

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.7225/M/2018
Assessment Year: 2007-08**

M/s. The Executive Board of the Methodist Church in India, 1, Prospect Chambers, Ground Floor, 313, D.N. Road, Flora Fountain Fort, Mumbai – 400 001 PAN: AAATT5754E	Vs.	Asst. Director of Income Tax (Exemptions)-2(1), 5 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mukund Bakshi, A.R.
Revenue by : Shri B.K. Bagchi, D.R.

Date of Hearing : 07 . 03 . 2022
Date of Pronouncement : 25 . 03 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. The Executive Board of the Methodist Church in India (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 25.10.2018 passed by Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2007-08 on the grounds inter alia that :-

“1. Ground No. 1 - Re: Re-assessment without issuing Notice u/s. 148:

The learned Commissioner of Income Tax (Appeals)-I, Mumbai [hereafter referred as the 'CIT(A)'] erred in upholding the action of the Asst. Commissioner of Income Tax (Exemptions)-2(l), Mumbai [hereafter referred as the 'A.O'] in assuming jurisdiction to re-assess income of the appellant-assessee without issuing and serving on the appellant-assessee valid notice u/s 147/148 of the Income Tax Act, 1961 (the 'Act') consequently passing the impugned assessment order dated 26.03.2015.

2. Ground No. 2 - Re: Issuance of Notice u/s 148 by the I.T.O, Bareilly, is invalid:

The learned C.I.T(A) erred in upholding the action of the Income Tax Officer Ward-1(1), Bareilly, in recording the reasons for re-opening and issuing Notice u/s 148 of the Act though the said ITO did not have jurisdiction over the appellant and hence the notice u/s 148 of the Act is invalid.

3. Ground No. 3 - Re: Arbitrary additions of Rs.2,04,08,000/- is invalid:

Without prejudice and in the alternative, the learned CIT(A) erred in confirming the arbitrary addition of Rs.2,04,08,000 being sale proceeds of properties allegedly belonging to the appellant-assessee without providing proper details and without affording opportunity to explain the same.

4. Ground No.42 - Re: Denial of Exemptions u/s 11 of the Act:

Without prejudice, the Learned CIT(A) erred in law and facts in denying the claim for exemption/deduction as per sec 11(1 A) of the Act even though the appellant has made sufficient investment in acquiring another capital asset.

5. The above grounds are independent and without prejudice to each other.

6. The Appellant craves leave to add, amend or alter the grounds of appeal either before or at the time of hearing of the appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee's return of income declaring total income at Rs.Nil was accepted and completed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). However, the assessment was reopened by invoking the provisions under section 147 read with section 148 of the Act on the basis of AIR information that the assessee trust has sold properties for Rs.62,56,000/-, Rs.72,77,000/- and Rs.68,75,000/- on 01.02.2007, 03.02.2007 and 25.07.2006 respectively as the transactions remained unexplained, assessment was reopened and sale proceeds of Rs.2,04,08,000/- reasoned to be believed as chargeable to tax having escaped assessment for A.Y. 2007-08.

3. Declining the contentions raised by the assessee the Assessing Officer (AO) made addition of Rs.2,04,08,000/-. The AO also denied the exemption/deduction claimed by the assessee under section 11 of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the order passed by the AO by partly allowing the appeal of the assessee. Feeling aggrieved from the

impugned order passed by the Ld. CIT(A), the assessee has come up before the Tribunal by way of filing the present appeal.

5. Undisputedly, original assessment against the assessee for the year under consideration was framed under section 143(3) of the Act on 20.11.2009. It is also not in dispute that jurisdictional AO in this case is ACIT(Exemption)-2(1), Mumbai. It is also not in dispute that reopening in this case was initiated by way of issuance of notice under section 148 of the Act by recording reasons by Income Tax Officer-(1) (for short 'ITO'), Bareli, Uttar Pradesh. It is also not dispute that assessment in this case under section 143(3) read with section 147 of the Act, which is challenged before the Bench, has been framed by ACIT(Exemption)-2(1), Mumbai. It is also not dispute that the assessee has filed return of income for the year under consideration at Mumbai.

