

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI
[THROUGH VIDEO CONFERENCING]
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
ITA.Nos.2331, 2332, 2333 & 2334/Del./2016
Assessment Years 2007-08, 2008-09, 2009-10 & 2010-2011

The ACIT, Central Circle-18, Room No.102, ARA Centre, E-2, Jhandewalan Extn. New Delhi.	vs.	M/s. SG Portfolio Pvt. Ltd., 2D, MIG DDA Flats Gulabi Bagh, New Delhi PIN – 110 017. PAN AAHCS6810N
(Appellant)		(Respondent)

For Revenue :	Shri Amitabh Kumar Sinha, CIT-DR.
For Assessee :	Shri Rakesh Gupta, Advocate

Date of Hearing :	18.03.2021
Date of Pronouncement :	22.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by Revenue are directed against different Orders of the Ld. CIT(A)-27, New Delhi, Dated 29.02.2016, for the A.Ys. 2007-2008 to 2010-2011 on identical grounds of appeals.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Learned Representatives of both the parties submitted that issue is common in all the appeals on identical facts, therefore, both the parties have argued in A.Y. 2007-2008 [ITA.No.2331/Del./2016] and stated that the Order in this appeal can be followed in other appeals. In order to dispose of the appeals, we take the facts from the A.Y. 2007-2008 as under.

ITA.No.2331/Del./2016 - A.Y. 2007-2008

4. The Grounds raised by the Revenue in this appeal are as under :

1. *“That the Ld. CIT(A) has erred in law and facts in quashing the assessment order passed without appreciating the fact that assessee never filed the return of income in pursuance to notice u/s 147 of the I.T. Act, 1961 and as no return of Income was filed, there was no occasion to issue notice u/s 143(2) of the I.T. Act, 1961.*
2. *That the Ld. CIT(A) has erred in law by ignoring the provisions of section 282BB of the Income Tax Act,*

1961 and quashing the assessment order u/s 147/144.

3. That the Ld. CIT(A) has erred in in law and facts of the case by ignoring that the case was reopened based on the new facts and evidences that were brought to the light in the survey action u/s 133A and on findings made during the earlier assessment proceedings.”

5. The brief facts of the case as noted in the impugned order are that original assessment for the assessment year under appeal was completed under section 143(3) read with section 153C on 26.12.2011 at a total income of Rs.4,54,03,440/- as against the returned income of Rs.12,073/- only which, inter alia, included protective addition of Rs.1,02,70,000/- as unexplained share application money and Rs.3,43,30,095/- as unexplained other deposits in the Bank account of the assessee. During the course of First Appellate Proceedings against the original assessment completed, the assessee challenged the action of the A.O. for assumption of jurisdiction stating that the

satisfaction arrived by the A.O. was not based on documents found and seized from the premises of other person on whom action under section 132 was initiated. Accordingly, the then Ld. CIT(A) quashed the original assessment order on the ground of incorrect assumption of jurisdiction under section 153C and, therefore, he did not dispose of the other grounds on merits. In that original assessment besides additions made of Rs 1,02,70,000/- on account of unexplained share application money, the then A.O. also made addition for expenses disallowed Rs.1,33,267/-, unexplained cash deposits Rs.6,58,000/- and unexplained other deposits of Rs.3,43,30,095/- on protective basis

5.1. In the appeal before the Ld. CIT(A) of the present case, the A.O. made same addition for unexplained expenditure of Rs.1,33,267/-, unexplained share application money of Rs.1,02,70,000/- and deposits in Bank account of Rs.4,52,58,095/-. It is seen on the reasons recorded as incorporated by the A.O. in the impugned assessment order that the A.O. relied upon the observations

made by the A.O. in the original assessment order. The A.O. stated in the reasons recorded that the findings given by the A.O. in the assessment order constitute an information within the meaning of Section 147 of the I.T. Act, 1961, although, there is an incorrect assumption of jurisdiction under section 153C of the I.T. Act, 1961. The Ld. CIT(A) has quashed the order of assumption with the observation to have remedial action as per Law to protect the Revenue. The A.O. further stated in the reasons recorded that as the income escaped assessment exceeds Rs.1 lakh and period of 04 years from the end of the relevant assessment year has passed, the approval of CIT was solicited for issue of notice under section 148 in view of provisions of Section 151(1) of the I.T. Act, 1961. It is also observed from the impugned assessment order that no return in compliance to notice under section 148 was filed. The A.O. proceeded to complete the assessment under section 144 of the I.T. Act, 1961 and made almost the same additions as was made in the original assessment order. The A.O. completed the assessment

under section 147/144 of the I.T. Act, 1961, Dated 02.03.2015.

