IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI B.C. MEENA

ITA No. 3061 /Del/2012
Assessment Year: 1997-98

Suresh Chandra, C/o Ahuja Arun & Co. 412 Deepshikh Building, Rajendra Place, New Delhi. (PAN: AACPC2002J) (Appellant)	vs.	Income-tax Officer, Ward 44(1), New Delhi. (Respondent)

Appellant by: Shri PC Yadav, Adv.
Respondent by: Shri BRR Kumar, Sr.DR

Date of hearing : 30.12.2014
Date of pronouncement: 13.03.2015

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned first appellate order on the following grounds:

"1. That the Learned CIT(Appeals)-XXVIII has erred on facts and in law in upholding the re-opening of assessment for assessment year 1997-98 by invoking the provisions of section 147 of the Income-tax Act, 1961. The provisions of section 147 read with section 148 of the Income-tax Act, 1961 are not at all applicable in the case of the appellant. As out of the total interest, the interest for the assessment year 1997-98 is Rs.32,806, which is below 1,00,000, so the notice u/s.

148 is time barred, according to sec.149/151 of the Income-tax Act, 1961.

2. The Learned CIT(Appeals)-XXVIII and the Assessing Officer has erred in facts that any new facts were the reason for reopening the case, which was earlier, not disclosed by the assessee. As the assessment has been wrongly reopened by invoking the provisions of sec. 147 as the assessee has disclosed all the relevant facts in the original return filed by him and mere change of opinion of the Assessing Officer cannot be the basis for re-opening of assessments.

3. That the Learned CIT(Appeals)-XXVIII erred on facts and in law and was not justified in upholding that the amount of Rs.3,16,639 is a revenue receipt and including the same in the total income of the assessee. The amount received by the assessee is fully exempt from tax and cannot be included in the taxable income.

4. That the Assessing Officer and he Learned CIT(Appeals)-XXVIII has erred on facts and in law in upholding the reassessment validity. As the present case, notice u/s. 148 was issued twice for the same assessment year.

5. That the impugned order issued by Assessing Officer is bad in awl as he once again fails to furnish the reasons of notice u/s. 148 before proceeding with assessment and the Learned CIT(Appeals)-XXVIII has erred on facts and in law in upholding the same.

6. That the impugned order is bad in law as it is based upon irrelevant considerations. The order of the Learned CIT(Appeals)-XXVIII are not based upon the facts of the case but on assumptions and surmises.

7. That the impugned order is illegal, bad in law and in violation of the contemporary principles of natural justice as well as established judicial pronouncements."

2. At the outset of hearing, the Learned AR submitted that the assessee does not wish to press ground Nos. 1 to 3. These grounds are accordingly rejected as withdrawn.

3. In ground Nos. 4 and 5, the validity of notice issued under sec. 148 of the Income-tax Act, 1961 has been questioned. Ground Nos. 6 and 7 are general in nature.

4. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

5. In support of the ground Nos. 4 and 5, the Learned AR submitted that in the first round of the appeal, the I.T.A.T vide its order dated 27.7.2007 in ITA No.476/Del/2006 has set aside the matter to the file of the Assessing Officer with the direction to dispose of the objections raised by the assessee to the jurisdiction of the Assessing Officer for issuance of notice under sec. 148 of the Act first by passing a speaking order in view of the decision of the Hon'ble Supreme Court in the case of G.K.N. Drive Shaft (India) Ltd. vs. ITO – 259 ITR 19 (S.C). He submitted that the assessee had raised objection on the issue of jurisdiction for issuance of notice under sec. 148 of the Act vide letter dated 11.01.2005 (wrongly typed as 11.01.2004) which has also been corrected by the Learned CIT(Appeals)). The Assessing Officer while disposing of the said objection also proceeded to pass the reassessment order instead of restricting itself for the disposal of the objection passing a separate order. He submitted that in the above cited decision of the Hon'ble Supreme Court in the case of G.K.N. Drive Shaft (India) Ltd. vs. ITO (supra), the ratios laid down is that the Assessing Officer ought to have disposed of the objection raised by the assessee to the jurisdiction of the Assessing Officer for issuance of notice under sec. 148 of the Act by passing a separate order and proceed for reassessment only after giving an opportunity to the assessee to question the said order of the

