

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2203/Del./2010
AND
ITA.No.1413/Del./2013
Assessment Year 2002-2003

M/s. Goldtex Furnishing Industries, 1197, Trinagar, New Delhi – 110035. PAN AAAFG3761A	vs.,	The ACIT, Circle – 25 (1) Vikas Bhawan, I.P. Estate, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Gaurav Jain, Advocate And Shri Deepesh Jain, C.A.
For Revenue :	Shri Kumar Hrishikesh, CIT-D.R.

Date of Hearing :	08.05.2019
Date of Pronouncement :	20.05.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by the Assessee are directed against the different Orders of the Ld. CIT(A)-XXIV, New Delhi, Dated 04.03.2010, for the A.Y. 2002-2003 on quantum addition and Order dated 27.12.2012 challenging

the levy of penalty under section 271(1)(c) of the I.T. Act, 1961 for same year.

2. We have heard the Learned Representatives of both the parties.

3. The facts of the case are that return of income was filed on 30.10.2002 declaring income of Rs.1 70 crores. The assessee claimed deduction under section 80HHC and 80IB of the I.T. Act, 1961. The assessee filed revised return of income declaring total income of Rs.1.58 crores. Subsequently, notice under section 148 was issued to assessee on 27.03.2009 after getting the approval of Competent Authority because assessee has claimed excessive deductions under section 80IB and 80HHC of the I.T. Act, 1961. The A.O. passed the assessment order under section 148/143(3) of the I.T. Act, 1961 and made the addition of Rs.22,75,585/- on account of excess deduction claimed under section 80IB and 80HHC of the I.T. Act. The assessee challenged the additions before the Ld. CIT(A). However, the Ld. CIT(A) partly allowed the appeal of assessee.

4. The assessee filed application for admission of additional ground of appeal and raised the following additional ground :

“That the reassessment order dated 21.12.2009 passed under section 148 r.w.s. 143(3) of the Income-tax Act, 1961 (‘the Act’) is beyond jurisdiction and void ab initio in as much as same has been passed without issuing the mandatory notice under section 143(2) of the Act for making such reassessment ”

4.1. Learned Counsel for the Assessee contended that it is a legal issue and goes to the root of the matter. Since, no notice under section 143(2) have been issued and served upon the assessee, therefore, entire re-assessment order is illegal and bad in law. He has relied upon decision of the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd., 229 ITR 383 (SC).

5. Considering the issue involved in additional ground in appeal which is legal in nature, we admit the same for the purpose of disposal of the appeal.

6. Learned Counsel for the Assessee submitted that in response to the notice under section 148 of the I.T. Act, assessee filed letter dated 07.04.2009 whereby A.O. was informed that revised return filed under section 139(5) dated 26.12.2002 may be treated as return filed in response to the notice under section 148 of the I.T. Act. Copy of which is filed at page-40 of the PB. He has submitted that since no notice under section 143(2) have been issued and served upon the assessee within the period of limitation, therefore, entire re-assessment order is illegal and bad in law. He has submitted that similar issue have been considered by ITAT, Delhi Bench in the case of M/s. Rajsi Infin Consultants Pvt. Ltd., vs. DCIT ITA.No.2785/Del./2018 Dated 25.03.2019, copy of which is filed in the paper book.

7. On the other hand, Ld. D.R. as per directions of the Tribunal produced the reassessment records and has

admitted that assessee has filed letter dated 07.04.2009 in response to the notice under section 148 of the I.T. Act, which is part of the record. The Ld. D.R. also submitted that as per record no notice under section 143(2) have been issued to the assessee in the matter. The Ld. D.R. however, relied upon Judgment of the Hon'ble Delhi High Court in the case of CIT-II, New Delhi vs. Madhya Bharat Energy Corporation Ltd., 337 ITR 389 (Del.).

8. After considering the rival submissions, we are of the view that re-assessment order is illegal and bad in law as no notice under section 143(2) have been issued and served upon the assessee within the period of limitation. The Ld. D.R. produced the reassessment record and stated that no notice under section 143(2) have been issued and served upon the assessee. The issue is considered in detail by ITAT, Delhi Bench in the case of M/s. Rajsi Infin Consultants Pvt. Ltd., vs. DCIT (supra) in which in paras 7 and 8 of the Order it was held as under :

