

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.901/Del./2016
Assessment Year 2006-2007

Micron Enterprises Pvt. Ltd., C-157, BSR Road, Indl. Area, Ghaziabad – 201 001. PAN AADCM1378D	VS	The Income Tax Officer, Ward-1(4), Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Aggarwal and Shri Deepesh Garg, Advocates.
For Revenue :	Smt Asheema Neb, Sr. D.R.

Date of Hearing :	09.05.2018
Date of Pronouncement :	14.05.2018

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), Ghaziabad, dated 16th December, 2015, for the A.Y. 2006-2007, challenging the addition of Rs.10 lakhs received from M/s. Hill Ridge Investment Ltd., on account of share capital. Earlier, appeal of the assessee were dismissed for default. However, by allowing M.A. of the assessee, the appeal was re-fixed for hearing on merit.

2. Briefly, the facts of the case are that assessee is a company filed return of income declaring NIL income. The case was subsequently reopened under section 147 of the I.T. Act, after recording reasons and notice under section 148 of the I.T. Act, was issued on 29th March, 2013. Reply to the notice under section 148 of the Act has been filed by assessee on 26.11.2013. Notice under section 143(2) was issued on the same day on 26.11.2013 in response to which, assessee-company appeared and the A.O. after discussion made the addition of Rs.10 lakhs on account of unexplained investment under section 68 of the I.T. Act, 1961 vide order dated 28.02.2014 under section 147 read with section 143(3) of the I.T. Act. The assessee challenged the addition before the Ld. CIT(A). However, the appeal of assessee has been dismissed by the Ld. CIT(A).

3. The assessee filed an application dated 19th September, 2017 for admission of following additional grounds of appeal :

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*
- 2. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3), is bad in law and against the facts and circumstances of the case.*
- 3. That having regard to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3) and that too without issuing/ serving the mandatory notice u/s 143(2) as per law.”*

4. The Learned Counsel for the Assessee submitted that these are legal in nature and may be admitted for hearing and no fresh facts are required for disposal of additional grounds. There is no challenge to the request of admission of the additional grounds of appeal by the Ld. D.R. Considering these additional grounds are legal in nature which are also not opposed by the Revenue, I admit the additional grounds for the purpose of disposal of the appeal.

5. Learned Counsel for the Assessee submitted that assessee filed reply to the notice under section 148 of the I.T. Act on dated 26.11.2013 which is noted in the assessment order, copy of which, is filed at page-11 of the paper book, in which, assessee explained that the return already filed under section 139(1) may be treated as return filed in response to notice under section 148 of the I.T. Act. He has submitted that on the same day A.O. issued notice under section 143(2) i.e., on 26.11.2013, copy of which, is filed at page-12 of the paper book. He has, therefore, submitted that the A.O. has not validly

assumed jurisdiction under section 147 and 143(3) of the I.T. Act to pass the assessment order against the assessee. He has submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) in which it was held as under :

“Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities.

Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice under s. 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23rd March, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it dear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is dear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2).”

5.1. And the conclusion is as under :

“Assessment made in pursuance of a notice under section 143(2) issued on 23rd March, 2000 when the return was filed on 27th March, 2000 is invalid.”

6. He has submitted that the same order have been followed by ITAT, Delhi Bench, in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi in ITA.No.1262 and 1263/Del./2017 dated 17.10.2017 in which the Tribunal held as under :

10. *“It was further argued by the ld. counsel for the assessee Dr. Rakesh Gupta that notice u/s 143(2) of the Act, was issued on 17.09.2014 and which is the same date on which return was filed. This is apparent from the Assessing Officer’s order in para 3 at page 1. Therefore, the Assessing Officer has not applied his mind independently while issuing notice u/s 148 of the Act. On this count also, the assessment deserves to be quashed. Accordingly, under the facts and*

circumstances of the case, the legal grounds of the assessee are allowed.”

7. On the other hand, Ld. D.R. submitted that assessee did not file return under section 148 within the specified period. Therefore, this ground of appeal of assessee may be dismissed.

8. After considering the rival submissions, I am of the view that the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (supra) and Order of ITAT, Delhi Bench in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi (supra). It is an admitted fact that assessee filed reply in response to the notice under section 148 of the I.T. Act on 26.11.2013 and submitted before A.O. that original return filed before him may be treated as return filed in response to the notice under section 148 of the I.T. Act. The A.O. on the same day served notice under section 143(2) upon assessee-company whose signature tally on the said notice. Therefore, notice

issued under section 143(2) is invalid and resultantly, the assessment is vitiated and is liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the re-assessment proceedings in the matter. Resultantly, all additions stands deleted. In view of the above, there is no need to decide other contentions raised by Learned Counsel for the Assessee.

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

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th May, 2018

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.

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