Assessing Officer rejecting the objection of the assessee. Since the Assessing Officer has failed to abide by such ratio of the above decision as directed by the ITAT, the rejection of the objection by the Assessing Officer vide order dated 03.10.2008 is bad in law and the same should be declared as void ab initio. He placed reliance on several decisions including decisions of Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd. vs. DCIT – 353 ITR 244 (Guj.); M/s. Bharuch Envoir –ITA Nos. 731 & 732/Ahmedabad/2007 (A.Ys. 2000-01 and 2001-02) vide order dated 05.08.2014.

6. The Learned AR on the other hand submitted that the Assessing Officer has fully complied with the direction of the ITAT while disposing of the objection raised by the assessee to the jurisdiction of the Assessing Officer for issuance of notice under sec. 148 of the Act. The Learned CIT(Appeals) was thus justified in upholding the same. He reiterated the contents of the orders of the authorities below in this regard.

7. Having gone through the above cited decisions regarding the manner in which the Assessing Officer is to dispose of the objections raised against the jurisdiction of the Assessing Officer for issuance of notice under sec. 148

of the Act, we find that the ratios laid down in this regard by the Hon'ble Supreme Court in the case of G.K.N. Drive Shaft (India) Ltd. vs. ITO (supra) along with other decisions have been discussed by the Hon'ble Gujarat High Court in the case of General Motors India (P) Ltd. vs. DCIT (supra) and the Hon'ble High Court after detailed deliberation has come to the following conclusions:

> "23. From the aforesaid decision, we are of the considered opinion that writ petition under Article 226 of the Constitution of India is maintainable where no order has been passed by the Assessing Officer deciding objection filed by the assessee under sec. 148 of the Act and assessment order has been passed or the order deciding an objection under sec. 148 of the Act has not been communicated to the assessee and assessment order has been passed or the objection filed under sec. 148 has been decided along with the assessment order. If the objection under sec. 148 has been rejected without there being any tangible material available with the Assessing Officer to form an opinion that there is escapement of income from assessment and in absence of reasons having direct link with the formation of the belief, the writ petition filed by the petitioner is maintainable. The Assessing Officer is mandated to decide the objection to the notice under sec. 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in a writ petition. Thereafter the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide the objection to notice

under sec. 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection of the assessee filed under sec. 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under sec. 148 and the assessment order passed under the Act deserves to be quashed."

8. In view of the above decisions, we find that the Assessing Officer is mandated to decide the objection to the notice under sec. 148 of the Act and supply or communicate it to the assessee. Thereafter, the assessee gets an opportunity to challenge the order in a writ petition. Thereafter, the Assessing Officer may pass the reassessment order. It is not open to the Assessing Officer to decide the objection raised against notice under sec. 148 by a composite assessment order. Thus, the Assessing Officer was required to first decide the objection of the assessee filed under sec. 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it is open to him to pass an assessment order. Since such compliance has not been made by the Assessing Officer in the present case, we hold the impugned assessment order dated 03.10.2008 as not valid and the same is held as void ab initio.

9. In result, the said assessment order dated 03.10.2008 is quashed. The issue raised in ground Nos. 4 and 5 on the validity of notice issued under sec. 148 of the Act and the assessment made in furtherance thereto is thus allowed.

7. In result, the appeal is allowed.

Decision pronounced in the open court on 13.03.2015

Sd/-	Sd/-
(B.C. MEENA)	(I.C. SUDHIR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 13 /03/2015
Mohan Lal

Copy forwarded to:

1) Appellant

2) Respondent

3) CIT

4) CIT(Appeals)

5) DR:ITAT

ASSISTANT REGISTRAR

	Date
Draft dictated on Computer directly	13.03.2015
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	