

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 6290/DEL/2017	
	A.Y. : 2009-10	
INCOME TAX OFFICER, WARD-2(3), NOIDA	VS.	SH. NEERAJ GOEL, FLAT NO. 713, TOWER-6, PURVANCHAL SILVER CITY, SECTOR-93, NOIDA-201301 (PAN: ABMPG4246K)
(APPELLANT)		(RESPONDENT)

Department by : Sh. V.K. Jiwani, Sr. DR
Assessee by : None

ORDER

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-I, Noida dated 31.7.2017 pertaining to assessment year 2009-10 on the following grounds:-

1. That the Ld. CIT(A) has erred in law and on facts by annulling the assessment order on ground that no notice under section 143(2) was issued before the completion of assessment under section 144 of the I.T. Act, 1961.
2. That the Ld. CIT(A) has erred in law and on facts by ignoring the facts that no return was filed by the assessee in response to notice u/s. 148 and notice u/s. 143(2) is

mandatory, where a return has been furnished u/s. 139, or in response to a notice under sub-section (1) of section 142.

3. That the Ld. CIT(A) has erred in law and on facts by ignoring the facts that as per provision of section 143(2)(ii) there is a time limit for issuance of notice u/s. 143(2) i.e. shall be served on the assessee before the expiry of six months from the end of the financial year in which return is furnished, but in the case under consideration no return was filed by the assessee.
4. That the appellant craves to leave, add, alter and amend any of the grounds of appeal on or before hearing.
5. That the order of the Ld. CIT(A) deserves to be set aside and order of the AO be restored.

2. The brief facts of the case are as per the AIR information regarding purchased property for Rs. 52,12,875/- in FY 2007-08. Therefore, notice u/s. 148 of the I.T. Act, 1961 was issued on 18.3.2015 to be fixing the date for compliance within 30 days, but no compliance was made by the assessee. Thereafter, notices u/s. 142(1) of the I.T. Act were issued on 26.6.2015 and to be fixing the date for compliance on 2.7.2015 and 23.9.2015 respectively but again no compliance was made by neither the assessee nor any representative on behalf of the assessee. Thereafter a show cause notice u/s. 144 of the I.T. Act was issued on 19.2.2016 and fixing the date for compliance for 26.2.2016, but assessee did not comply

the said notice and accordingly, the AO completed the assessment u/s. 144 of the I.T. Act by holding that since the assessee has failed to furnish any details with reference to source of investment in property, hence, the investment in property of Rs. 27,42,688/- was treated as unexplained and added to the income of the assessee and assessed the income at Rs. 27,42,688/- vide order dated 02.3.2016.

3. Against the aforesaid assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 25.4.2016 has allowed the appeal on the ground of jurisdiction.

4. Aggrieved with the impugned order, the Revenue is in appeal before the Tribunal.

5. At the time of hearing, Ld. DR relied upon the order passed by the AO and reiterated the contentions raised by the Revenue in the grounds of appeal.

6. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, I am deciding the present appeal exparte qua assessee, after hearing the Ld. DR and perusing the records.

7. I have heard Ld. DR and perused the relevant records available with us, especially the orders of the revenue authorities. I find that Ld. CIT(A) has discussed the issue in dispute elaborately at page no. 1 to 7 vide para no. 3 to 26. For the sake of convenience, I am reproducing herewith the relevant findings of the Ld. CIT(A) as under:-

3. *The Id. counsel for the appellant at the very beginning raised objections to the jurisdiction of the Ld. A.O. assumed to frame the impugned assessment order on the ground that no notice under section.143(2) of LT. Act, 1961 was issued by the Id. A.O. at any stage in the course of the process to frame the impugned assessment order & therefore there was no jurisdiction to frame the impugned assessment order.*

4. *The Ld. Counsel submitted that law is well settled that without assuming the jurisdiction under section 143(2) of LT. Act, 1961 the A.O. cannot frame the assessment Order & the omission on the part of the Ld. A.D. to assume jurisdiction is fatal to the maintainability of the assessment Orders if*

framed & that cannot be cured or rectified by the protection available to the Revenue u/s 292 BB of I.T. Act, 1961.

5. *The Ld. Counsel submitted that the jurisdictional High Court has dealt with this issue & has held that without assuming jurisdiction u/s 143(2) of I.T. Act, 1961, the assessment cannot be framed & if at all the A.O. framed an assessment order without assuming jurisdiction u/s 143(2) of I.T. Act, 1961 the same is bad in law & cannot be sustained in the law.*

6. *The Id. counsel relied upon the first para of the impugned assessment order where the Id. A.O. has recorded the sequence of the procedural events and the notices issued by him and in which there is no mention of notice under section 143(2) of I.T. Act, 1961. Res ipsa loquitor, the Id. counsel submitted that he does not need to prove his submissions.*

7. *Admittedly, Id. A.O. has not issued notice u/s 143(2) of I.T. Act, 1961. The*

facts of the case on this issue are therefore, not in dispute.

8. As the objection to the availability of jurisdiction to Ld. A.O. to frame the assessment order is being raised as preliminary issue & goes to the root of the dispute between the appellant & the Revenue, it need to be considered before, if needed, to consider the merits of case.

9. It is seen that the Id. A.O. assumed jurisdiction u/s. 147 of I.T. Act, 1961 based upon certain material on its record and issued notice u/s. 148 of I.T. Act, 1961 calling for the Return of income. The said notice was not complied with and whereafter Id. A.O. issued notice u/s. 142(1) calling for the Return of income again and as the said notice was also not complied with Id. A.O. assumed jurisdiction u/s. 144 of I.T. Act, 1961 and proceeded to frame the impugned assessment to the best of his judgment which is being challenged by the appellant on the grounds of want of jurisdiction &

finality of the lapse dehors section 292 BB of I.T. Act, 1961.

10. The legal issues, therefore, which arises for consideration of this office is whether Id. A.O. could have framed the impugned assessment order without first assuming the jurisdiction u/s. 143(2) of I.T. Act, 1961 and in the event of non assumption of jurisdiction u/s. 143(2) of LT. Act, 1961 whether the impugned assessment order is void ab-initio or is voidable or whether it is possible for the Revenue to save the impugned assessment order in one way or another.

11. The Income Tax Act, 1961 is a complex special Law and various provisions in this Act are self contained codes in themselves. There is clear demarcation of jurisdiction for various actions and such actions are to be performed independent of other actions and only after following the correct and prescribed procedure & if that is not done,

the jurisdiction to perform those actions becomes unavailable.

12. The domain of section 147 and section 148 of I.T. Act, 1961 is confined to calling for the return of income from the assessee so that the assessing officer can compare the declarations made by the assessee in the Return of income' with the information on his record and decide for further course of action. Once the Return of income is filed pursuant to notice u/s. 148 the domain of such notice stands discharged and no proceeding remains pending. For the sake of the argument it can be stated on behalf of the Revenue that there will be no difficulty in the cases where the Return of income is filed by the assessee pursuant to the issue of notice u/s. 148 but what procedure is required to be followed where there is non-compliance of the said notice and the assessee fails to file the Return of income in compliance to the notice issued u/s. 148 of I.T. Act, 1961.

13. *This situation, however, is merely hypothetical. Non-compliance of notice u/s. 148 will merely give rise to a cause of action to call for the Return of income further under the applicable and available provisions of law which will include the jurisdiction conferred u/s. 142(1) of I.T. Act, 1961 & proceed thereafter as may be necessary in the facts & circumstances of the case. The A.O. will not have any jurisdiction to frame an assessment merely because the assessee has failed to comply with the notices issued u/s. 148 and 142(1) of I.T. Act, 1961. The scope and domain of sections 147 and 148 on the one hand and section 142 (1) are not meant for framing of assessment. These sections are only for calling for the return of income and in a case where the assessing officer finds discrepancy between the return of income filed and the information on its records or where despite the lawful invocation of jurisdiction calling for the Return of income the assessee has failed to comply and*

furnish the Return of income and the assessing officer is of the view that the information on its records discloses taxable income which has not been offered to tax, the assessing officer is bound in law to assume jurisdiction for further course of action which will be framing of assessment, proceeding against the defaulting assessee for punitive action like imposition of penalty for non-compliance 'of the statutory notices and even the criminal prosecution of the assessee but all these actions are independent of jurisdiction conferred upon the assessing officer under sections 147 and 148 and 142(1) and unless the assessing officer assumes jurisdiction for these further actions, the jurisdiction assumed u/s. 148 or 142(1) will not confer jurisdiction for such further action and assessment order or a penalty order passed by the assessing officer without first assuming jurisdiction under appropriate provisions of law will be bad in law and will not survive in the eyes of the law.

14. *Under this arrangement of law the assessing officer will have to follow the same procedure even in the cases where the Return of income has not been filed by the assessee despite the assessing officer calling the same and "the assessing officer intends to proceed & rightly so under section 144 of LT. Act, 1961 to frame the best judgment assessment. Framing of an assessment order is a separate domain while the action of calling the Return of income is a separate domain and both are independent of each other. The jurisdiction under one domain of these two will not confer jurisdiction under the other domain.*

15. *Under the scheme of law as legislated by Parliament, assessment can be framed only after assuming jurisdiction under section 143(2) of I.T. Act, 1961 whether the Return of income is filed by the assessee or not filed and whether the assessment is framed under section 143(3) or section 144 of LT. Act, 1961 or whether pursuant to Return*

filed or not filed u/s 139(1) or u/s 148 or not filed despite receiving notices therein.

16. *The Rule of Construction of statute is well settled and wherever a legal act is contingent upon compliance of a particular act or is to be done in a particular manner, non-compliance of the said act or the said procedure will also be cause of action for the same consequential action in law, i.e., framing of assessment order which is consequence of the Return of income filed by the assessee being contingent upon the assumption of jurisdiction by the A.O. u/s 143 (2) of I.T. Act, 1961, the framing of the assessment order in the event of non-filing of Return of income whether an its own motion or in the vent of notices issued by the A.O. calling for filing of Return of income whether u/s 142(1) or 148 or 139(9) or any other provision of law would have to follow the same procedure as law makes no distinction between the event of Return filed & the event of the Return not filed and the same procedure has to be followed by the*

A.O. to frame assessment in both the eventualities.

17. Therefore, framing of an assessment in the event of non filing of Return of income is to be governed by the same procedure which is prescribed for framing of an assessment in the event of filing the return of income.

18. The Revenue cannot argue that the provisions of section 143(2) hold true only in the cases where the return is filed by the assessee. The procedure prescribed in the event of filing of Return of income will also hold to' the event of non filing of Return of income. Therefore, the assessing Officer is bound in law to assume jurisdiction u/s. 143(2) to frame assessment order whether with the Return of income or without the Return of income and whether u/s 143(3) of 144 or under same other provisions of law.

19. The assumption of jurisdiction to' frame an assessment or non assumption of jurisdiction to' frame an assessment goes to the root of the judicial act of framing an

assessment order and in the event of non assumption of jurisdiction u/s. 143(2) to frame an assessment the act of the assessing officer in framing an assessment order without issuing notice u/s. 143(2) cannot be saved under the provisions of section 292B of I.T. Act, 1961 or under section 292BB of I.T. Act, 1961. The assessment order so framed will be void ab-initio for want of assumption of jurisdiction as assessment cannot be framed based upon jurisdiction calling for the Return of income

20. This issue is no longer res integra. The Hon'ble jurisdictional High Court has already considered this issue and their Lordships of Hon'ble Allahabad High Court have held that assessment order framed without first assuming jurisdiction u/s. 143(2) of I.T. Act, 1961 is void ab-initio.

21. In view of the provisions of law and the law declared by the Hon'ble Allahabad High Court which is binding on all the parties to

the present appeal i.e., the appellant, the Revenue and this office; the impugned assessment order is bad in law and cannot be sustained or salvaged under the plenary or residual jurisdiction vested in this office.

22. *The objections of the appellant to the jurisdiction of the Id. A.O. to frame the impugned assessment order are therefore, valid in law.*

23. *However, the provisions of section 150 of LT. Act, 1961 are available to the protection of Revenue and the Ld. Counsel very fairly submitted that his client has no objection to this office protecting the Revenue u/s 150 of I T. Act, 1961 & directing the Ld. A.G. to reframe the assessment qua the present appeal after following the due & applicable procedure.*

24. *Therefore, the impugned assessment order is deleted for being void ab- initio subject to the protection of section 150 of LT. Act, 1961 with the directions to Id. A.O. to reframe the assessment order after following the correct & applicable procedure in the law and after giving the reasonable opportunity of being heard to the appellant, as impugned assessment order though, bad*

in law was framed well within the time permitted under the limitation provisions under the I.T. Act, 1961 & therefore the Revenue is entitled to the protection of section 150 of I.T. Act, 1961 & this office is bound to protect the Revenue there under.

25. The Office is directed to forward a copy of this order to all the Range In charge who are subject to the jurisdiction of this office for strict guidance and compliance henceforth. A copy of this order is also directed to be forwarded to the officer in charge of the concerned Chief Commissioner of Income Tax in the cases of those ranges with a direction to the concerned officer in that office to place this order to the consideration of the Ld. Chief Commissioners of Income Tax.

26 The appeal of the appellant succeeds and is allowed in terms of the above. It is clarified that the merits of the case has not been considered in this proceedings and the appeal has been decided only with reference to the availability of jurisdiction to frame the assessment order and it is open to the Revenue as well as to the appellant to seek their remedies in law as available under the provisions of Income Tax Act, 1961 and other law as may be applicable to the facts of the case & the A.O. has its jurisdiction on merits of the case protected & available."

8. After perusing the aforesaid finding, I am of the considered view that Ld. CIT(A) has rightly held that the assumption of jurisdiction to frame an assessment or non assumption of jurisdiction to frame an assessment goes to the root of the judicial act of framing an assessment order and in the event of non assumption of jurisdiction u/s. 143(2) of the Act to frame an assessment the act of the Assessing Officer in framing an assessment order without issuing notice u/s. 143(2) cannot be saved under the provisions of section 292B of I.T. Act, 1961 or under section 292BB of I.T. Act, 1961, hence, the assessment order so framed will be void ab-initio for want of assumption of jurisdiction as assessment cannot be framed based upon jurisdiction calling for the Return of income. I further find that this issue is no longer re-integra. The Hon'ble Jurisdictional High Court has already considered this issue and their Lordship of Hon'ble Allahabad High Court have held that assessment order framed without first assuming jurisdiction u/s. 143(2) of the I.T. Act, 1961 is void ab-initio. In view of above I uphold the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

9. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced on 13/03/2018.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dat:- 13/03/2018

"SRBHATNAGAR"

Copy forwarded to: -

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

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Assistant Registrar,
ITAT, Delhi Benches