

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ ए”, चण्डीगढ़**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘A’, CHANDIGARH  
(Virtual Court)**

**BEFORE: SHRI N.K. SAINI, VICE PRESIDENT  
AND SHRI R.L. NEGI, JUDICIAL MEMBER**

**आयकरअपीलसं./ITA No. 201/Chd/2020**

**निर्धारणवर्ष/ Assessment Year : 2011-12**

Sh. Uttam Singh, C/o C.R. Gautam & Associates GT Road, Phagwara 144401	बनाम	The D.C.I.T. (International Taxation), Circle, Chandigarh.
स्थायी लेखा सं./PAN NO: AMSPS6617H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: ShriJ.S.Bhasin, Advocate

राजस्व की ओर से/ Revenue by: Sh. Ashok Kumar Khanna, Additional CIT  
(DR)

सुनवाई की तारीख/Date of Hearing: 09.02.2021

उद्घोषणा की तारीख/Date of Pronouncement: 03.05.2021

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The assessee has filed the present appeal against the order dated 17.12.2019 passed by the Learned Commissioner of Income Tax (Appeals)-43,[in short the ‘Ld.CIT(A)’, New Delhi, whereby the Ld.CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed by the AO u/s 144 read with section 147 of the of the Income Tax Act, 1961 (hereinafter referred to as ‘Act’), pertaining to the assessment year 2011-12.

2. The brief facts emanating from the record and the pleadings of the parties are that the AO issued Notice u/s 148 of the Act on 19.03.2018 after obtaining approval from the competent authority. However, the AO did not receive any response from the assessee. Thereafter the AO issued notices u/s 142(1). Again, no response was received. Ultimately, the AO passed the assessment order u/s 144 read with section 147 of the Act, determining the total income of the assessee at Rs. 33,14,716/- after making addition of Rs. 33,00,000/- as income from undisclosed source under the provisions of section 69 of the Act and Rs. 14,716/- as income from other sources. The assessee challenged the assessment order before the CIT(A). The Ld. CIT(A) after hearing the assessee upheld the action of the AO and dismissed the assessee's appeal. Against the said findings of the Ld. CIT(A), the assessee has preferred the present appeal before this Tribunal.

3. The assessee has challenged the action of the Ld. CIT(A) on the following grounds:

*"1. That when the AO passing the impugned order, had neither recorded reasons u/s 142(2), nor issued notice u/s 148, the impugned order ought to have been held as void ab initio by the ld. CIT(A).*

2. *That there being no order passed u/s 127(2) by the competent authority, transferring the case from ITO Phagwara, (who otherwise had unlawfully usurped jurisdiction in this case), to DCIT (Intl. Taxation), the letter AO could not lawfully avail the benefit of continuity of proceedings, as envisaged u/s 127(4) of the Income Tax Act, 1961.*
3. *That the absence of service of statutory notice u/s 148 on assessee in a manner known to law, the order under appeal was a nullity and ought to have been quashed by the ld. CIT(A) on this very premise.*
4. *That without prejudice to above, the ld. CIT(A) grossly erred in summarily upholding the initiation of proceedings u/s 147 when the prerequisites of the said sections had not been complied with by the AO, while recording reasons u/s 148(2).*
5. *That the ld. CIT(A) was not justified in arbitrarily sustaining the addition of Rs. 23,50,000/- without affording proper opportunity of hearing to assessee after the receipt of remand report from the AO.*
6. *That the ld. CIT(A), wrongly confirmed the impugned addition, by overlooking the documents, filed in appeal as additional evidence, to substantiate the credits in bank, as representing the sale proceeds of the said house.*

7. *That the impugned order, to the extent disputed herein, is against law and facts of the case.”*

4. At the outset, the Ld.Counsel for the assessee submitted that the legal grounds raised by the assessee in this case are covered in favour of the assessee by the decision of the Chandigarh Bench of the Tribunal in the case of *Sh. Manjit Singh vs. DCIT International Taxation, Chandigarh, ITA No. 867/CHD/2018* for the assessment year 2009-10. The Ld. Counsel further pointed out that since the findings of the Ld. CIT(A) are contrary to the decision of the jurisdictional Bench of the Tribunal, the same deserves dismissal. The Ld. Counsel invited our attention to facts of the case and the circumstances under which the Ld. CIT(A) had passed the order in the above referred case to show that in the present case, the Ld. CIT(A) has passed the impugned order in the similar set of facts and circumstances.

5. On the other hand, the Ld. Departmental Representative (DR) did not deny the facts stated by the Ld.Counsel for the assessee. The Ld. DR further admitted that the legal issues raised in this case is covered in favour of the assessee by the decision of the ITAT in the case of *Sh. Manjit Singh vs. DCIT International Taxation*. The Ld. DR further admitted that notice u/s 148 in this case was not issued by the AO who has passed the assessment order.

However, the Ld. DR supported the order passed by the DCIT (International Taxation) and the Ld. CIT(A).

