 143(3) or 144. In this case, the assessment involved was of assessment year 2008-09 and the notice was issued on 29.01.2010. Therefore, the time limit for completion of assessment was expired on 31.03.2011. During the pendency of assessment proceedings, the assessing officer issued notice u/s 148 on 16.11.2010 for reopening the assessment which is bad in law and has to be treated as invalid. When the assessment proceedings are already pending, the notice issued u/s 148 is invalid and the assessment order passed u/s 143(3) is barred by limitation.

4. On the other hand, the Ld.DR argued that the assessing officer has issued notice u/s 142(1) calling for the return of income for the A.Y.2008-09 on 29.01.2010 and the assessee failed to furnish the return of income by 25.02.2010 the due date given in the notice. Since the assessee did not choose to file the return of income within one year from the end of the relevant assessment year, or before the due date mentioned in the notice u/s 142(1) the proceedings initiated u/s 142(1) were deemed to have been concluded and hence, the assessing officer has initiated proceedings u/s 147 of the I.T.Act which is valid. The

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Ld.DR contended that there is nothing wrong in issue of notice u/s 148 and the assessment order passed by the assessing officer is valid.

5. We have heard the rival submissions and perused the material placed on record. The assessing officer has passed the order in this case u/s 143(3) of I.T.Act. In this case, the assessee did not file the return of income hence the assessing officer issued notice u/s 142(1). There was no return of income filed by the assessee in response to the notice issued u/s 142(1). The assessing officer is empowered to issue notice u/s 142(1) for the purpose of making assessment under I.T.Act and calling for information in the following circumstances.

(a) For the purpose of making the assessment, where the return is furnished u/s 139 of I.T.Act.

(b) Where the assessee has not furnished return of income directing the assessee to furnish the return of income in respect of his income or the income of any other person in respect of whom he is assessable under this Act.

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5.1. From the above, it is clear that the assessing officer is authorized to call for the return of income and also collect information for the purpose of making assessment u/s 142(1). In case, if the assessee fails to furnish the return of income, provisions of section 144 of the Act applies and the assessing officer is required to complete the assessment as per the procedure laid down u/s 143(2) / 144 of I.T.Act. The time limit for completion of assessment is within two years from the end of the relevant assessment year. In case, the assessee did not respond to the notice issued u/s 142(1) and the assessing officer is duty bound to make assessment u/s 144 by issue of show cause notice. For ready reference, we extract relevant provisions of section 142(1) and 144 of I.T.Act.

Section 142(1) reads as under :

Inquiry before assessment.

> [81]***142.*** *(1) For the purpose of making an assessment under this Act, the [82][Assessing] Officer may serve on any person who has made a return [83][under section 115WD or section 139 [84][or in whose case the time allowed under sub-section (1) of section 139] for furnishing the return has expired] a notice requiring him, on a date to be therein specified,—*
>
> [85][*(i) where such person has not made a return [86][within the time allowed under sub-section (1) of section 139] [87][or before the end of the relevant assessment year], to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed*

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manner[88] and setting forth such other particulars as may be prescribed, or :]

Notice u/s 142(1) is issued in case of non filer calling for the return of income. In the instant case, the AO has issued the notice calling for return of income.

Section 144

Best judgment assessment.

*[30]**144.** [31][(1)] If any person—*

(a) fails to make the return required [32][under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [33][or fails to comply with a direction issued under sub-section (2A) of that section], or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the [34][Assessing] Officer, after taking into account all relevant material which the [34][Assessing] Officer has gathered, [35][shall, after giving the assessee an opportunity of being heard, make the assessment[36]] of the total income or loss to the best of his judgment and determine the sum payable by the assessee [37][* *] on the basis of such assessment :*

*[38][**Provided** that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :*

***Provided further** that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section*

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142 has been issued prior to the making of an assessment under this section.]

[39][(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

5.2. In this case, the assessing officer has issued notice u/s 142(1) within time limit allowed for filing return of income under section 139 of I.T.Act. Since the assessee failed to respond to the notice u/s 142(1), the assessing officer should invoke the provisions of section 144 and complete the assessment as per section 144 on or before 31.03.2011. Since the assessment is already initiated, during pendency of assessment proceedings, there is no case for invoking the provisions of reassessment u/s 148 of I.T.Act and reopening of the assessment.

5.3. The procedure for reassessment is also enshrined in section 147, 148 and 143 of I.T.Act. Where the assessee is having taxable income but not filed the return of income, the assessing officer is empowered to issue notice u/s 148 after recording the reasons. Similarly, where the assessee has furnished return of income, but the assessing officer has a

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reason to believe that income chargeable to tax has escaped assessment, after recording the reasons, the assessing officer has to take action u/s 148 and issue notice u/s 148. In both the instances, notice u/s 148 is issued calling for the return of income from the assessee within a specified period. For ready reference, we extract the relevant provisions of I.T.Act.

[**Issue of notice where income has escaped assessment.**

*[61]**148.** [62][(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve[63] on the assessee a notice requiring him to furnish within such period, [64][* * *] 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 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 pres-cribed; and the provisions of this Act shall, so far as may be[65], apply accordingly as if such return were a return required to be furnished under section 139 :]*

5.4. On furnishing the return of income u/s 148, the assessing officer can choose to drop the proceedings and proceed with the reassessment proceedings by issue of notice u/s 143(2) of I.T.Act and in case the assessee do not respond to notice u/s 148, the assessing officer can proceed to complete the assessment u/s 144, Best judgement . Once the return is filed in response to notice u/s 148, provisions of section

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139, 143 and 144 applies in case of 148 also. Therefore, provisions of section 142(1), 148 are para materia for furnishing the return of income except recording the reasons in the case of section 148. Once the assessing officer has initiated assessment proceedings, the assessing officer cannot resort to reassessment unless the assessment proceedings are concluded. In this case, the assessment proceedings were initiated by issue of notice u/s 142(1) and before concluding the assessment proceedings, the assessing officer has issued notice u/s 148 for reassessment. Since the notice u/s 148 is issued without concluding the assessment proceedings, the notice issued u/s 148 is bad in law and cannot be sustained. The assessing officer is not permitted to carry on the assessment proceedings and reassessment proceedings simultaneously. Hon'ble ITAT Delhi Bench 'SMC' in the case of Sunil Kumar Jain Vs. ACIT 71 Taxman.com 136 held that two parallel proceedings on similar subject matter cannot be sustained. Proceedings u/s 147 cannot stand during continuation of proceedings u/s 154. Similarly, the Hon'ble Delhi High Court in the case of Mastech Technologies Ltd. Vs. DCIT 84 taxman.com 20 (2017), Delhi, held that where the reassessment initiated vide two notices and second notice

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was beyond prescribed period and first notice proceeding were not continued and nowhere it was stated that second notice was in continuation of first one, reassessment was invalid. In the instant case, the assessing officer has issued notice u/s 142(1) and initiated assessment proceedings. The assessment proceedings u/s 143(3)/144 should be completed within the period of limitation allowed to the assessing officer i.e 31.03.2011 and the assessing officer allowed to get the assessment barred by limitation and passed the assessment order u/s 143 on 29.12.2011 which was barred by limitation. Therefore, the assessment passed u/s 143(3) on 29.12.2011 barred by limitation and the same is annulled.

5.5. The assessing officer issued notice u/s 148 for reassessment, during the pendency of assessment proceedings by issue of notice u/s 148 which is bad in law and cannot be sustained as per the detailed discussion made in the earlier paragraphs of this order. Accordingly, the notice issued u/s 148 is quashed.

6. In the result, the appeal of the assessee is allowed.

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The above order was pronounced in the open court on 18th Aug 2017.

Sd/-	Sd/-
(वी. दुर्गाराव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 18.08.2017

L. Rama, SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Medapati Venkayamma, W/o Bhaskara Rao, Sivalayam Street, Ubalanka, Ravulapalem Mandalam, E.G. Dt.
2. प्रत्यार्थी / The Respondent – Income Tax Officer, Ward-2, Amalapuram
3. आयकर आयुक्त / The Commissioner of Income Tax, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT(Appeals)-11, Mumbai, Camp Office, Visakhapatnam
4. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
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Sr. Private Secretary
ITAT, VISAKHAPATNAM