5.2. The assessee challenged the additions as well as re-assessment proceedings before the Ld. CIT(A) challenging the assumption of jurisdiction under section 147/151 of the I.T. Act and that the re-assessment order have been framed without serving mandatory notice under section 148, 143(2) and 142(1) of the I.T. Act, 1961.

5.3. The Ld. CIT(A) referred to various decisions relied upon by the assessee in the written submissions which are reproduced in the impugned order. The Ld. CIT(A) as regards the assumption of jurisdiction under section 147/148 of the I.T. Act and sanction granted under section 151 of the I.T. Act, after examining the record found that it is not a case where no return of income was filed by assessee as per provisions of Section 139 of the I.T. Act, 1961, as original return was filed by the assessee under section 139(1) on Dated 31.08.2007. The Ld. CIT(A) found that nothing has been brought on record by the A.O. in the

reasons recorded as to how and what income has escaped assessment by the reason of the failure on the part of the assessee. No tangible material was also found to initiate the proceedings against the assessee. the Ld. CIT(A) also observed that once assessment have been quashed under section 153C of the I.T. Act, Law does not permit to reopen an assessment which has already been quashed unless there is fresh tangible material was before A.O. to form a belief that income chargeable to tax has escaped assessment. In the present case no such case is made-out by the A.O. The Ld. CIT(A) also found that sanction granted by the CIT under section 151(1) of the I.T. Act, 1961 is also invalid and bad in Law. The Ld. CIT(A), therefore, quashed the initiation of re-assessment proceedings in the matter.

5.4. The Ld. CIT(A) as regards service of the notice under section 143(2) of the I.T. Act mandatorily for assumption of jurisdiction to proceed against the assessee found from the record that no such notice have been issued by the A.O. for completion of the re-assessment proceedings. Therefore, on this ground also the issue was

decided against the Revenue by the Ld. CIT(A) and re-assessment proceedings were quashed. The findings of the Ld. CIT(A) in Paras 8.9 and 8.10 of the impugned order are reproduced as under :

“8.9. Appellant has also raised the issue that no notice u/s 143(2) was served on the appellant after filing the return in response to notice issued by the AO u/s.148. In order to verify the contention of the appellant, assessment records for the assessment year under consideration were requisitioned. In the paper book filed by the appellant, I find that the appellant has filed a letter dated 25.5.2013 submitted in the office of the AO on 21.6.2013 (Page 21 of the Paper book) wherein the assessee requested the AO to treat the original return filed on 31/08/2007 as return filed in pursuance of the notice issued u/s 148. On the contrary AO has mention at page 3 of the impugned order that no return in compliance to notice u/s 148 was filed. On verification of the assessment records I find that no such letter is available in the records of the AO. Even

the AO has not recorded the order sheet for the period between 22.5.2013 to 26.10.2014. However, there is a subsequent letter dated 6.9.2013 filed by the assessee, in the assessment records which has a reference of letter filed by the assessee dated 25.5.2013. No notice u/s 143(2) is found on the record maintained by the AO which proves that the AO has not issued statutory notice u/s 143(2) of the Act. Once a return has been filed u/s 148, AO is bound to issue a notice u/s 143(2) in order to assume jurisdiction to frame assessment u/s 143(3) or u/s 144 which has not been done by the AO in the present case. Therefore, also the assessment so completed without issuance of notice u/s 143(3) does not empower the AO to complete an assessment u/s 143(3) or u/s 144 of the Act. Hon'ble Supreme Court in the case of ACIT & Anr Vs. Hotel Blue Moon 321 ITR 362 held that the provisions of section 142 and sub-sections (2) and (3) of section 143 would have mandatory application in a case where the Assessing Officer in repudiation of return filed in response to a

notice issued under section 158BC(a) proceeds to make an inquiry. Similarly when a return is filed u/s 147 assessment cannot be completed u/s 143(1) of the Act, and it is mandatory to complete the assessment u/s 143(3).