6. We have perused the material available on record including the decision of the coordinate Bench in the light of the submissions made by the Ld.Counsel for the assessee. The assessee has challenged the impugned order on legal grounds as well as on merits. We find that the legal grounds raised by the assessee in this case are similar to the legal grounds raised by the assessee in the case of *Sh. Manjit Singh vs. DCIT International Taxation*, relied upon by the Ld. Counsel. As pointed out by the Ld. Counsel the Coordinate Bench has decided the identical legal grounds raised by the assessee in the said case in favour of the assessee holding as under:

*“6. We have considered the rival submissions. The main and foremost grievance of the Ld. Counsel for the assessee in this case is regarding the validity of re-assessment order framed by the DCIT (International Taxation) on the ground of non-issuance of notice u/s 148 of the Act by DCIT (International Taxation). It has submitted that the assessment has been framed by the DCIT (International Taxation) on the basis of the borrowed satisfaction of the ITO, Dasuya instead of himself forming the belief regarding the escapement of income of the assessee.*

*As per the narration of events as discussed above, firstly, in the year 2012, the queries were raised by the ITO Dasuya regarding the aforesaid deposit of amount of*

*Rs. 30.68 lacs in the bank account of the assessee, however, thereafter the ITO Dasuya remained silent for about four years. Thereafter, the ITO Hoshiarpur issued queries vide letter dated 18.2.2016 about the same bank transactions. The assessee vide letter dated 09.02.2016 informed the ITO Hoshiarpur that he was a non-resident Indian, further necessary details like copies of PAN card, passport, Permanent Resident Card etc. were attached with the said letter. However, after considering the PAN details of the assessee, ITO, Hoshiarpur transferred the case to ITO, Dasuya. The ITO, Hoshiarpur did not make any comments about the non-resident status of the assessee. Again, queries were raised by the ITO, Dasuya and even a notice u/s 148 of the Act was also issued by the ITO, Dasuya to the assessee. The assessee, in response, again duly affirmed that he was a non-resident Indian and that the jurisdiction to assess him did not vest with the ITO, Dasuya. Thereafter, the ITO, Dasuya again issued letter to the assessee and after being satisfied, he himself transferred the case to the ADIT (International Taxation), Chandigarh for taxation. Thereafter, Ld. DCIT (International Taxation) neither recorded any reasons to believe that income of the assessee had escaped assessment nor issued any notice u/s 148 of the Act. The DCIT (International Taxation) continued proceedings from the stage these were left by the ITO, Dasuya. A perusal of the above sequence reveals that the ITO Dasuya did not have any jurisdiction over the assessee and, as such, the notice u/s 148 of the Act by the ITO, Dasuya being without jurisdiction was not valid. Though, the fact, that the assessee was a non-resident Indian, was duly mentioned to the ITO, Hoshiarpur and the entire record along with reply of the assessee was transferred to ITO, Dasuya, apart from that the ITO Dasuya also was informed vide separate replies, as mentioned above, that the assessee was a permanent resident of USA, ITO*

*Dasuya, continued to proceed with the re-assessment and issued notices u/s 148 of the Act. The fact that the assessee was an NRI was very much on the record. Under the circumstances, the ITO Dasuya had no jurisdiction to initiate reopening of the assessment by way of issuance of notice u/s 148 of the Act. However, thereafter he transferred the case to ADIT (International Taxation) fully convinced that he himself had no jurisdiction to make assessment in the case of the assessee.*

*7. Admittedly, no notice u/s 148 of the Act by the DCIT (International Taxation), Chandigarh to the assessee was issued. Since the ITO, Dasuya had no jurisdiction to reopen the assessment, hence, any notice issued by him has no legal validity. So far as the DCIT (International Taxation), Chandigarh is concerned, he admittedly did not issue any notice u/s 148 of the Act to the assessee, therefore, the very reopening of the assessment without issuance of notice u/s 148 of the Act by the Assessing officer of the competent jurisdiction, is bad in law and the consequential assessment framed u/s 147 of the Act is not sustainable in the eyes of the law and the same is accordingly liable to be quashed.*

*12. So far as the argument of the Ld. DR that the ITO, Dasuya had transferred the case to DCIT (International Taxation ), Chandigarh and, hence, there was no requirement of issuing of fresh notice u/s 148 of the Act as per the provisions of section 127 (4) of the Act is concerned, we do not find any force in the above contention of the Ld. DR. Firstly, the re-assessment proceedings initiated by the ITO, Dasuya were without jurisdiction and the same were voidabinitio, hence, any transfer of such void proceedings to the Assessing officer of competent jurisdiction did not validate his action and the proceedings. Even otherwise, as per the provisions of section 127 of the Act, ITO, Dasuya himself had no*

*jurisdiction to suo motu transfer the case to the DCIT (International Taxation). Rather, the transfer of the case as per the provisions of section 127 (1) of the Act, can be ordered by the competent authority prescribed in the said provisions.*

*In view of this, the reopening of the assessment by the DCIT (international Taxation) was not valid and the same is accordingly quashed.”*

7. We notice that in the present case notice u/s 148 of the Act was issued by the ITO Phagwara after recording reasons for initiating proceedings u/s 147 of the Act, whereas the assessment order u/s 144 read with section 147 was passed by the DCIT (international Taxation), Circle Chandigarh. Further, the competent authority has not passed any order u/s 127(2) of the Act for transferring the case from ITO Phagwara to the Deputy Commissioner of Income Tax (International Taxation) Circle Chandigarh. Since, the coordinate Bench has decided the identical issue in favour of the assessee in the case of *Sh. Manjit Singh vs. DCIT International Taxation* (supra) and since the facts and issues involved in the present case are identical to the facts of the of the present case, we find merit in the legal issues raised by the assessee in its appeal. Hence, respectfully following the decision of the coordinate Bench, we allow the legal grounds raised by the appellant/assessee in the present case and quash the order passed by the Ld. DCIT (International Taxation).



8. Since we have quashed the order passed by the Ld. DCIT (International Taxation) u/s 144 read with section 147 of the Act, by allowing the legal grounds raised by the assessee, we do not deem it necessary to adjudicate the other grounds raised by the appellant/assessee on merits.

In the result, the appeal filed by the assessee is allowed.

Order pronounced on 03.05.2021.

**Sd/-**  
**(N. K. SAINI)**  
**(VICE PRESIDENT)**

**Dated: 03<sup>rd</sup> May, 2021**

**\*Ranjan**

**Sd/-**  
**(R.L. NEGI)**  
**(JUDICIAL MEMBER)**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar