

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
SMC BENCH 'B', BANGALORE**

**BEFORE SHRI AK GARODIA, ACCOUNTANT MEMBER &**

ITA No.61/Bang/2017 - Asst. Year – 2007-08  
ITA No.62/Bang/2017 - Asst. Year – 2008-09  
ITA No.63/Bang/2017 - Asst. Year – 2010-11  
ITA No.64/Bang/2017 - Asst. Year – 2011-12

Shri K Nagesh,  
No.487, 1s Floor, 5<sup>th</sup> Cross,  
PWD Road, Banashankari 3<sup>rd</sup> Stage,  
3<sup>rd</sup> Phase, Kathriguppe,  
Bengaluru. . Appellant  
PAN No. – ABMPN9499B.

Vs.

The Dy. Commissioner of Income-tax,  
Circle-7(2)(1),  
Bangalore. Respondent

Appellant by : Ms. Vinutha H.G, C.A

Respondent by : Shri A.R.V Sreenivasan, JCIT &  
Shri Kamaladhar, Advocate

Date of Hearing : 16-3-2017

Date of Pronouncement : 17-3-2017

**ORDER**

**PER SHRI AK GARODIA, ACCOUNTANT MEMBER :**

This bunch of 4 appeals is filed by the assessee and these appeals are directed against the combined order of learned Commissioner of Income-tax (Appeals) – 7, Bangalore dated

31/10/2016 for assessment years 2007-08, 2008-09, 2010-11 and 2011-12.

2. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

3. It was submitted by the ld AR of the assessee that ground No.1 is general in all the 4 years and as per Ground Nos. 2 to 6, which are also common in all the 4 years, this is the grievance of the assessee that notice u/s 143(2) was not served on the assessee within the prescribed time in any of these 4 years and hence, the assessment order in all these four years is bad law and in support of this, reliance has been placed on the judgment of Hon'ble Apex Court rendered in the case of ACIT Vs. Hotel Blue moon as reported in 188 taxman 113.

4. It was submitted by the ld DR of the Revenue in reply that notice u/s 142(2) was issued in the month of November 2013 itself where as the return was filed by the assessee on 13/11/2013. In rejoinder, it was submitted by ld AR of the assessee that notice has been issued but the same was served on the assessee in Feb, 2015 only. Therefore, service of notice is not within the prescribed time and hence, these assessment orders should be quashed.

5. I have considered the rival submissions. I find that it is noted by the Id CIT(A) on page No.17 of his order that it was submitted before him that the assessee was intimated over upon phone to appear on 24/2/2015 and on 24/2/2015, when the representative of the assessee appeared, a notice u/s 143(2) of the Income-tax Act dated 19/11/2013 with the date of hearing as 26/11/2013 was served. After considering these facts, it is held by the Id CIT(A) that provisions of section 153A of the Income-tax Act are different from the provisions of sec. 158BC of the Income-tax Act and therefore, this judgment of Hon'ble Apex Court rendered in the case of Hotel Blue moon (Supra) is not applicable. Hence, it is admitted position that notice u/s 143(2) was not served on the assessee within the prescribed time. We find that as per sub sec. 1 of sec. 153A of the Income-tax Act, it is specified that notwithstanding anything contained in sections. 139, 147, 149, 151 and 153 where a search has taken place, AO shall issue notice to the concerned person requiring him to furnish return of income in respect of each of these 6 assessment years and the provision of this Act shall so far as may be applied accordingly as if such return were a return required to be furnished u/s 139 of the Income-tax Act.

6. In view of this clear provision of the Act, I find no merit in the stand of the Id CIT(A) that where the proceedings are initiated u/s 153A of the Income-tax Act, notice u/s 143(2) is not required to be issued. In

my considered view, this judgment of Hon'ble Apex Court rendered in the case of Hotel Blue moon (Supra) is applicable in those cases also where assessment is being completed u/s 153A and therefore, by respectfully following this judgment of Hon'ble Apex Court, I hold that the assessment orders passed by the AO in these 4 years are not valid because notice us 143(2) was not served on the assessee within the prescribed time. These assessment orders are quashed.

7. In view of this decision, no adjudication is called for on merit on various additions made by the AO which are disputed in the appeals.

8. In the result, all the four appeals of the assessee are allowed.

Order pronounced in the open court on **17<sup>th</sup> March, 2017.**

**Sd/-  
(AK GARODIA)  
ACCOUNTANT MEMBER**

Vms.  
Bangalore  
Dated : 17/03/2017

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order