“7. We have considered the rival submissions. It is not in dispute that assessee filed original return of

income on 11th August 2010. It is also not in dispute that notice under section 148 was issued to assessee on 20th March 2015. It is also not in dispute that assessee, in response to notice under section 148 filed letter before assessing officer on 25th March 2015 submitting therein that original return filed on 11th August 2010 may please be treated as return filed in response to notice under section 148 of the Income Tax Act, 1961. In the case of Pr. CIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd., (supra), the assessee similarly made a statement before assessing officer to the effect that original return filed should be treated as return filed pursuant to notice under section 148 of the Income Tax Act and issue have been decided in favour of the assessee because notice under section 143(2) of the Income Tax Act was not issued within the time. Similarly in the same Judgment the Judgment of the Honorable Delhi High Court in the case of CIT versus Madhya Bharat Energy Corporation Ltd., (supra), relied upon by the Learned Department of Representative has been considered and is

distinguished by the Honorable Delhi High Court and have held that the said decision is not of any assistance to the Revenue as far as the issue in the present case is concerned i.e., failure to issue notice under section 143(2) of the Income Tax Act within the period of limitation.

7.1. *Proviso to Section 143(2) provides that “provided that no notice under clause (ii) shall be served on the assessee after expiry of six months from the end of the financial year in which the return is furnished”. In the present case, the assessee filed letter on 25th March 2015 before assessing officer praying that original return filed on 11th August 2010 may be treated as return filed under section 148 of the Income Tax Act. Thus, the return under section 148 of the Income Tax Act shall be deemed to be furnished on 25th March 2015. According to the above proviso to Section 143(2) of the Income Tax Act, no notice in this Section shall be served upon the assessee after expiry of six months from the end of the financial year in which the return is*

furnished which would expire on 30th September 2015. However, in the present case, notice under section 143(2) have been issued on 9th February 2016. In the case of Indus Towers Ltd., vs. Dy. CIT (supra), the Hon'ble Delhi High Court held that "delay in issuing notice under section 143(2) of the Income Tax Act, would be fatal to the reassessment proceedings " The above Judgment has been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. In the case of Principal CIT versus Silverline (supra) and CIT versus CPR Capital Services Limited (supra), it was held that "notice under section 143(2) within limitation is mandatory. Otherwise, assessment would be nullity and void. No reassessment order could be passed without compliance with the mandatory requirement of notice being issued by the assessing officer to the assessee under section 143(2) of the Income Tax Act." The above decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts of the case. The decisions relied upon by the Departmental

Representative in the case of CIT vs. Madhya Bharat Energy Corporation Ltd., (supra) is already distinguished by the Hon'ble Delhi High Court and that the Judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT, Amirtsar vs. OCM India Ltd., (supra), cannot be given preference as against the Judgment of the Delhi High Court because Hon ble Delhi High Court is a jurisdictional High Court in the case of the assessee.

7.2. *In view of the above discussion and following the decisions of the Hon'ble Delhi High Court relied upon by the Learned Counsel for the Assessee and others as reproduced above, we are of the view that since notice under section 143(2) have been issued beyond the period of limitation, therefore, entire reassessment order is nullity and void abinitio. We, accordingly, set aside the orders of the authorities below and quash the reassessment order. Resultantly, all additions stand deleted. In view of the above, there is no need to decide other issues on merits.*

8. *In the result appeal of Assessee allowed.”*

8.1. In the aforesaid decision, the decision of Hon'ble Delhi High Court in the case of CIT-II, New Delhi vs. Madhya Bharat Energy Corporation Ltd., (supra) relied upon by the Ld. D.R. have also been considered. Since no notice under section 143(2) have been issued and served upon the assessee, therefore, the mandatory requirement of Law have not been complied with in the matter. It is well settled Law that re-assessment order cannot be passed without service of notice under section 143(2) of the I.T. Act, 1961. We rely upon the decisions of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Sri Jai Shiv Shankar Traders Pvt. Ltd., 383 ITR 448 (Del.) Pr. CIT vs. Silverline 383 ITR 455 (Del) and CIT vs. Lunar Diamonds Ltd., 281 ITR 1 (Del.). Considering the above discussion, we are of the view that reassessment order is nullity and bad in law. The additional ground of the appeal of assessee is allowed. We, accordingly, set aside the Orders of the authorities below and quash the re-assessment order.

9. In the result, appeal of Assessee allowed.
10. The A.O. on the aforesaid additions also levied the penalty under section 271(1)(c) of the I.T. Act, 1961. Since the quantum re-assessment order have been set aside and quashed, therefore, no penalty is leviable. We, accordingly, set aside the Orders of the authorities below and cancel the penalty.
11. In the result, appeal of Assessee allowed.
12. To sum-up, both the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 20th May, 2019

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "C" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.

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