6. In the backdrop of the aforesaid undisputed facts, the sole question arises for determination in this case is:

“As to whether assessment framed in this case under section 143(3) read with section 147 of the Act by ACIT (Exemption) on the basis of reopening initiated by ITO, Bareli by way of issuance of notice under section 142(1) of the Act is liable to be quashed as contended by the Ld. A.R. for the assessee?”

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

8. The Ld. A.R. for the assessee challenging the impugned order passed by the AO as well as the Ld. CIT(A) framing/confirming the assessment under section 148 of the Act contended interalia that assessment framed in this case is liable to be quashed as ITO, Bareilly who has initiated the reopening of assessment under section 148 of the Act was having no jurisdiction under section 120/124 of the Act nor any transfer of jurisdiction order was ever passed under section 127 of the Act and relied upon the decision rendered by the Tribunal in cases cited as Indorama Software Solution Ltd. vs. ITO 29 taxmann.com 78 (Mumbai), Mohd. Rizwan vs. ITO 62 taxmann.com 160 (Lucknow-Trib.), Ramesh Mishra vs. DCIT 111 taxmann.com 268 (Lucknow-Trib.), Tata Sons Ltd. vs. ACIT 76 taxmann.com 126 (Mumbai-Trib.) and Harvinder Singh Jaggi vs. ACIT 67n taxmann.com 109 (Delhi-Trib.)

9. However, on the other hand, to repel the arguments addressed by the Ld. A.R. for the assessee, the Ld. D.R. for the

Revenue contended that when the assessee's PAN was lying with ITO, Bareilly, ITO, Bareilly has rightly issued the notice under section 142(1) of the Act and the assessment framed in this case is valid and relied upon the order passed by the AO as well as the Ld. CIT(A).

10. Before proceeding further, we would like to extract for ready perusal "reasons recorded" for the purpose of reopening assessment under section 147 of the Act by ITO-1, Bareilly, UP are as under:

"As per AIR information in Code no. 07 in respect of property sold on 01.02.2007 for Rs.62,56,000/-, on 03.02.2007 for Rs.72,77,000 /- and on 25.07.2006 for Rs.68,75,000/-. Letters dated 27.01.2014 were sent to the assessee alongwith Annex. B for verification of the property transaction. However no explanation was furnished by the assessee. The transaction stands unexplained. Hence the cost of acquisition is taken at NIL.

Therefore I have reasons to believe that income chargeable to tax to the extent of Rs.2,04,08,000/- has escaped assessment for the A.Y. 2007-2008"

11. When it is undisputed fact that jurisdictional AO of the assessee trust is ACIT (Exemption)-2(1), Mumbai and jurisdiction has never been changed or transferred to ITO, Bareilly, the very initiation of reopening by ITO, Bareilly under section 147/148 of the Act is bad in law. Because under section 120 & 124 of the Act only ACIT (Exemption), Mumbai is the AO of the assessee trust empowered to frame the assessment, which has never been changed or transferred to ITO, Bareilly under section 127 of the Act.

12. It is settled principle of law that when the notice under section 148 of the Act has been issued by a non jurisdictional AO, the ITO Bareli in this case, reassessment by the jurisdictional AO is bad in law and is liable to be quashed, more particularly when assessment of the assessee has admittedly not been transferred to Bareli under section 127 of the Act. So the assessment framed by the ACIT(Exemption)-2(1), Mumbai on the basis of initiation of reopening under section 147/148 of the Act is not sustainable in the eyes of law for lack of jurisdiction being void ab-initio.

13. Since assessment framed in this case is not sustainable for lack of jurisdiction, the appeal filed by the assessee is hereby allowed without going into the issue raised on merit.

Order pronounced in the open court on 25.03.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.03.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.