



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.197/Rpr/2011**  
Assessment Year : 2007-2008

**ITA No.198/Rpr/2011**  
Assessment year: 2008-09

Asst. Commissioner of Income Tax -1(2), Raipur.	Vs.	M/s. Radius Corporation Ltd., 57/58, Vardhman Nagar, Rajnandgaon, C.G.
PAN/GIR No.AACCR 7045 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.C.Maloo/Abhishek Maloo Jain, AR  
Revenue by : Shri D.K.Jain, DR

**Date of Hearing : 08/01/ 2018**  
**Date of Pronouncement : 11 /01/ 2018**

**ORDER**

**Per Pavan Kumar Gadale, JM**

Both the appeals filed by the revenue are directed against the common order dated 14.7.2011 of the CIT(A)-Raipur, for the assessment years 2007-08 and 2008-09, respectively.

2. The revenue has filed additional ground in both the appeals, which is as under:

“Whether on law and facts and in the circumstances of the case, the CIT(A) was justified in holding that the assessment orders are invalid without valid notice u/s.143(2).”



3. At the very outset, Id D.R. submitted that the additional ground filed by the revenue be adjudicated, which goes to the root of the matter. Ld A.R. had no objection to the admission of above additional ground of appeal taken by the revenue. Hence, the said Additional ground of appeal being legal ground is admitted for adjudication in view of the ratio laid down by the Hon'ble Apex Court in the case of CIT vs. NTPC [229 ITR 383(SC)] and the parties were allowed to make their submissions thereon.

4. Ld D.R. submitted that the Assessing Officer has rightly issued notice u/s 148 of the Act on 2.12.2009. Further, the notice u/s.143(2) of the Act was issued simultaneously on 2.12.2009, which was served on the assessee on the same date. He submitted that provisions of section 143(2) prescribing limitation period is not applicable in respect of return of income filed in response to notice u/s.148 of the Act. Therefore, the CIT(A) erred in treating the issue of notice u/s.143(2) is invalid and beyond time limit. The Id D.R. referred to the decision of the Agra Tribunal in the case of Chandra Bhan Bansal vs DCIT, 79 ITD 639 (Agra), wherein, it was held that provisions of section 143(2) make it amply clear that proviso to section 143(2) did not include a return filed in response to notice under section 148. It has limited itself to the returns filed under section 139 or in response to notice u/s.143(1). It is significant to note that sections 139, 142(1) and section 148, all these sections provide for filing of returns in their response. By



including sections 139 and 142(1), within the scope of proviso to section 143(2), the law makers have made it abundantly clear that the limitation period imposed in proviso to section 143(2) was not applicable to the return of income filed in response to notice u/s.148. As this is substantive provision of law, the assessee's submission in this regard have no force and the same are rejected. Accordingly, notice u/s.143(2) was validly served within limitation. Further, Id D.R. referred to the decision of Hon'ble Madras High Court in the case of CIT vs. Mrs C. Malathy, 294 ITR 532 (Mad), wherein, it was held that by virtue of proviso to section 148 inserted by the Finance Act, 2006, notice u/s.143(2) issued beyond 12 months from the date of filing return but before expiry of time limit for making assessment, reassessment, or recomputation as specified in sub-section (2) of section 153 shall not be invalid and prayed for allowing the appeal of the revenue.

5. Contra, Id A.R. of the assessee submitted that the assessee has filed return of income for both the assessment years on 2.12.2009 and in response to notice dated 2.12.2009 u/s.148 of the Act. Whereas, the notices u/s. 148 and 143(2) and were issued on 2.12.2009 but it should have been issued within the time prescribed u/s.143(2)(ii) of the Act after filing the return of income. Subsequently, notices u/s.143(2) for both the assessment years were issued on 18.11.2010. As per proviso to section 143(2)(ii), no notice under clause (2) shall be served after expiry of six



months from the end of the financial year in which the return of income was furnished. In the present case the return of income was furnished on 12.12.2009, therefore, notice u/s.143(2) could have been issued upto 30.9.2010, whereas notices were issued on 18.11.2010. Accordingly, notice u/s. 143(2) of the Act issued on 18.11.2010 is beyond the time limit prescribed by proviso to section 143(2)(ii) of the Act. Therefore, the Id A.R urged that since there is no valid notice issued by the revenue, the order of the CIT(A) in treating the notice as invalid is justified and relied on the order of the CIT(A).

6. We have heard both the sides and perused the material on record of the case. We find that undisputedly notice under [section 148](#) of the Act and u/s.143(2) was issued on 2.12.2009 and subsequently, the notice u/s.143(2) was issued on 18.11.2010, which is beyond the time limit prescribed by proviso to section 143(2)(ii) of the Act. The issuance of this notice could not comply the requirement of law. As per the provision, the notice under [section 143\(2\)](#) of the Act has to be issued only after filing of the return of income and not earlier. The Ld CIT(A) has held that there is no valid notice u/s.143(2) of the act, therefore, the completion of reassessment without a valid notice u/s.,143(2) is not valid. For this proposition, the Id CIT(A) relied on the decision of Hon'ble Apex Court in the case of CIT vs. Hotel Blue Moon, 229 CTR (SC) 212, wherein, it has been held that omission



on the part of the Assessing authority to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice u/s.143(2) cannot be dispensed with. We find that the findings and the decision of the CIT(A) are in consonance with the decision of Hon'ble Supreme Court in the case of Hotel Blue Moon (supra). Accordingly, we uphold the findings of the CIT(A) and dismiss the additional grounds raised by the revenue for the both the assessment years.

7. As the notice u/s.143(2) issued by the Assessing Officer is invalid, as dealt above, the reassessment order for both the assessment years is also invalid and, therefore, there is no need to adjudicate the ground on merits by the CIT(A).

8. In the result, appeals for the assessment years 2007-08 and 2008-09 are dismissed.

Order pronounced on 11 /01/2018.

Sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

Raipur; Dated 11 /01/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1.	The appellant: Asst. Commissioner of Income Tax - 1(2), Raipur.
2.	The Respondent. M/s. Radius Corporation Ltd., 57/58, Vardhman Nagar, Rajnandgaon, C.G
3.	The CIT(A)-Raipur
4.	Pr.CIT-Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Raipur**