

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-II' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4900/Del/2015
(ASSESSMENT YEAR-2010-11)**

Col. Manjeet Singh Sodhi, House No.210, Sector-37, Noida. PAN-AASPS0224L (APPELLANT)	vs	ITO, Ward-2(2), Noida (RESPONDENT)
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Appellant by	Sh.Piyush Kr.Goel, Adv.
Respondent by	Ms. Anima Baranwal, Sr.DR

Date of Hearing	04.08.2016
Date of Pronouncement	28.09.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 10.06.2015 of CIT(A)-1, Noida pertaining to 2010-11 assessment year. At the time of hearing, an adjournment petition was moved on behalf of the assessee stating that the arguing counsel was before the Hon'ble Punjab and Haryana High Court. The record shows that apart from various other grounds assailing the addition sustained in appeal by the CIT(A), the assessee has also raised the following ground before the ITAT:-

1. *"That since notice u/s 143(2) of the Act was neither issued and nor served after the filing of return in response to notice u/s 148 of the act the order of assessment dated 02.02.2015 u/s 147/143(3) of the Act is without jurisdiction and deserves to be quashed as such."*

2. A perusal of the record further shows that the issue agitated in the present proceedings was neither agitated before the Assessing Officer nor before the CIT(A), in view thereof, the facts relatable to the said issue were not available on record. In the circumstances, it was considered appropriate to reject the petition and proceed with the

hearing. Accordingly, the appeal was passed over. In the second round also, the Ld. AR still sought time stating that he is not prepared. It was noted after hearing the Ld.Sr.DR that even if time is granted, the material available on record is not there in order to adjudicate upon the said issue which is a jurisdictional issue and should be first decided. Thus the issue is not the maintainability of the ground before the ITAT as it is not in question but the facts relatable to it are not available accordingly the petition seeking time was rejected.

3. Both the parties were heard wherein the Ld. Sr.DR had no objection if the issues are restored for adjudication on facts to the AO as the full facts would be available it was stated on his record only. It was highlighted that the facts are not discussed in the orders as the issue was not challenged by the assessee either before the Assessing Officer or before the CIT(A). The Ld. AR on the other hand submitted that he is not fully prepared. Considering the fact that since the issue was not challenged before the tax authorities, the occasion to consider and address whether notice under section 143(2) was sent or not has not been considered. Accordingly taking note of the fact that the assessee in the year under consideration returned an income of Rs.3,99,351/- which after issuance of notice under section 148 resulted in the addition of Rs.28,42,202/-. As a result thereof, the assessment was completed at an income of Rs.32,41,552/- which was challenged in appeal before the CIT(A). On the jurisdictional issue there is no discussion. A perusal of the record shows in para 4 of the assessment order, reference has been made to notice under section 142(1) dated 28.10.2014 however there is no reference to the fact whether the notice under section 143(2) was issued or not. Since the fact was not challenged by the assessee there is no reference thereto in the impugned order also. Accordingly being of the view that first the jurisdictional issue needs to be addressed the impugned order is set aside and accepting

the Revenue's prayer the issues are restored back to the file of the Assessing Officer. The AO is directed to first decide the jurisdictional issue on the material available on record after giving the assessee a reasonable opportunity of being heard and thereafter proceed on merits, if so warranted. The said order was pronounced on the date of hearing itself in the open Court.

5. In the result, the appeal of the assessee is allowed for statistical purposes

The order is pronounced in the open court on 28th September, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI