

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 1997/Del/2022
Assessment Year: 2011-12

M/s Raghuraj Laminates Pvt. Ltd. Kamal Theater Building, Railway Road, Opp. Railway Station, Muzaffarnagar 251001, PAN AAACR 9848 Q	vs.	ITO, Ward-3(2)(2), Muzaffarnagar 251001
(Appellant)		(Respondent)

For Assessee :	Shri Ankit Gupta, Adv.
Revenue For :	Shri Om Parkash, Sr. DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	31.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A),NFAC dated 03.06.2022 for AY 2011-12.

Condonation of delay of 22 days

2. The assessee has filed an application in both the appeals seeking condonation of delay of 22 days. The learned counsel submitted that the assessee company has filed the appeal on 30.07.2022 through online ITAT portal and send the physical appeal set through speed post to the Registrar ITAT and the appeal filed on 25.08.2022. Therefore, the delay of 22 days has been accrued due to the delay in sending the physical set through speed post as the director of the assessee company is travelling out of the town due to some personal reason and return back on 19.08.2022. Thereafter the set was signed by the authorized Director and send the speed post on 20.08.2022. The learned Senior DR strongly opposed to the condonation of delay. However, he could not controvert the fact that the assessee filed appeal on the portal of ITAT online on 30.07.2022.

3. On careful consideration of above we find that the assessee filed online appeal on 30.07.2022 and physical copy reached on 25.08.2022 and thus, said cause shown by

the assessee is a reasonable cause beyond control of the assessee. Therefore delay of 22 days in filing the appeal is condoned and appeal is admitted for adjudication.

4. Ground no. 3 of assessee read as follows:-

That, the NFAC has erred in not appreciating that fact, that the notice issued u/s. 148 has wrongly issued by DCIT, Circle 3(1), Haridwar, whereas, the jurisdiction of the assessee lies with ITO, Ward-2(2), Muzaffarnagar, therefore, the notice issued u/s. 148 is illegal, bad in law and without jurisdiction.

5. The assessee has submitted following written submissions on ground no. 3

A) That, the notice issued Us 148 of the ACT by the DCIT, Circle-3(1), Haridwar is illegal, bad in law and without jurisdiction.

a) That, the DCIT, Circle-3(1), Hardwar has issued, the notice Us 148 on 30.03.2008 Page No. 12 of the P/B;

b) The assessee challenged the jurisdiction of DCIT, Circle-3(1), Hardwar has no jurisdiction over the assessee, because, the assessee is having under the jurisdiction of ACIT, Circle-2, Muzaffarnagar vide letter dated 11.05.2018 and 16.08.2018, Page No.14 and 18 to 19 of the P/B;

c) That, the assessee is filing its return of income on the address of M/s Raghuraj Laminates Private Limited, Kamal Theatre Building, Railway Road, Muzaffarnagar Page No.56 of the P/B;

d) That, the assessment was completed, for assessment year 2008-09 by the ACIT, Circle-2, Muzaffarnagar and for AY. 2012-13 has been completed by the ITO, Ward 2(2), Muzaffarnagar Page No.20 to 22 and 25 to 28 of the P/B;

e) That, the assessee company has also moved an application for the request of migration of PAN. Number to DCIT/ ACIT, Circle -2, Muzaffarnagar vide application dated 24.08.2013 and also informed the DCIT, Circle Hardwar, during the assessment proceeding for Assessment Year 2012-13, that the jurisdiction of the assessee company. is with DCIT ACIT, Circle -2, Muzaffarnagar vide letter dated 24.11.2014 Page No.23 and 24 of the P/B;

f) Thereafter, the DCIT, Circle-3(1), Hardwar has transferred the case to ITO, Ward-2(2), Muzaffarnagar without any order passed U/s 127 of the Act, which itself proves, that, the assessee is always under the jurisdiction of the ACIT, Circle-2, Muzaffarnagar and regularly assessed under the ACIT, Circle-2, Muzaffarnagar, therefore, the notice issued Us 148 by the DCIT, Circle-3(1), Haridwar is beyond the his jurisdiction, hence, the notice issued Us 148 and initiation of proceedings Us 147 is illegal, bad in law and without jurisdiction.

g) Moreover, the said objection raised by the assessee has been never disposed off and the action of the department, itself proves, that, the notice issued Us 148 and

assumption of jurisdiction by the DCIT, Circle-3(1), Haridwar is illegal, bad in law and without jurisdiction.