Hon'ble ITAT, New Delhi in the case of Mohinder Kumar Chhabra Vs. Income Tax Officer in [2014] 48 taxmann.com 120 held after considering the judgment of the Hon'ble Delhi High Court in the case of Alpine Electronics Asia Pvt. Ltd v. Director General of Income-tax [2012] 341 ITR 247/205, that assessment completed under section 147 without issue of notice under section 143(2) would be invalid.

8.10. *In view of my above observations and respectfully following the observations made on the above issues of the Hon'ble Courts as referred to by the Appellant in the written submissions filed and also discussed by me, I find that i) reassessment has been done by the AO on the same set of facts, on which the*

original assessment was quashed, without bringing on record any new tangible material, ii) No valid satisfaction has been recorded by the Ld. CIT and the sanction accorded was in a mechanical manner, iii) there was no independent application of mind of the AO while recording the reasons, as AO relied only on the findings given by his predecessor AO in the order of assessment, which was quashed, and iv) AO could not assume the jurisdiction to frame assessment in the absence of issuance of statutory notice u/s 143(2). Therefore, the assessment framed without a valid assumption of jurisdiction and without issuance of notice u/s 143(2) is bad in law and therefore, the consequent assessment framed is quashed. Accordingly, these grounds of appeal are decided in favour of the appellant.”

5.5. The Ld. CIT(A) in view of the above did not adjudicate the upon the additions on merits because re-assessment proceedings have been quashed. The appeal of assessee was accordingly allowed.

6. The Ld. D.R. relied upon the Order of the A.O. and submitted that since assessee never filed return of income in pursuance to the notice under section 147 of the I.T. Act and has no return of income was filed by assessee, there were no occasion to issue notice under section 143(2) of the I.T. Act, therefore, the Ld. CIT(A) was not justified in quashing the re-assessment proceedings.

7. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee has filed letter before A.O. requesting the A.O. to treat the original return filed on 31.08.2007 as the return filed in response to the notice under section 148 of the I.T. Act, 1961. Therefore, from that date it should be considered as return filed by the assessee in response to the notice under section 148 of the I.T. Act. He has referred to notice under section 142(1) Dated 20.10.2014 issued by the A.O. to the assessee seeking explanation of assessee on certain queries which is also referred to in the re-assessment order in which the A.O. has specifically mentioned that *“please refer to the return of*

income filed by you for the A.Y. 2007-2008.” He has, therefore, submitted that it is not in dispute that assessee filed letter before A.O. requesting the A.O. to treat the original return of income filed in response to the notice under section 148 of the I.T. Act, therefore, when A.O. has not issued any notice under section 143(2) of the I.T. Act, therefore, re-assessment order have been rightly quashed by the Ld. CIT(A).

8. We have considered the rival submissions. It is not in dispute that assessee filed original return of income under section 139(1) of the I.T. Act on 31.08.2007. It is also not in dispute that original assessment was completed under section 143(3) read with Section 153C of the I.T. Act, 1961, which have been quashed by the Ld. CIT(A) because the satisfaction arrived by the A.O. was not based on documents found and seized from the premises of the person searched. The A.O. accordingly initiated the re-assessment proceedings against the assessee. The A.O. issued notice under section 148 of the I.T. Act and framed the impugned assessment order. The Ld. CIT(A) on the issue

of assumption of jurisdiction under section 147 of the I.T. Act has specifically held that once original assessment under section 153C have been quashed, Law does not permit the A.O. to reopen the same case unless there is fresh tangible material available before the A.O. to form a belief that some income has escaped assessment due to failure on the part of the assessee. The Ld. CIT(A) also found sanction given under section 151 of the I.T. Act to be invalid. The Ld. CIT(A) in view of these reasons held that impugned assessment order passed by the A.O. deserves to be quashed. The Revenue has not raised any ground of appeal in the present appeal to challenge these findings of the Ld. CIT(A). The Revenue merely contended in the grounds of appeal that since no return was filed in response to notice under section 148 of the I.T. Act, 1961, therefore, there is no question of issuing of notice under section 143(2) of the I.T. Act and that Ld. CIT(A) has ignored the provisions of Section 282BB of the I.T. Act, 1961. The Revenue, therefore, did not challenge the Order of the Ld. CIT(A) in quashing the initiation of re-assessment proceedings on

both counts i.e., initiation of re-assessment proceedings is without fresh tangible material and that sanction under section 151 is invalid. Therefore, once the Order of the Ld. CIT(A) on this question is not challenged by the Revenue Department, it became final and any result of Departmental appeal cannot change the fate of Departmental appeal, the appeal of Revenue would not be maintainable and is liable to be dismissed on this ground alone.

9. As regards the issue of notice under section 143(2) of the I.T. Act, 1961 for completion of the assessment, the Ld. CIT(A) in order to verify the contention of assessee requisitioned the assessment record and find from paper book that assessee has filed a letter Dated 25.05.2013 submitted in the O/o. Assessing Officer on 21.06.2013 wherein the assessee requested the A.O. to treat the original return filed on 31.08.2007 as return filed in pursuance to the notice under section 148 of the I.T. Act, 1961. In subsequent letter on record of A.O. find mention of letter Dated 25.05.2013. These facts clearly show that assessee filed letter before A.O. at the re-assessment

proceedings to treat the original return of income filed as return filed in response to the notice under section 148 of the I.T. Act, 1961. Therefore, from the date of such letter it would be deemed that assessee filed the return of income under section 148 and as such the A.O. shall have to issue notice under section 143(2) of the I.T. Act, 1961 for completion of the assessment accordingly and limitation would be counted from the date of filing of the letter before A.O. in this regard. The Ld. CIT(A) on verification of the record also found that no notice under section 143(2) of the I.T. Act, 1961 is found on record maintained by the A.O. which proves that A O. has not issued any statutory notice under section 143(2) of the I.T. Act, 1961. Therefore, assumption of jurisdiction by the A.O. was totally invalid and bad in Law and as such the same was correctly quashed by the Ld. CIT(A).

10. The Revenue in Ground No.2 has referred to provisions of Section 282BB of the I.T. Act, 1961 which does not exist in the statute. However, we may refer to Section 292BB of the I.T. Act, 1961 in which notice may be deemed

to be valid in certain circumstances, however, such provision will also not apply when notice under section 143(2) have not been issued against the assessee. The Ld. CIT(A) after examining the record, correctly found the contention of assessee to be correct which fact is further strengthened by the notice of the A.O. under section 142(1) of the I.T. Act Dated 20.10.2014 which is also referred to by the A.O. in the re-assessment order in which the A.O. has called for the explanation of assessee on certain queries in which A.O. has specifically mentioned that assessee has filed return of income for the assessment year under appeal. This notice under section 142(1) Dated 20.10.2014 is issued after issue of notice under section 148 Dated 16.05.2013. Therefore, it is relevant to the re-assessment proceedings. When the A.O. admits in the notice under section 142(1) Dated 20.10.2014 that assessee filed return of income under section 148 of the I.T. Act, it would strengthen the findings of the Ld. CIT(A) that assessee made a request before A.O. that original return filed may be treated as return filed in response to notice under section 148 of the

I.T. Act, 1961. Since no notice under section 143(2) have been issued by the A.O. before completion of the assessment within the period of limitation, therefore, the Ld. CIT(A) was justified in quashing the re-assessment proceedings. We, therefore, do not find any infirmity in the Order of the Ld. CIT(A) in quashing the re-assessment proceedings. Accordingly, the Departmental appeal is dismissed.

11. In the result, appeal of the Revenue for the A.Y. 2007-2008 in ITA.No.2331/Del./2016 dismissed.

12. The issue is same in remaining appeals i.e., ITA.Nos. 2332, 2333 & 2334/ Del./2016 for the A.Ys.2008-09, 2009-10 & 2010 2011. Therefore, following the Order for the A.Y. 2007 2008 in ITA.No.2331/Del./2016, we dismiss the remaining Departmental Appeals.

13. In the result, all the appeals of the Department are dismissed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 22nd March, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.