

ITAT confirmed reassessment as assessee didn't object to jurisdiction of JCIT issuing notice within limitation period

Summary – The Chennai ITAT in a recent case of Karandhai Tamil Sangam., (the Assessee) held that where pursuant to survey conducted upon assessee, a notice under section 148 was issued by Joint Commissioner, and assessee raised objection to territorial jurisdiction of Joint Commissioner, since objection was not raised within time provided under section 124(3)(b) from date of issuance of said notice, jurisdiction of Joint Commissioner stood confirmed

Facts

- The assessee trust was carrying out activities in propagating the proficiency of Tamil language and culture. The assessee had originally been denied registration under section 12A but subsequently registration was granted under section 12AA by the Commissioner with effect from 01-07-1973.
- A survey was conducted on the premises of the assessee-trust by the Income Tax officer, Thanjavur and subsequently notices under sections 142(1) & 148 were issued by the Joint Commissioner, Thanjavur.
- The assessee was under the *bona fide* belief that the Joint Commissioner Thanjavur Range, Thanjavur did not have jurisdiction over the assessee, the assessee had not co-operated for assessment proceedings and the assessments came to be completed under section 144 read with section 147 wherein the Assessing Officer had disallowed 40 per cent of the expenses booked by the assessee and made the additions to the excess of the income over the expenditure.
- In instant appeal, the assessee contended that when the Assessing Officer completed the assessments under section 144 read with section 147, Assessing Officer had not considered the assessee's registration under section 12AA. Further, it was submitted that the assessee-trust had filed a writ petition before the High Court and the High Court had dismissed the assessee's writ petition against which the writ appeal had been filed before the High Court and the same was pending insofar as the revenue had been continuously seeking adjournments on some pretext or other. The assessee's main thrust of the argument was that there was violation of provisions of the section 120(4)(b) insofar as there was no notification directing the assessee was to be assessed by the Joint Commissioner Thanjavur. On merits, it was a submission that the issues in the appeals might be restored to the file of Assessing Officer for re-adjudication and that the assessee would co-operate in the set aside proceedings.

Held

- The facts in the present case clearly shows that the notice under section 148 issued by the Joint Commissioner Thanjavur Range, Thanjavur on 12-08-2010 was served on the assessee on 12-08-2010. This is evident from the assessment order. Notice under section 142(1) was served on the

assessee on 08-03-2011. Admittedly, assessee has not challenged the jurisdiction by intimating the Assessing Officer as required under section 124(3)(b) within the time provided therein. It must be mentioned herein that the challenge to the jurisdiction has been provided in section 124(3) wherein the time for challenging has also specified, so that the revenue would also have an opportunity to rectify any defects, if found validly raised. This has not been done. Once the time limit for challenging jurisdiction has expired, the same cannot be challenged. Admittedly, the provisions of the section 292BB introduced by the Finance Act, 2008 would not apply insofar as the assessee is not challenging the notices or the service of the notices, but the assessee has challenged the very jurisdiction and the challenge to the jurisdiction has to be within the time provided under section 124(3). Further, as has been pointed out by the Revenue that though the assessee has filed writ petition before the Jurisdictional High Court, the High Court has dismissed the writ petition *vide* order dated 24-08-2011. Here in respect of writ petition filed by the assessee and the order passed by the Jurisdictional High Court thereon it should be clearly understood that the challenge in the writ petition was in respect of the order passed under section 127(3) regarding the transfer of jurisdiction. What is before the Tribunal is not the transfer of jurisdiction, but is a challenge to the jurisdiction under section 120(4)(b). This challenge to the jurisdiction is completely different from the challenge to the transfer of jurisdiction, which has been made in the writ petition and which has been dismissed by the jurisdictional High Court. Admittedly, no evidence of filing of writ appeal or pendency of the writ appeal or any orders passed by the jurisdictional High Court in respect of the writ appeal has been produced before us. The challenge to the jurisdiction under section 120(4)(b) had not been made within the prescribed time under section 124(3) to the authority, whose jurisdiction is being challenged, consequently, the issue of the challenge of the jurisdiction no more survives and the jurisdiction of the Joint Commissioner Thanjavur Range, Thanjavur stands confirmed.

- Coming to the merits of the issue in this appeal, admittedly the assessee has submitted that the assessee was under the *bona fide* belief that the Joint Commissioner Thanjavur Range, Thanjavur did not have jurisdiction. Admittedly, the assessee has never filed its returns hitherto earlier. This being so, the *bona fide* belief of the assessee cannot be disregarded. Further, perusal of the assessment order also shows that the Assessing Officer has completed the assessment with the presumption that the assessee does not have registration under section 12AA. However, the fact remains that the assessee has been granted registration under section 12AA by an order of the Tribunal, which has been given effect by the Commissioner, in his order granting the registration under section 12AA with effect from 01-07-1973. This being so, the issues in the assessment orders passed by the Assessing Officer would have to be re-adjudicated afresh after considering the registration granted to the assessee-trust under section 12AA. In these circumstances, the issues in these appeals in respect of the merits are restored to the file of Assessing Officer for re-adjudication after considering the registration under section 12AA granted to the assessee by Commissioner and after

affording an opportunity to the assessee in view of the undertaking given by the assessee-trust that the assessee would co-operate in the set aside proceedings.