

आयकर अपीलीय अधिकरण, विशाखापटणम "एसएमसी" पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.177/Viz/2020  
(निर्धारण वर्ष / Assessment Year : 2007-08)

Smt.Kakarla Guna Vidya Saraswathi Vs. Income Tax Officer  
C/o Kakrla Surya Gangadhar Tilak Ward-3(3)  
A-1, Janani Apartments Visakhapatnam  
Pandurangaswamy Temple backside  
Pandurangapuram  
Visakhapatnam  
[PAN : APJPK5999N]

आयकर अपील सं./I.T.A.No.178/Viz/2020  
(निर्धारण वर्ष / Assessment Year : 2007-08)

Sri Kakarla Surya Gangadhar Tilak Vs. Income Tax Officer  
A-1, Janani Apartments Ward-1(2)  
Pandurangaswamy Temple backside Visakhapatnam  
Pandurangapuram  
Visakhapatnam  
[PAN : AHBPK5319G]  
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri I.Kama Sastry, AR  
प्रत्यर्थी की ओर से / Respondent by : Shri O.N.Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing : 27.02.2023  
घोषणा की तारीख/Date of Pronouncement : 31.05.2023

**आदेश / O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the assessee against the orders of  
Commissioner of Income Tax (Appeals) [CIT(A)]-1 Visakhapatnam

dated 13.08.2020 and 15.07.2020 for the Assessment Years (A.Y.) 2007-08. Since the grounds raised in these appeals are common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under. Facts are extracted from I.T.A.177/Viz/2020.

2. Briefly stated the facts are that the assessee is an individual, sold an immovable property along with his son Kakarla Surya Gangadhara Tilak as co-owners having equal share. The property was sold for a consideration of Rs.50,00,000/- vide sale deed registered as document No.3089/06 dated 22.06.2006, whereas, the stamp duty value as on the date of registration was Rs.70,68,500/-. The immovable property was purchased by the co-owners for a consideration of Rs.24,00,000/- plus stamp duty and registration charges of Rs.5,14,795/- and registered vide document No.2910 of 2005 dated 24.06.2005. A notice u/s 148 of the Income Tax Act, 1961 (in short "Act") dated 13.03.2014 was issued by the Assessing Officer(AO) and the same was served on the assessee on 26.03.2014 by affixture. The address in the notice u/s 148 was mentioned as Smt.K.G.Vidya Saraswathi, 1187, Rockdale Residency Apts., Waltair Main Road, Vizag, whereas the address of the assessee in the assessment order u/s 144 was 10-50-79/1, Saraswathi Nilayam, Beside

Apollo Hospital, Visakhapatnam-2. The assessment order was passed in accordance with the provisions of section 144 r.w.s. 147 of the Act dated 25.03.2014 and the same was served by affixture on 26.03.2015. Further notice u/s 274 r.w.s. 271(1)(c) dated 25.03.2015 was issued along with order u/s 144 of the Act. All these details are reported from the penalty proceedings dated 29.09.2015. However, the assessee never received any notice / order from the income tax authorities. Letter F.No.ITO/W-1(2)/vsp/Penalty/2015-16 dated 11.09.2015 was served on the assessee on 16.09.2015. In response to the same, the assessee has filed a letter dated 21.09.2015, requesting the Ld.AO to furnish copies of various documents / orders listed therein. In response to the letter filed by the assessee on 28.09.2015, copies of the notice u/s 148, copies of the reasons recorded, copies of sanction of Additional CIT, copies of orders passed u/s 144 r.w.s.147 and copy of the report for service of notice by affixture have been furnished to the assessee on 17.05.2016.

