

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BENCH- A, BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER AND
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

ITA No.1075 /Bang/2016
(Asst. Year 2006-07)

Shri S Bhagawan,
No.7/1, 'Vydehi',
Dewan Madhava Road,
Basavanagudi, Bangalore.

. Appellant

Vs.

The Income-tax Officer,
Ward 3(1), 5TH Floor,
Unity Buildings Annex,
Bengaluru.

. Respondent

Appellant by : Shri Shyam Chakravarthy, CA

Respondent by : Shri Tshering Ongda, JCIT

Date of Hearing : 26-09-2016

Date of Pronouncement : 30-09-2016

ORDER

PER ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of
Commissioner of Income-tax (Appeals) - 5, Bengaluru dated
3/3/2016 and it pertains to the assessment year 2006-07.

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2. The assessee is an individual filing his return of income regularly. For the impugned year, the assessee has filed his return of income in the capacity of an individual declaring salary income of Rs.4,62,510/- on 12/7/2006. There was no scrutiny assessment made in the case of assessee.

3. Notice u/s 148 dated 27/3/2013 was issued to the assessee re-opening the case for the year 2006-07. The notice was issued in the name of S Bhagawan and Others. In response to the notice u/s 148 of the Act, the assessee vide letter filed on 1/4/2013, request for issue of reasons recorded for issuing the notice u/s 148. The assessee further stated that, he has no income liable to be taxed during the impugned assessment year which has escaped assessment. No notice u/s 143(2) and u/s 142(1) was served on the assessee for the impugned year under consideration.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and one of the grounds raised was with respect to non issuance of notice u/s 143(2). The assessee had submitted as follows

“10.1 It is submitted that the learned AO pursuant to the issue of notice u/s 148 of the Act has not served notice u/s 143(2) of the Act. Service of notice u/s 143(2) of the Act is mandatory to assume jurisdiction under the Act. When an order has to be passed u/s 143(3) read with 147 of the Act, service of notice u/s 143(2) is sine qua non. In case the notice u/s 143(2) is not issued the proceedings under the Act is null and void. In the instant case, notice u/s 143(2) was never served on the assessee and hence there is a legal defect in the order passed u/s 147 read with 143(3) and this defect is not curable.

10.2 The Hon'ble Supreme Court in the cse of ACIT & Another Vs. Hotel Blue Moon has held as under:-

“If an assessment has to be completed u/s 143(3) read with 1158BC, notice u/s 143(2) should be issued within one year from the date of filing of the block return. Omission on the part of the assessing authority to issue notice u/s 143(2) cannot be a procedural irregularity and is not curable. Therefore, the requirement of notice u/s 143(2) cannot be dispensed with”

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Hence it is prayed before your goodself to hold that the notice u/s 143(2) was served on the assessee and the assessment order passed is without jurisdiction and the same requires to be cancelled in total in the interest of equity and justice.

5. The CIT(A) vide its order dated 3/3/2016 had not discussed or given any finding with respect to issuance of notice u/s 143(2). In this circumstance, the matter is restored back to the file of the CIT(A), who shall decide the issue in accordance with law after giving an opportunity to the assessee.
6. In the result, the appeal is set aside for statistical purpose.

Order pronounced in the open court on **30th September, 2016.**

Sd/-
(AK GARODIA)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Bangalore
Dated : 30/09/2016

Vms

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

By order

Asst. Registrar, ITAT, Bangalore