IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 2443/Bang/2019
Assessment year: 2008-09

M N Dastur & Co Pvt. Ltd., 7th Floor, Raheja Towers, 26/27, M.G. Road, Bangalore – 560 001. **PAN: AABCM 2136M**	Vs.	The Deputy Commissioner of Income Tax, Circle- 4(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.K. Manjunatha, CA
Respondent by	:	Smt. Priyadarshini Mishra, Addl. CIT(DR), ITAT, Bangalore.

Date of hearing	:	08.03.2022
Date of Pronouncement	:	08.03.2022

O R D E R

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 15.10.2019 of the CIT(Appeals)-4, Bengaluru for the assessment year 2008-09 on the following grounds:-

> "1. That the Order of the Assessing Officer / CIT-Appeals in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity and all other known principles of law.

2. That the total value of fringe benefit computed and the total tax computed is hereby disputed.

3. That the notice issued u/s 115WH of the Act and subsequent assessment proceedings consequent to such notice is without jurisdiction, bad in law and barred by limitation.

4. That the notice u/s 115WH and the reassessment order are barred by limitation as no reassessment can be made beyond four years from the end of the relevant assessment year.

5. That the reassessment proceedings is not conformity with procedure laid down by the Hon'ble Supreme Court in 259 ITR 19, hence on this ground alone the order requires to be cancelled.

6. That the order u/s 115WE (3) r.w.s 115WG of the Act is bad in law, as the appellant had disclosed the primary material facts fully and truly necessary for assessment and mere change of opinion cannot be the basis for making reassessment.

7. The Learned AO /CIT(A) erred in holding that the sum of Rs. 81,55,514/- being 5% of tour and travel expenses is liable for FBT u/s 115WC(1)(e) without appreciating the fact that such expenses were incurred as a legitimate business expenditure and no element of employee benefit was involved.

8. The Learned AO /CIT(A) erred in treating the sum of Rs. 3,63,562/- as liable for Fringe Benefit Tax u/s 115WB(2)(N) of the Act.

9. The Learned AO /CIT(A) erred in treating the sum of Rs. 97,368/- as liable for Fringe Benefit Tax u/s 115WB(2) (0) of the Act.

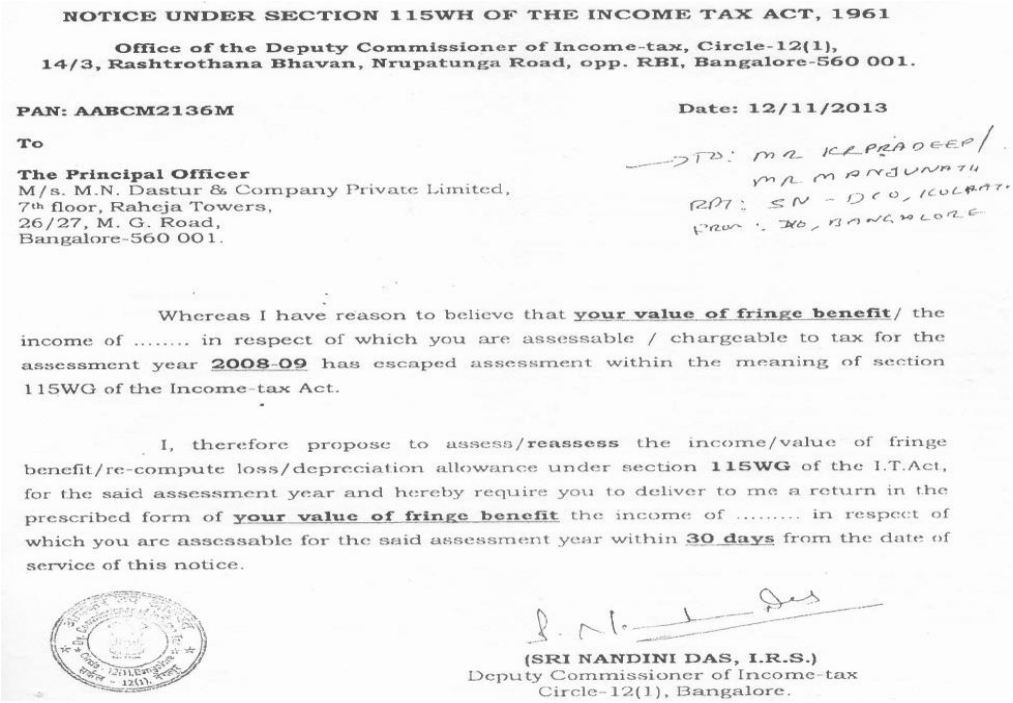
10. The Learned AO /CIT(A) erred in withdrawing interest granted u/s 244A of the Act.