3. On being aggrieved, the assessee preferred appeal before the CIT(A). After considering the submissions made by the assessee, the Ld.CIT(A) dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee preferred an appeal before us by raising the following grounds :

*1. In the facts and circumstances of the case and as per law the order under section 144 r.w.s. 147 passed by the assessing officer and confirmed by the Ld. Commissioner of Income tax (Appeals) is not justified.*

*2.The order passed by Ld. Commissioner of Income-tax (Appeals)-1, Visakhapatnam dated 13.08.2020 is beyond time as it is passed more than 15 days from the date of last hearing of the case which is 15.10.2019.*

*3. The CIT(Appeals) is not justified in rejecting the plea of the assessee that the order passed under section 144 r.w.s. 147 is null and ab initio void as the assumption of jurisdiction by the AO is not valid for the reason that:*

*(A) The notice under section 148 has not been served on the assessee before passing of the order as mandated by section 148(1) of the Income-Tax Act,1961.*

*(B) The alleged service of notice by affixture is not in conformity with the provisions of section 282 of the Income-Tax Act, 1961 read with order V of the code of civil procedure, 1908.*

*4. The CIT (Appeals) is not justified in rejecting the plea of the assessee that the order passed under section 144 r.w.s. 147 dated 25.03.2015 is barred by limitation as the same is served on the assessee on 17.05.2016.*

*5. The CIT (Appeals) is not justified in rejecting the plea of the assessee that the order passed under section 144 r.w.s. 147 by the Income-Tax officer, Ward-1(2), Visakhapatnam is null and ab initio void as the Income-Tax officer, Ward-1(2), Visakhapatnam has not assumed jurisdiction properly as the reasons recorded for reopening the assessment have been recorded by Income-Tax Officer, Ward-3(1), Visakhapatnam and it is the same officer who issued the notice under section 148 dated 19.03.2014 more so in the absence of any order section 127 transferring the case of the assessee from Income-Tax*

*Officer, Ward-3(1), Visakhapatnam to Income-Tax Officer, Ward-1(2), Visakhapatnam.*

*6. The CIT (Appeals) is not justified in rejecting the plea of the assessee that the order passed by the Ld. Income-Tax Officer is null and void ab initio for the reason that the sanction accorded under section 151 by the Addl. Commissioner of Income-Tax for issue of notice under section 148 is mechanical and with out application of mind.*

*7. The CIT (Appeals) is not justified in rejecting the plea of the assessee that the period for which interest under section 234A and 234B is levied is not correct.*

*8. All the above grounds of appeal are mutually exclusive and without prejudice to one another.*

*9. The appellant craves leave to add to, alter, amend, modify, delete all or any of the above grounds of appeal.*

The Ld.Counsel for the assessee has submitted that there was no proper notice served on the assessee u/s 147 / 148. Therefore, the assessment order dated 25.03.2015 is null and void. He further submitted that the notice u/s 148 has not been served on the assessee before passing the order as mandated by section 148(1) of the Act. The alleged service of notice by affixture is not in conformity with the provisions of section 282 of the Act read with Order V of the Code of Civil Procedure, 1908. The Ld.AR further submitted that the inspector report of service of notice by affixture does not contain the addresses of the two witnesses, who have signed as mandated u/s 282 read with Order V of Code of Civil Procedure, 1908. The Ld.Counsel for the assessee also relied on the decision of coordinate bench of this Tribunal in the case of

Erramilli Gurunatha Sastry in I.T.A. 424 & 425/Viz/2018 dated 30.09.2019, wherein, it was held that notices u/s 148 / 142(1) of the Act were not served on the assessee, therefore, the reassessment is bad in law.

5. On the other hand, on this issue, the Ld.DR submitted that the AO issued notice as per the address mentioned in the sale deeds and the whereabouts of the assessee are not known, therefore, the inspector affixed the notice as contemplated u/s 282 of the Act. Hence, the notice was served on the assessee. He, therefore, pleaded to uphold the order passed by the Ld.CIT(A).

