

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.795/Hyd/2018		
Assessment Year: 2009-10		
Smt. Kusumben Sumant Bhai Patel, Medchal, RR Dist PAN:AECPP6074R	Vs.	Income Tax Officer Ward 11(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri Siddharth Toshniwala	
Revenue by:	Sri Sunil Kumar Pandey, DR	
Date of hearing:	17/03/2021	
Date of pronouncement:	05/05/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2009-10 against the order of the CIT (A)-5, Hyderabad, dated 12.03.2018.

2. Brief facts of the case are that the assessee individual, filed her return of income for the A.Y 2009-10 on 17.8.2009 admitting income of Rs.2,27,890/-. AO received information that the assessee, along with 4 others, had sold an immovable property admeasuring 243 sq.yards at Gadwal Compound, Nampally, Hyderabad vide Document No.464/2009, dated 19.02.2009 during the financial year 2008-09 relevant to the A.Y 2009-10 for a consideration of Rs.58,00,000/- which was registered in SRO, Hyderabad. It was also learnt that the market value of the property is Rs.1,14,09,000/- as per Sub-Registrar on

which stamp duty and the registration charges were paid. The AO observed that as per the provisions of section 50C(1) of the Act, the SRO value should have been adopted while computing the capital gain. Therefore, observing that the income chargeable to tax under the head 'Long Term Capital Gain' has escaped the assessment within the meaning of section 147 of the Act, the AO issued notice u/s 148 of the Act dated 31.03.2016. The notice which was sent by registered post was sent to the address given in the Sale Deed but the same was returned back saying "no such person with this address residing". The Assessing Officer, therefore, served notice to the assessee by affixture on 25.05.2016 on the address given by the Inspector of Income Tax. In response to the said notice, the assessee filed a letter dated 13.5.2016 stating as under:

"5. Your above referred letter was served on me on 06.12.2016. Though the letter was served on me at my Residence at 69, Prestige Park, Gundala Pochampally, Medchal but my address mentioned in the letter is 5-8-5618, Gadwal compound, Nampally, Hyderabad which is incorrect.

In the letter you have required me to file my Return of Income in compliance to the Notice dated 31.03.2016 Issued u/s 148. In this connection, I state that I have not received the Notice u/s 148. I also state that my address comes in jurisdiction of Income Tax officer Ward-11(4) and I have filed my Return of Income for assessment year 2009-10 in Ward-11 (4). Therefore, the Notice issued by you u/s 148 is without jurisdiction."

3. AO, however, observed that the notice u/s 148 was issued after taking prior approval of the Pr. CIT-4, Hyderabad and the notice was sent by registered post well within the time period i.e. 31.03.2016 as per the address available in the sale deed. Therefore, he did not accept the claim of the assessee and thereafter proceeded to consider the computation of capital gains by the assessee at Rs.40,71,460/- and the claim of deduction of

Rs.34,30,000/- u/s 54F and also deduction of Rs.4,30,000/- u/s 54EC of the Act. The AO observed that as per section 50C of the Act, the market value of the property is Rs.1,14,09,000 and therefore, the long term capital gain should be at Rs.96,80,460/- and after allowing deduction u/s 54F and 54EC, he worked out the long term capital gain at Rs.62,50,460/- and brought it to tax.

4. Aggrieved, the assessee preferred an appeal before the CIT (A) challenging the validity of the reopening of the assessment and also the additions made by the AO. As far as the validity of the re-assessment is concerned, the assessee's contention is that she has filed her return of income to the ITO Ward 11(3), whereas the Officer who has initiated 148 proceedings was ITO Ward 5(3) and therefore, the notice u/s 148 is not valid. He submitted that though the final assessment order was passed by the ITO Ward 11(4), he is not the Officer who has recorded the reasons for reopening. Thus, according to him, since the reasons were not recorded by the ITO having jurisdiction over the assessee, the re-assessment is not valid. The CIT (A) however, held that the original residence of the assessee was at a place whose territorial jurisdiction was vested with ITO Ward 5(3) who issued notice u/s 148 and the original residence had been sold by the assessee and thereafter, the return was filed with ITO Ward 11(4) but the assessee had not informed the change of address to the Department. Therefore, he held that since the assessee has not changed the PAN, and has not informed the change of address to the Department, the notice issued by the ITO Ward 5(3) u/s 148 of the Act was valid. Thereafter, he proceeded to confirm the additions made by the AO. Aggrieved, the assessee is in second

appeal before the Tribunal by raising the following grounds of appeal:

"1) That the learned Commissioner (Appeals) erred in confirming the validity of reassessment Order passed u/s 143(3) rws 147 despite the fact that the Order so passed is without jurisdiction as reassessment proceedings were initiated by non jurisdictional Officer and Notice u/s 148 was not served.

2) That the address of Appellant falls in jurisdiction of Income Tax Officer Ward 11 (2) and accordingly the Appellant filed the Return of Income for assessment year 2009-10 with Income Tax Officer Ward 11 (2) and hence the initiation of reassessment proceedings by ITO Ward 5(3) who does not have jurisdiction over the Appellant, is bad in law.

3) That learned CIT(Appeals) erred in confirming the initiation of reassessment proceedings by ITO Ward 5(3) on the ground that old address of Appellant falls in jurisdiction of ITO Ward 5(3) and change in address was not intimated by Appellant ignoring the fact that Appellant had filed Return of Income mentioning the correct address and thus change in address was duly intimated to Department and further the this address was available with ITO ward 5(3) and he served letters/notices at this address.

4) That the reassessment proceedings passed are bad in law as Notice u/s 148 was not served and learned CIT(Appeals) despite admitting this fact erred in upholding the reassessment proceedings.

5) That without prejudice to above Grounds of Appeal, the alleged service of Notice u/s 148 by affixture is invalid as the affixture was not done on Appellant's address and further none of the circumstances specified under Rule 17 of Order V of Code of Civil Procedure, 1908 which warrant service by affixture were existing and this renders the alleged service by affixture invalid.

6) That the Reassessment Order passed u/s 143(3) rws 147 by Income Tax Officer Ward 11 (2) is bad in law as there was no reason to believe that Income has escaped assessment as Assessing Officer [ITO Ward 11 (2)] has to form his own reasons and he cannot proceed on the basis of reasons recorded by Income Tax Officer Ward 5(3).

7) That the reassessment order passed by Income Tax Officer ward 11 (2) are bad in law as the objections raised by Appellant to reassessment proceedings were not disposed before passing the Reassessment Order

8) That the Order passed u/s 143(3) rws 147 is bad in law as no return of Income was filed in response to the issue of Notice u/s 148 and in the circumstances the provisions of Section 143(3) are not at all applicable and therefore the Order passed u/s. 143(3) rws 147 is without jurisdiction.

9. That the learned CIT(Appeals) erred in totally ignoring the case laws relied upon by Appellant in support of the contentions raised in Grounds of Appeal.

10) That the learned CIT(Appeals) erred in confirming the action of Assessing Officer in not referring the valuation of the property to Valuation Officer in terms of Section 50C(2) despite claim by Appellant that value adopted for stamp duty exceed the fair market of the property and sale consideration received by Appellant is full value of consideration received.

11)Any other Ground of Appeal that may be raised subsequently”.

5. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below submitted that the property was sold on 19.02.2009 whereas the assessee has filed her return of income on 17.8.2009 before the ITO Ward 11(4) giving the correct address in the return of income. Therefore, according to him, the assessee's jurisdiction lies with the ITO Ward 11(4) only. He submitted that the ITO Ward 5(3), had initiated the 148 proceedings by sending a notice u/s 148 on 31.3.2016 i.e. after nearly 7 years of the assessee transferring the property and also filing her return of income. He submitted that the property which was sold is the address to which the notice u/s 148 was sent by registered post and was later served by affixture. He submitted that the assessee has filed a letter dated 13.12.2016 before the Income Tax Officer Ward 5(3) intimating the correct address of the assessee and also that she has not received the notice u/s 148, and it was thereafter that the assessee's files were transferred from ITO Ward 5(3) to ITO Ward 11(4), but the

AO who has correct jurisdiction over the assessee, never issued any notice u/s 148 but has completed the assessment on the basis of the material on record. He submitted that this assessment therefore, has no legs to stand, because the basis for initiating or assuming the jurisdiction u/s 148 have not been fulfilled. He argued that the AO who issued the notice u/s 148 of the Act had no jurisdiction over the assessee, but had recorded the reasons for reopening and initiated the re-assessment proceedings by issuance of notice u/s 148, which has not been served on the assessee. Therefore, according to him, the re-assessment proceedings are invalid and have to be set aside. In support of his contentions, he placed reliance upon the following decisions:

- a) *The Hon'ble Gujarat High Court in the case of Shirishbhai Hargovandas Sanjanwala vs. ACIT reported in (2017) 396 ITR 167 (Guj.) dated 19th July, 2016.*
- b) *The Hon'ble Delhi High Court in the case of Dushyant Kumar Jain vs. Dy. CIT reported in (2016) 381 ITR 428 (Del.) dated 15th January, 2016.*
- c) *The Hon'ble Gujarat High Court in the case of Pankajbhai Jaysukhlal Shah v. ACIT reported in (2020) 425 ITR 70 (Guj.) dated 9th April, 2019.*
- d) *The Hon'ble Delhi High Court in the case of K.K. Loomba and others vs. CIT reported in (2000) 241 ITR 152 (Del) dated Nov.30, 1998.*
- e) *ITAT Ahmedabad Bench in the case of ACIT vs. Resham Petrotech Ltd reported in (2012) 136 ITD 185 (ITAT Ahm) dated 10.02.2012*

6. The learned DR, on the other hand, submitted that the notice u/s 148 was validly served on the assessee. In support of his contention, he placed reliance upon the findings of the AO and the CIT (A).

7. Having regard to the rival contentions and the material on record, we find that undisputedly, the re-assessment proceedings were initiated by the ITO Ward 5(3), while the assessment was completed by ITO Ward 11(4). It is also undisputed fact that the ITO Ward 11(4) is the Officer having jurisdiction over the assessee and the assessee had filed her return of income giving her correct address. Therefore, the ITO Ward 5(3) who issued notice u/s 148 had no jurisdiction over the assessee. When this fact was brought to the notice of ITO Ward 5(3), by the assessee, the assessment record was transferred to the ITO Ward 11(4). But even at that point of time, the ITO Ward 11(4) did not choose to record the reasons for reopening or issue notice u/s 148 of the Act to the assessee on her correct address. He chose to proceed from the stage at which ITO Ward 5(3), had transferred the files to him. Therefore, it is clearly without any jurisdiction. The AO gets jurisdiction to reopen the assessment only after he records the reasons for reopening and thereafter, issues notice u/s 148 within the prescribed time and only on fulfilment of the conditions prescribed therein. None of these conditions have been fulfilled by the AO. Therefore, we have no hesitation in holding that the re-assessment proceedings were not initiated validly and therefore, the re-assessment order dated 30.12.2016 is set aside. Since we have set aside the assessment order on the ground of invalidity, the other grounds of appeal become academic at this stage. They are accordingly not adjudicated. Therefore, the assessee's grounds against validity of assessment are allowed and the other grounds are not adjudicated.

8. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 5th May, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 5th May, 2021.

Vinodan/sps

Copy to:

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- 2 ITO Ward 11(2) Hyderabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order