11. The appellant denies the liabilities for interest u/s 234D of the Act. No opportunity has been given before the levy of interest u/s 234D of the Act.

> 12. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered."

2. At the outset, the assessee argued that ground No.3 with regard to time limit to pass order u/s. 115WH of the Income-tax Act, 1961 [the Act]. The facts are that assessee filed its return on fringe benefits for the year under appeal on 30.9.2009 declaring total value of fringe benefits of Rs.1,73,35,689. The AO completed the assessment u/s. 115WE(3) r.w.s. 115WG of the Act assessing income of Rs.2,59,52,133 after making addition of towards fringe benefits of Rs.81,55,514 u/s. 115WC(1)(e), Rs.3,63,562 u/s. 115WB(2)(N) and Rs.97,368 u/s. 115WB(2) of the Act. The total demand raised was Rs.40,26,856.

3. The ld. AR submitted that assessee raised the issue relating to time limit of passing the order stating that it was time barred before the CIT(Appeals) by way of ground No.3 before CIT(A). However, the CIT(A) failed to address these grounds. He submitted that these grounds being pure legal issues, the issue may be decided by the Tribunal instead of remitting the same to the CIT(Appeals) for his decision. In this regard, he submitted that the original assessment in this case for AY 2007-08 was passed u/s. 115WE(3) of the Act on 24.3.2010. Notice u/s. 115WH of the Act dated 12.11.2013 was issued for reopening the assessment which is as follows:-



NOTICE UNDER SECTION 115WH OF THE INCOME TAX ACT, 1961

Office of the Deputy Commissioner of Income-tax, Circle-12(1),
14/3, Rashtrothana Bhavan, Nrupatunga Road, opp. RBI, Bangalore-560 001.

PAN: AABCM2136M **Date: 12/11/2013**

To

The Principal Officer
M/s. M.N. Dastur & Company Private Limited,
7th floor, Raheja Towers,
26/27, M. G. Road,
Bangalore-560 001.

TO: MR. K.PRADEEP/
MR. MANJUNATH
RPT: SN - DCO, ICULRAT.
PRM: JO, BANGALORE

Whereas I have reason to believe that **your value of fringe benefit**/ the income of ..... in respect of which you are assessable / chargeable to tax for the assessment year **2008-09** has escaped assessment within the meaning of section 115WG of the Income-tax Act.

I, therefore propose to assess/**reassess** the income/value of fringe benefit/re-compute loss/depreciation allowance under section **115WG** of the I.T.Act, for the said assessment year and hereby require you to deliver to me a return in the prescribed form of **your value of fringe benefit** the income of ..... in respect of which you are assessable for the said assessment year within **30 days** from the date of service of this notice.

(SRI NANDINI DAS, I.R.S.)
Deputy Commissioner of Income-tax
Circle-12(1), Bangalore.

4. The ld. AR submitted that no notice u/s. 115WH(4) could be issued within four years from the end of relevant assessment year with the approval of Chief Commissioner or Commissioner, as the case may be. According to him, in the present case, notice u/s. 115WH was issued on 12.11.2013 which is after four years from the end of relevant assessment year with the approval of Additional CIT, Range 12, Bangalore, as such jurisdiction assumed by the AO is bad in law. Accordingly, the assessment order has to be quashed.

5. The ld. DR submitted that the issue was raised for the first time before the CIT(Appeals), however, there is no adjudication by the CIT(Appeals) on this issue, as such it may be remitted to the CIT(Appeals) for his decision.

6. We have heard both the parties and perused the material on record. Admittedly, notice for reopening was issued to the assessee on 12.11.2013

u/s. 115WH of the Act for the AY 2008-09. The provisions of section 115WH(4) reads as follows:-

> "(4) In a case where an assessment under sub-section (3) of section 115WE or section 115WG has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, after the expiry of four years from the end of the relevant assessment year, unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. "

7. In the present case, approval for reopening has been obtained from the Additional Commissioner of Income Tax, Range 12, Bangalore as seen from page 57 of the PB which is as under:-

OFFICE OF THE ADDL.COMMISSIONER OF INCOME-TAX
RANGE.12, BANGALORE.
(4th Floor, Rastrothana Bhavan, (Opp.)RBI, Nrupathunga Road,Bangalore)

No.29/Addl.CIT/R-12/DCIT Cir.12(1)/2013-14 Date : 31.10.2013

SPEED POST GOVT. OF INDIA
SPEED POST INCOME-TAX DEPT.
11 NOV 2013
BANGALORE

To

The DCIT Circle 12(1),
Bangalore.

Sub : Your proposal u/s 115WH in the case of M/s M.N. Dastur & Company Pvt.Ltd, for A.Y. 2008-09 vide letter dated 25.10.2013 – approval – regarding -
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Please refer to the above.

2. Your proposal for reopening of FBT assessment u/s 115WH in the above mentioned case for A.Y. 2008-09 is hereby approved. The assessment records in two dockets are returned herewith.

(M. Vijay Kumar)
Addl. Commissioner of Income Tax,
Range-12, Bangalore.

Encl: As above.

8. As seen from the above, approval was not granted by the Competent Authority. Being so, the assumption of jurisdiction by the AO is bad in law. This view of ours is fortified by the order of the coordinate Bench of the Tribunal in the case of *Hi Gain Investment P. Ltd. v. ITO, 50 CCH 34 (Del Trib.)* wherein it was held as under:-

> "Reopening u/s 148 of the Act was initiated by the AO after obtaining the approval of the Add. Commissioner, Range-12, New Delhi. This fact has been mentioned by the AO in the body of the assessment order at page no.1. However, as per the provision contained in Section 151 of the Act, the reopening after the expiry of four years from the end of the relevant assessment year can be done only after the satisfaction of the Commissioner or Pr. Commissioner or Chief Commissioner or Pr. Chief Commissioner but not on the approval of the Addl. Commissioner as has been done in this case.
>
> In the present case also the reopening beyond 4 years has been done by getting the approval of Addl. Commissioner and not from the Commissioner or Pr. Commissioner or Pr. Chief Commissioner. Therefore, the initiation of the proceedings u/s 148 of the Act was invalid."

9. Further in the case of Pr. CIT v. M/s. Khushbu Industries, 106 CCH 245 (Bom) it was held as under:-

> "3. The impugned order of the Tribunal upheld the view taken by the Commissioner of Income Tax (Appeals) in the order dated 12 April 2016 holding that the reopening proceedings under section 148 are bad as necessary sanction/approval had not been obtained in terms of section 151 of the Act. The impugned order of the Tribunal records that the sanction for issuing the impugned notice had been obtained from the Commissioner of Income Tax when, in terms of section 151, the sanction had to be obtained from the Joint Commissioner of Income Tax. Thus, in the absence of sanction/approval being obtained from the appropriate authority as mandated by the Act, the Tribunal held that the reopening notice itself is without jurisdiction.

> 4. Mr.Kotangale, learned counsel appearing in support of the appeal very fairly points out that the submission of the Revenue that the Commissioner of Income Tax is a higher authority and, therefore, the sanction obtained from him would meet the requirement of obtaining sanction from the Joint Commissioner of Income Tax in terms of section 151 of the Act will no longer survive. This in view of the decision of this Court in Ghanshyam K. Khabrani v. Asst. CIT (2012) 346 ITR 443 (Bom) = 2012-TIOL-201-HC-MUM-IT wherein, in identical circumstances, this Court held that where the Act provides for sanction by the Joint Commissioner of Income Tax in terms of section 151, then the sanction by the Commissioner of Income Tax would not meet the requirement of the Act and the reopening notice will be without jurisdiction.
>
> 5. In the above view, the question as proposed does not give rise to any substantial question of law as the said issue has already been concluded against the Revenue in view of the decision of this Court in Ghanshyam K. Khabrani v. Asst. CIT (supra). Appeal is, therefore, dismissed."

10. In the present case also the reopening beyond 4 years has been done by getting the approval of Addl. Commissioner and not from the Commissioner or Pr. Commissioner or Pr. Chief Commissioner. Therefore, the initiation of the proceedings u/s 148 of the Act was invalid.

11. In view of the above discussion, we are of the opinion that assumption of jurisdiction is improper in the present case so as to reopen the assessment. Accordingly, we quash the reassessment order u/s. 115WE(3) r.w.s. 115WG of the Act.

12. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on this 8th day of March, 2022.

Sd/-	Sd/-
(BEENA PILLAI)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 8th March, 2022.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.