6. I have heard both the parties and perused the material placed on record. It is an admitted fact that the notice was not served on the assessee. On perusal of the notice u/s 148, the address in the notice was mentioned as Smt.K.G.Vidya Saraswathi, 1187, Rockdale Residency Apts., Waltair Main Road, Vizag., whereas the address of the assessee in the order u/s 144 was 10-50-79/1, Saraswathi Nilayam, Beside Apollo Hospital, Visakhapatnam-2. Therefore, there is ambiguity between the addresses mentioned in the notice and the assessment order. Admittedly, in both the addresses, notice was not served on the assessee

before passing the assessment order. Now the question before us is whether the notice issued by the AO u/s 147 dated 14.03.2014 addressed to the assessee was duly issued and served in accordance with law or not. On this aspect, Hon'ble Delhi High Court in the case of CIT Vs. Chetan Gupta in ITA 72 of 2014 discussed the law in detail and summarised the legal position as under :

*(i) Under section 148 of the Act, the issue of notice to the Assessee and service of such notice upon the Assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.*

*(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under section 148(1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282(1) of the Act read with Order V Rule 12 CPC and Order III Rule 6 CPC.*

*(iii) Although there is a change in the scheme of sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with section 282(1) and Section 153(2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.*

*(iv) The onus is on the Revenue to show that proper service of notice has been effected under section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.*

On the facts of the present case, it is seen that notice u/s 148 of the Act dated 14.03.2014 was issued to the assessee by the AO at the address Smt.K.G.Vidya Saraswathi, 1187, Rockdale Residency Apts., Waltair Main

Road, Vizag. Admittedly, the AO has shown the address of the assessee in the assessment order as 10-50-79/1, Saraswathi Nilayam, Beside Apollo Hospital, Visakhapatnam-2. Hence, there is nothing to show that the notice u/s 148 of the Act was in fact issued by the AO showing the aforementioned address. Therefore, we are of the view that the notice itself was not issued at the correct address. Moreover, in the light of law explained by the Hon'ble Supreme Court in the case of R.K.Upadhyaya V.Shanbhai P.Patel(1987) 3 SCC 96, wherein, it was held that the requirement of both the issuance and service of such notice upon the assessee for the purposes of Section 147 and 148 of the Act are mandatory jurisdictional requirements. Therefore, after considering the above discussions, I am of the firm view that the revenue has failed to establish that there was proper service of notice u/s 147 / 148 of the Act before passing the assessment order. Therefore, the orders passed by the AO as well as CIT(A) are liable to be quashed. Hence, the grounds raised by the assessee are allowed.

7. In the case of Sri Kakarla Surya Gangadhar Tilak in I.T.A.No.178/Viz/2020, the assessee filed the following additional grounds before the Tribunal and pleaded to admit the same for adjudication as they are legal in nature :



1. *In the reasons recorded as furnished to us there is no averment that the income likely to escape assessment is Rs.One lakh or more as mandated by section 149(1)(b), this makes the entire process of reopening bad in law and the order passed under section 144 r.w.s. 147 would be a nullity.*
2. *The reopening has been done for bringing to tax the long term capital gains escaping assessment whereas, the reassessment is done taxing short term capital gains which is not permissible under law.*

Since the orders passed by the lower authorities are set aside and quashed on merits in favour of the assessee as adjudicated above, there is no need to adjudicate the additional legal grounds.

8. In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 31<sup>st</sup> May 2023.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Dated :31.05.2023

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- (i) Smt.Kakarla Guna Vidya Saraswathi, C/o Kakarla Surya Gangadhar Tilak, A-1, Janani Apartments, Pandurangaswamy Temple backside, Pandurangapuram, Visakhapatnam  
(ii) Sri Kakarla Surya Gangadhar Tilak, A-1, Janani Apartments, Pandurangaswamy Temple backside, Pandurangapuram, Visakhapatnam
2. राजस्व/The Revenue - The Income Tax Officer, Ward-1(2), Visakhapatnam
3. The Principal Commissioner of Income-Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam