

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1505/Kol/2016  
Assessment Year: 2006-07

**Snehlata Kothari**.....**Appellant**  
**28/C, Harmohan Ghosh Lane**  
**Kolkata - 700 085**  
**[PAN : AFTPK 3258 G]**

**ITO Ward-45(3)**.....**Respondent**  
**3, Government Place West**  
**Kolkata - 700 001**

**Appearances by:**

*Shri Manish Tiwari, FCA, appeared on behalf of the assessee.*

*Shri S.M. Tauheed, Addl. CIT, appearing on behalf of the Revenue.*

Date of concluding the hearing : October 17, 2017

Date of pronouncing the order : November 30, 2017

**ORDER**

**Per J. Sudhakar Reddy :-**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-13, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 30/03/2016, for the Assessment Year 2010-11.

2. The assessee is an individual and filed her return of income on 15/12/2006, declaring total income of Rs.7,73,430/-, for the Assessment Year 2005-06. The order u/s 144 of the Act, was passed by the Assessing Officer on 31/12/2008, determining total income at Rs.37,50,040/-. Aggrieved, the assessee carried the matter in appeal on various ground without success.

3. Further aggrieved, the assessee is in appeal before us.

4. First we take up the preliminary issue, as to whether the mandatory notice u/s 143(2), has been served on the assessee. The Id. First Appellate Authority gave the following factual findings. The Income Tax Officer Ward-40(3), had issued notice u/s 143(2) of the Act, dt. 17/07/2017 and the same was served on one Shri

Amit Gourisaria, on 29/10/2007, fixing the case for hearing on 4<sup>th</sup> March, 2008, at 10:00 A.M.

5. The contentions for the Id. Counsel for the assessee, is that the order sheet entry produced by the Revenue demonstrates that, this entry was on a single sheet of paper and, thereafter, the entire page was left blank and the second entry was on 29/07/2008, on a separate sheet of paper at the top and, thereafter the recordings were made continuously. He submits that, this order sheet entry on 17/10/2007, on a separate sheet of paper being the lone entry on a full sheet of fresh paper, points to insertion of an entry and that this is not in the normal course of proceedings.

5.1. It was further submitted that there was no service of the notice on either the assessee or any of the family members. It is submitted that the assessee does not know as to who is Amit Goursaria, and that he is not an employee of the assessee nor in any way connected with the assessee. Hence, he submits that the service of notice is bad in law and hence the entire assessment is bad in law.

5.1.1. For this proposition, reliance was placed by the assessee on a number of decisions including the order of 'A' Bench of the Tribunal in the case of *DCIT vs. M.K. Enterprises in I.T.A. No.181/Kol/2013, order dt. 30/11/1996*.

6. The Id. DR, on the other hand, opposed the contentions of the assessee and submitted that the notice has been duly served on one Shri Amit Goursaria, and that the allegation of tampering of order sheet notings and acknowledgement slip is wrong. The Id. DR, produced the assessment record and submitted that the assessee has not controverted the contention of the Assessing Officer that Shri Amit Goursaria, is not an employee of the assessee. Reliance was placed on the order of the Id. First Appellate Authority.

7. After hearing rival contentions, considering the papers on record and the order of the Authorities below as well as case-laws cited, I hold as follows:-

7.1. It is a fact that the Assessing Officer has made a noting of the fact of issue of notice u/s 143(2) of the Act on 17/10/2017 in the order sheet on a separate sheet of paper, which contains only one entry. Normally, order sheet entries are written chronologically and entire sheets are not left blank. The balance of the order sheet

entries are chronologically written from 29/07/2008 on a separate sheet of paper. If this is not an insertion of a sheet of paper, the entry on 29/07/2008, should have been written on the sheet of paper after the entry of 17/10/2007.

7.2. Be it as it may, the copy of the acknowledgement slip provided by the Department shows that a notice u/s 143(2) was served on one Mr. Amit Goursaria on 29/10/2017. When the assessee submitted before the Assessing Officer that she does not know this gentleman Shri Amit Goursaria, and that he is neither a relative nor an employee of the assessee nor was he authorised to receive the notices or correspondences on behalf of the assessee, the burden is on the Assessing Officer to prove valid service of the notice. In fact the assessee, vide letter dt. 23/12/2008 and 26/12/2008, disputed the service of the notice u/s 143(2) and the Assessing Officer passed the assessment order on 31/12/2008, without addressing this issue. When the undisputed fact is that the notice in question is served on Shri Amit Goursaria, it was the duty of the Assessing Officer to demonstrate, as to how this gentleman was authorised to receive this notice on behalf of the assessee. As the Assessing Officer has failed in this regard, I have no hesitation to hold that there is no valid service of notice u/s 143(2) of the Act.

7.3. In the case of *DCIT vs. M.K. Enterprises (Supra)*, under similar circumstances it has been held as follows:-

*“.....when the notice u/s 143(2) of the Act, was not properly served on the assessee, the assessment order passed u/s 144 of the Act, is bad in law.”*

8. Respectfully following the same, I uphold the contention of the assessee and hold that the order passed u/s 144 of the Act, on 31/12/2008, is bad in law.

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

***Kolkata, the 30<sup>th</sup> day of November, 2017.***

***Sd/-***

**[J. Sudhakar Reddy]**  
Accountant Member

Dated :30.11.2017  
{SC SPS}

*Copy of the order forwarded to:*

**1. Snehlata Kothari  
28/C, Harmohan Ghosh Lane  
Kolkata - 700 085**

**2. ITO Ward-45(3)  
3, Government Place West  
Kolkata - 700 001**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches

