

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.359/Del./2017
Assessment Year 2011-2012

Shri Rakesh Kumar Gupta, 101, Aman Chamber, 47/21, Old Rajinder Nagar, New Delhi – 110 060. PAN AAGPG6517Q	vs.	The Income Tax Officer, Ward-27(3) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Salil Aggarwal, Advocate. Shri Shailesh Gupta, Advocate.
For Revenue :	Shri Kaushlendra Tiwari, Sr. D.R.

Date of Hearing :	30.10.2017
Date of Pronouncement :	06.11.2017

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A)-14, New Delhi, dated 10th November, 2016 for the A.Y. 2011-2012 on the following grounds :

1. *“That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the addition of Rs.8,00,000/- on account of Investment in M/s Unitech Limited, Signature Tower, South City, Gurgaon. The learned*

A.O. as well as CIT(A) has not looked into the documentary evidence filed by the assessee during the course of proceedings.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the enhancement of profit shown at Rs.1,58,879/- to Rs.10,25,000/- on estimated basis on sales of Rs.1,28,14,983/- by taking the rate of profit @ 8% of the sales. The learned A.O. had made the addition at the rate of 10% of the sales of Rs.1,28,14,983/-. The addition made on estimated basis is highly unjustified and rejection of books of account without finding any discrepancy in purchase or sales, was not called for.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the addition of Rs.8,18,495/- on account of unsecured loan received from Mr.Dushyant. The learned A.O. as well as learned CIT(A) has not looked into the documentary evidence filed during the course of proceedings.”

1.1. On earlier date when appeal was taken-up for hearing, assessee filed additional ground of appeal challenging the assessment order dated 29th March, 2014 passed by the A.O. without jurisdiction and *void-ab-initio* and is liable to be quashed, as no notice under section 143(2) of the Act was issued and served within the time prescribed under the Act. On 29th August, 2017, the SMC Bench considering the additional ground of appeal noted that the additional ground so raised is legal in nature and hence, admitted. The Ld. D.R. was directed to place on record the evidence of service of notice under section 143(2) of the I.T. Act. The appeal was adjourned to 30th October, 2017.

2. Briefly the facts of the case are that the assessee filed return of income at Rs.1,58,880 on 30th September, 2011. The case was selected for scrutiny by issuing notice under section 143(2) of the I.T. Act dated 07th September, 2012 fixing the hearing of the case on 18th September, 2012. This notice was sent through speed post. Detailed questionnaire were issued to the assessee on 09th January, 2013. Subsequently, various notices were issued under section 143(2)/142(1) from time to time. But, according to A.O, the

assessee has avoided all the notices and did not file any reply. The A.O. ultimately, computed the income of assessee at Rs.28,99,990 by making the additions of Rs.11,22,619, Rs.8 lakhs and Rs.8,18,495. The appeal of assessee was partly allowed by the Ld. CIT(A).

3. The Learned Counsel for the Assessee contended that as per proviso to Section 143(2) relevant to the assessment year under appeal, no notice under this clause shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. He has submitted that since return was filed on 30th September, 2011, therefore, notice under section 143(2) would be served upon the assessee till 30th September, 2012. Learned Counsel for the Assessee submitted that no notice under section 143(2) have been served upon the assessee. Therefore, assessment is bad in law and is liable to be quashed. Learned Counsel for the Assessee pointed out that assessment in this case has been framed at the address at 434, Meera Bagh, New Delhi. Intimation under section 143(1) for assessment year under appeal i.e., 2011-2012 have been issued at 13/1/4, Emilia Vatika

City, Sector-49, Gurgaon, Haryana-122018 (paper book-1). He has submitted that notice dated 08th October, 2013 have been issued to the assessee on 295, V & PO–Kapashera, New Delhi. The Learned Counsel for the Assessee therefore, submitted that since no notice under section 143(2) have been served upon the assessee within the period of limitation, therefore, proceeding may be quashed. He has submitted that mere issuance of notice under section 143(2) of the Act, does not tantamount to service of notice and the requirement of law is the “service of notice” and not merely issuance of notice and relied upon the decision in the case of ACIT vs. Hotel Blue Moon 321 ITR 362. He has also relied upon the decision of the Hon’ble Delhi High Court in the case of CIT vs. Chetan Gupta 382 ITR 613 in which it was held that burden is on the Revenue to establish the service of notice and no material has been brought forward in the impugned matter to suggest the service of the notice under section 143(2) of the I.T. Act.

4. On the other hand, the Ld. D.R. filed the copies of the notice under section 143(2) dated 07th September, 2012 along with address of the assessee as per data base and return filed along with

copies of the order sheet. The Ld. D.R. relied upon the decisions of the Hon'ble Delhi High Court in the case of CIT vs. Madhysy Films (P.) Ltd., (2008) 301 ITR 69 (Del.) and CIT vs. Yamu Industries Ltd., (2008) 306 ITR 309 (Del.) in which it was held that where notice issued to the assessee under section 143(2) had been dispatched by Speed Post at the address given in the return and same had not been returned back, it would be presumed that it had reached the assessee and duly served upon the assessee within the period of limitation. The Ld. D.R. therefore, submitted that additional ground may be dismissed.

5. I have considered the rival contentions. The assessee filed return of income on 30th September, 2011. Therefore, according to proviso to Section 143(2) of the I.T. Act as relevant to assessment year under appeal, no notice under this clause shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. Therefore, the notice under section 143(2) could be served upon the assessee latest by 30th September, 2012. Ld. D.R. filed copy of the notice dated 07th September, 2012 in which the address of the

assessee has been given as 290, V & PO-Kapashera, New Delhi. However, in the intimation issued under section 143(1), the address of the assessee has been given as 13/1/4, Emilia Vatika City, Sector-49, Gurgaon, Haryana-122018. The assessment order, however, is passed at the address of assessee at 434, Meera Bagh, New Delhi. The Ld. D.R. also filed address of the assessee as per PAN data base i.e., at 295, V & PO-Kapashera, New Delhi and as per the return, the address of the assessee is 290, V & PO-Kapashera, New Delhi. The A.O. in the assessment order has mentioned that notice dated 07th September, 2012 have been issued to the assessee fixing hearing on 18th September, 2012 through Speed Post. However, the A.O. has not mentioned in the assessment order whether the said envelope containing the notice had been served upon the assessee or had been received back unserved. No order sheet for 18th September, 2012 on which date the compliance is to be made by the assessee has been recorded by the A.O. Copy of the order sheet filed on record suggests that after 07th September, 2012, A.O. did not record any order sheet on 18th September, 2012. The A.O. thereafter, recorded order sheet on 24th

September, 2012 and on that date A.O. issued notice under section 143(2) to the assessee at the another address of assessee at Sohna Road, Gurgaon and fixed the case for compliance on 28th September, 2013. Thereafter, no order sheet on 28th September, 2013 have been recorded. Thereafter, A.O. straightaway recorded the order sheet on 26th August, 2013 issuing notice under section 143(2) and 142(1) for 11th September, 2013 and notices under section 133(6) to Auditor for 09.09.2013. Thereafter, order sheet on 08.10.2013 have been recorded to issue notice under section 143(2) and 142(1) for 14.10.2013, by that these limitation expired on 30.09.2012. These facts clearly show that A.O. did not record anything in the order sheet about the service of the notice under section 143(2) against the assessee and no such fact has been recorded in the assessment order as well. The A.O. has issued notice to the assessee at different addresses. Notice dated 07th September, 2012 have been issued at the address at 290, V & PO-Kapashera, New Delhi and if the said notice have been served upon the assessee in the ordinary course of business, there was no necessity for the A.O. to issue further notice under section 143(2)

on 24th September, 2012 at the address at Sohna Road, Gurgaon. These facts clearly prove that the notice under section 143(2) dated 07th September, 2012 and 24th September, 2012 have not been served upon the assessee and the true facts are not brought on record. The assessee denied service of the notice in the additional ground of appeal so admitted. It may be noted here that when additional ground was admitted on 29th August, 2017, Ld. D.R. was directed to place on record the evidence of service of notice under section 143(2) of the I.T. Act. However, the Ld. D.R. apart from filing copy of the notice under section 143(2) dated 07th September, 2012, bearing postal stamp, did not produce any evidence of service of the notice under section 143(2) of the I.T. Act. In the facts and circumstances and in view of the above discussion, even the presumption could not be raised in favour of the Revenue that the notice under section 143(2) have been served upon the assessee within the period of limitation. In view of the above, I am of the view that Revenue failed to produce any evidence of service of the notice under section 143(2) of the I.T. Act upon assessee within the period of limitation. Therefore, the assessment order so passed is without

jurisdiction and *void abinitio* and is liable to be quashed. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue because of the facts noted above. In view of the above, I set aside the orders of the authorities below and quash the assessment order. Resultantly, all additions would stand deleted. The additions are not decided separately because the same are left with academic discussion only.

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

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th November, 2017

VBP/-

Copy to

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

// By Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.