In view of the above, the basic requirement of section 147 is that the assessing officer must have a reason to believe that any income chargeable to tax has escaped assessment and such belief must be belief of jurisdictional assessing officer and not any other assessing officer or authority or department. Therefore, the jurisdiction of A to reopen an assessment under section 147 depends upon issuance of a valid notice and in absence of the same entire proceedings taken by him would become void for want of jurisdiction.

That, the assessee company wants to place, its reliance on :-

- Decision of jurisdictional Allahabad High Court, in the case of PCIT Vs. Mohd. Rizwan, ITA No. 100/2015 Page No. 129 to 133 of the P/B;*
- Decision of Hon'ble ITAT Camp Bench at Jalandhar, in the case of Gaurav Joshi Vs. ITO, ITA No.274/ASR/2018 Page No.96 to 101 of the P/B; Decision of Hon'ble ITAT Ahmedabad Bench, in the case of ACIT Vs. Resham Petrotech Limited, Page No. 73 to 92 of the P/B;*
- Decision of Hon'ble High Court of Calcutta, in the case of Smt. Smriti Kedia Vs. Union of India, Writ Petation1 No.984/2006, Page No.93 to 95 of the P/B;*

6. Precisely reiterating the above written submissions the Id. counsel submitted that the DCIT, Circle 3(1), Haridwar issued notice u/s. 1148 of the Act on 30.03.2018 for AY 2011-12 and the on the written request of assessee dated 24.08.2013 the said Assessing Officer transferred the case to ITO Ward 2(2), Muzaffarnagar without any order u/s. 127 of the Act. Therefore, placing reliance various judgements and orders including judgment of Hon'ble jurisdictional High Court of Allahabad in the case of PCIT vs. Mohd. Rizwan in Appeal No. 100/2015 dated 30.03.2017 particularly paragraphs 32 to 44 the learned counsel submitted that where no valid notice has been issued by the jurisdictional Assessing Officer, who was DCIT Circle 2(2) in the present case, before passing or making reassessment order, in such a situation proceedings of reassessment pursuant to such notice issued by the Assessing Officer not having jurisdiction over the assessee are void ab initio and reassessment order passed under such proceedings has to be held as invalid being bad in law.

7. Replying to the above the Id. Senior DR submitted that impugned reassessment order dated 31.12.2018 u/s. 143(3)/147 of the Act has been passed by the ITO Ward 2(2) Muzaffarnagar, therefore such order cannot be held as invalid and being passed without having valid jurisdiction as the assessee himself in the letter dated 24.08.2013 informed the Assessing Officer i.e. DCIT, Circle 3(1), Hairdwar that his jurisdictional Assessing Officer is ITO Ward 2(2) Muzaffarnagar and immediately after receiving said letter he transferred the case to the jurisdictional Assessing Officer who passed the reassessment order therefore no allegation regarding validity of assuming of jurisdiction for passing reassessment order can be made.

8. On careful consideration of above submissions, first of all, from the copy of notice u/s. 148 of the Act, available at page 12 of the assessee paper book it is clear that the notice u/s. 148 of the Act, dated 30.03.2018 was issued by ACIT, Circle 3(1) Haridwar and on receipt of notice the assessee vide letter dated 24.04.2018 informed the said Assessing Officer that his jurisdictional Assessing Officer is ITO, Ward 2(2) Muzaffarnagar. On receipt of said application the Assessing Officer of Haridwar transferred the case to ITO, Ward 2(2) Muzaffarnagar and he passed the reassessment order under challenged.

9. On being asked by the bench the Id. Senior DR did not controvert that there was no notice u/s. 148 of the Act, by the jurisdictional ITO, Ward 2(2) Muzaffarnagar, and he proceeded on strength of notice u/s. 148 of the Act, dated 30.03.2018 issued by ACIT, Circle 3(1) Haridwar. After noting above factual matrix I find it appropriate and necessary to take respectful cognizance of the judgment of Hon'ble jurisdictional High Court of Allahabad in the case of PCIT vs. Mohd. Rizwan (supra) wherein their Lordship under identical facts and circumstances held as follows:-

29. Sections 147 and 148 relates to procedure for reassessment or opening of assessment where A.O. has reason to believe that any income chargeable to tax has escaped assessment for any A.Y.

30. Section 148 provides for issue of notice where income has escaped assessment and A.O. intends to make reassessment or recomputation under Section 147.

31. Looking into the scheme of procedure for assessment as briefly discussed above, we find that, in the present case, dispute relates to A.Y. 2010-10 (F.Y. 2009-10, i.e., 01.04.2009 to 31.03.2010). Time to file Return of income under Section 139(4) was obviously available to Assessee upto 31.03.2012. It is also not disputed that return was actually filed by Assessee on 17.02.2012. In these circumstances, we do not find any occasion on the part of Revenue to have served a notice under Section 148 of Act, 1961 upon Assessee on 18.11.2011 inasmuch as neither assessment was made till date nor there was any occasion to assume that there was any escapement of income from assessment. This entire exercise of reassessment commencing from notice dated 18.11.2011, in our view, and even otherwise, was illegal.

32. Now we come to legality of notice issued under Section 148. Admittedly, it was issued by a Designated Officer authorized to receive AIR information and make inquiry. Thereafter, said Designated Officer was supposed to furnish entire material to Competent A.O. for further action.

33. In the present case, notice under Section 148 was not issued by A.O. having jurisdiction over Assessee and instead it was issued by Designated Officer authorized to collect AIR information and make inquiry in this regard. No notice was issued under Section 148 admittedly by Jurisdictional A.O.

34. Section 148 clearly talks of issue of notice by A.O. Meaning thereby, A.O. having jurisdiction over Assessee. In fact, it is his satisfaction which is to be recorded for justifying reopening of assessment/reassessment proceedings as

contemplated under Section 147 and recording of reasons for the same purpose is mandatory. The satisfaction of A.O. could not have been hired or be delegated to any other authority.

35. In Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi 1967 (66) ITR 147 (SC), Court held that notice under Section 148 cannot be regarded as mere procedural requirement. It is a condition precedent for initiation of proceeding for assessment.

36. In Y. Narayana Chetty and another Vs. Income Tax Officer, Nellore and others 1959 (35) ITR 388 (SC), it was held, that, if notice issued is invalid or not properly served, any proceeding taken by A.O. to back assess, would be illegal and void.

37. A Constitution Bench, in Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi (1960) 40 ITR 605 (SC), a pari materia provision, i.e., Section 34 under old Indian Income Tax Act, 1922 (hereinafter referred to as "Act, 1922") was considered and it was held that A.O. having power to issue notice should be a particular A.O. having jurisdiction over Assessee at the time of issue of requisite notice. If notice issued by any other A.O. or notice is bad for any reason, than such back assessment would be illegal.

38. In Anirudhsinhji Jadeja and another Vs. State of Gujarat 1995 (5) SCC 302, Court held, if a statutory authority has been vested with jurisdiction he has to exercise it according to its own discretion.

39. In K.K. Loomba and Mrs. Uma Loomba Vs. Commissioner of Income Tax and others 2000 (241) ITR 152 (Delhi) it was held that A.O. having natural jurisdiction over the area would have jurisdiction to assess, issue notice under Section 148 as well and it cannot be done by anyone else.

40. Punjab and Haryana High Court in the case of Lt. Col. Paramjit Singh Vs. Commissioner of Income Tax and another 1996 (220) ITR 446 (Punjab) said "a notice for reassessment can be issued only by A.O. who had concluded the proceedings."

41. We, however, do not go to that extent for the reason that there may be any subsequent change resulting in change of jurisdiction of A.O. Notice of reassessment can be issued by such an Officer but not by Officer who has no jurisdiction for assessment/reassessment.

42. In Commissioner of Income Tax Vs. Rajeev Sharma 2011 (336) ITR 678, Court observed "provisions contained in Section 148 of Act, 1961 with regard to escaped assessment must be construed strictly with regard to procedure prescribed for escaped assessment."

43. The reason for issuance of notice by Competent A.O. is quite obvious inasmuch as such notice could have been issued only when concerned A.O. has reason to believe that some income has escaped assessment and recomputation/reassessment is needed.

Now such satisfaction can be of that A.O. only who has jurisdiction in the matter and not of any third party.

44. We, therefore, hold that in the present case, no valid notice under Section 148 was issued by Jurisdictional A.O. before making assessment/reassessment and, therefore, proceedings of reassessment pursuant to notice issued under Section 148 by an incompetent Officer are void and ab initio.

45. When a notice under Section 147/148 issued is a jurisdictional step, it cannot be treated to be mere irregularity curable under Section 292BB. In fact, Section 292BB has no application to a case where no valid notice has been issued by Competent A.O. This is clear from a bare reading of Section 292BB of Act, 1961 which reads as under:-

"292BB. Where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

46. The curability permitted under Section 292BB is with regard to service of notice upon Assessee and not with regard to competence of authority who has issued notice.

47. A similar question was considered in Commissioner of Income Tax, Gujarat-II Vs. Kurban Hussain Ibrahimji Mithiborwala 1972 (4) SCC 394 and Court said "Income Tax Officer's jurisdiction to reopen an assessment under Section 34 depends upon issuance of a valid notice. If notice issued by him is invalid for any reason, entire proceedings taken by him would become void for want of jurisdiction." Court then held that notice was invalid as A.O. had no jurisdiction to revise assessment then it cannot be treated to be mere irregularity so as to validate proceedings of assessment if the Assessee had participated.

48. Similar is the view taken by a Full Bench of this Court in Laxmi Narain Anand Prakash Vs. Commissioner of Sales Tax, Lucknow AIR 1980 ALL 198.

49. The contention of learned counsel for Revenue that participation of Assessee before Jurisdictional A.O. would operate as acquiescence or waiver and will not invalidate proceedings is thoroughly misconceived.

50. In Karnal Improvement Trust, Karnal Vs. Smt. Prakash Wanti and another (1995) 5 SCC 159, Court said that acquiescence does not confer jurisdiction and

erroneous interpretation should not be permitted to perpetuate and perpetrate defeating of legislative animation.

51. In Abdul Qayume Vs. Commissioner of Income Tax 1990 (184) ITR 404, Court said "an admission or an acquiescence cannot be a foundation for assessment where the income is returned under an erroneous impression or misconception of law."

52. It is well settled that a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any jurisdictional authority, something which he lacked inherently.

53. Even if, it can be said that Assessee submitted to jurisdiction of A.O., law is that Assessee cannot confer jurisdiction on an authority who did not have the same and we find support from Commissioner of Income Tax Vs. Hari Raj Swarup and sons (1982) 138 ITR 462 (Alld.).

54. In Mir Iqbal Husain Vs. State of U.P. 1963 (50) ITR 40, it was held that requirement of valid notice cannot be waived. The mere fact that Assessee filed Return of Income pursuant to invalid notice would not render notice valid or validate subsequent proceedings which are vitiated in law for want of valid notice.

55. In Raza Textile Ltd. Vs. Income Tax Officer, Rampur (1973) 87 ITR 539 (SC), Court said that it is incomprehensible to think that a quasi-judicial authority like A.O. can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.

56. If an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside order passed by authority or forum having no jurisdiction. This is what was held in State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another AIR 1996 SC 2664.

57. In view of above discussion, we have no manner of doubt to answer all the four questions against Revenue and in favour of Assessee.

10. Therefore under identical facts and circumstances of the present case respectfully following the proposition rendered by the Hon'ble jurisdiction High Court of Allahabad in the case of PCIT vs. Mohd. Rizwan(supra)I have no hesitation to held that the Assessing Officer having jurisdiction over the assessee is only validly entitle to initiate reassessment proceeding u/s. 147 of the Act and to issue notice u/s. 148 of the Act and consequent thereof is eligible to pass reassessment order on conclusion of proceedings. Since in the present case the Assessing Officer who is issued notice u/s. 148 of the Act was not having jurisdiction over the assessee and the Assessing Officer having jurisdiction over the assessee i.e. ITO Ward 2(2) Muzaffarnagar not issued any notice u/s. 148 of the Act. It is also pertinent to mention that their Lordship also considered the provision of section 292BB of the Act and held that the said section is not applicable in favour of the assessee as the lack of valid jurisdiction cannot be cured and it is well settled that a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any

jurisdictional authority, something which he lacked inherently. Therefore the contention of Id. Senior DR regarding applicability of section 292BB also does not hold water in favour of the revenue.

11. In view of foregoing discussion I hold that the impugned reassessment order u/s. 143(3)/147 of the Act dated 05.12.2018 is not validly sustainable in absence of a valid notice u/s. 148 of the Act by the Assessing Officer having jurisdiction over the assessee therefore the same deserves to be quashed being bad in law. Accordingly ground no. 3 is allowed.

12. The Id. Representatives of both the sides have not placed any submissions on the other grounds of assessee and since in the earlier part of this order we have quashed the entire proceedings and impugned reassessment order therefore other grounds of assessee are not being adjudicated and left open.

13. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.05.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 31st May, 2023.

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi