

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1644/PUN/2015
निर्धारण वर्ष / Assessment Year : 2009-10

DCIT, Circle-1(2), Pune

.... अपीलार्थी/Appellant

Vs.

Terex India Pvt. Ltd.,
(formerly known – Demag Cranes
& Components (I) Pvt. Ltd.,)
Gat No.33, 332, 333, 334,
Nanekarwadi Chakan,
Taluka Khed, Pune – 411 501
PAN : AABCM9351Q

.... प्रत्यर्थी / Respondent

C.O.No.42/PUN/2017
(Arising out of ITA No.1644/PUN/2015)
A.Y. 2009-10

Terex India Pvt. Ltd.,
(formerly known – Demag Cranes
& Components (I) Pvt. Ltd.,)
Gat No.33, 332, 333, 334,
Nanekarwadi Chakan,
Taluka Khed, Pune – 411 501
PAN : AABCM9351Q

.... Cross Objector

Vs.

DCIT, Circle-1(2), Pune

.... Appellant in the
Appeal

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Mukesh Jha, JCIT

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| सुनवाई की तारीख / Date of Hearing : 07.03.2018 | घोषणा की तारीख / Date of Pronouncement: 09.03.2018 |
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

The appeal ITA No.1644/PUN/2015 is filed by the Revenue against the order of CIT(A)-1, Pune, dated 07-09-2015 for the Assessment Year 2009-10.

2. Assessee filed the Cross Objection No.42/PUN/2017 raising a legal issue relating to the failure to issue statutory notice u/s.143(2) of the Income Tax Act, 1961. In preference to the other cross objections, Ld. AR for the assessee brought our attention to Cross Objection No.4 and submitted that the said ground is legal in nature and the CIT(A) erred in not appreciating the fact that the defect is incurable. Ld. AR further submitted that if the said Cross Objection No.4 is adjudicated in favour of the assessee, adjudication of other cross objections and the grounds raised by the Revenue become infructuous.

3. On hearing this preliminary issue, we find it relevant to accept Ld. AR's contention and proceed to adjudicate the cross objection No.4 raised by the assessee in the following paragraphs. For the sake of reference, the said cross objection No.4 is extracted as follows :

“On the facts and in the circumstances of the case, the Ld. AO :

4. erred in upholding the validity of the reassessment proceedings u/s.147 of the Act, even though no notice u/s.143(2) of the Act have been issued by the AO.”

4. Briefly stated relevant facts are that the assessee is a company engaged in providing state of art material handling solutions, particularly in the crane manufacturing industry. Assessee filed the return of income on 30-10-2009. Subsequently, it was revised on 26-05-2010 declaring total income of Rs.2,21,69,251/-. AO issued notice u/s.143(2) of the Act on 29-08-2011. Meanwhile the draft assessment order was passed by the AO on 13-03-2013. Appellant filed its objections on 02-05-2013. In the meantime, the AO issued notice u/s.148 of the Act on 31-03-2013. Further, the AO passed an order u/s.143(3) r.w.s.147 of the Act which is the subject matter of the litigation before us.

5. Before us, at the outset, Ld. AR for the assessee brought our attention to the order of the AO and submitted that the said order is deficient on the information relating to issuance of the statutory notice u/s.143(2) of the Act. Further, he submitted that the reassessment was completed on 10-03-2014 u/s.143(3) r.w.s.147 of the Act without issuance of notice u/s.143(2) of the Act. Further, bringing our attention to the grounds/additional grounds raised before the CIT(A), Ld. AR brought our attention to Para No.3 of the order of CIT(A) and submitted that similar legal ground was raised vide Additional Ground No.14 and the same reads as under :

“14. Challenging the validity of initiating the reassessment proceeding u/s.147 of the Act without completing the regular assessment proceedings u/s.143(2) of the Act.”

6. Referring to the way the said additional ground was adjudicated by the CIT(A), Ld. AR for the assessee brought our attention to the contents of Para No.24 and 25 of order of the CIT(A). Ld. AR submitted that despite the chronology of events provided in Para No.25, the conspicuous absence of the date relating to the issuance of statutory notice u/s.143(2) of the Act indicates the making of reassessment without issuing said notice. Referring to contents of Para No.22 which contains relevant adjudication on the issue relating to the issue of notice u/s.143(2) of the Act, Ld. AR for the assessee submitted that CIT(A) acknowledged the fact that the notice was never issued and accordingly proceeded to adjudicate the issue stating that the said deficiency is curable under the provisions of section 292BB of the I.T. Act, 1961.

7. On the other hand, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A) and submitted that the relevant records

were directed to be produced before the court in the past but due to some reasons the case was adjourned from time to time.

8. We heard both the parties on the limited factual issue of issuance of notice u/s.143(2) of the Act before reassessment is made u/s.147 r.w.s.143(3) of the Act. On perusal of the order of the AO, it is evident that there is no reference to the fact of issue of notice u/s.143(2) of the Act, which is mandatory before making the impugned re-assessment. Further, on perusal of the order of CIT(A) in general and the contents of Para Nos. 22, 24 and 25 in particular, the failure to issue the said notice is an obvious inference. It is also a fact that the CIT(A) in Para No.22 has only attempted to justify the said failure on the ground of curability u/s.292BB of the Act which is again a proposal which is unsustainable in law. For the sake of completeness, we proceed to extract the contents of Para No.22 of the order of CIT(A) and the same reads as under :

“22. I have carefully considered the facts of the case as well as reply of the appellant. In this case the order passed by the Assessing Officer is covered by the provisions of sec.292BB of the I.T. Act, 1961. For the sake of clarity provisions of sec.292BB are reproduced as under :

.....

Since the appellant has not raised this issue before AO, the same is barred to be taken up in further proceedings as per the above section. Accordingly, Ground No.12 is dismissed.”

9. The above para is self-explanatory so far as the fact relating to the issuance of notice u/s.143(2) of the Act. We have also perused the cited Supreme Court judgment in the case of ACIT and Another Vs. Hotel Blue Moon 321 ITR 362 wherein it is held that the statutory requirement of issuing the notice u/s.143(2) of the Act constitutes an incurable defect. Similar views are upheld by the number of judgments viz., (1) CWT Vs. HUF of H.H. Late Shri J.M. Scindia 300 ITR 193

(Bombay High Court), Alpine Electronics Asia Pte Ltd. Vs. Director General of Income Tax and Others 341 ITR 247 (Delhi High Court), Virendra Dev Dixit Vs. ACIT 331 ITR 483 (Allahabad High Court), Pai Vinod Vs. DCIT 353 ITR 622 (Karnataka High Court) etc.

Considering the same, we are of the view that the cross objection No.4 raised by the assessee is required to be allowed in favour of the assessee. Consequently, adjudication of other cross objections raised by the assessee as well as the grounds raised by the revenue, in our view, becomes an academic exercise. Accordingly, all of them are dismissed as academic. Thus, the grounds raised by the revenue are dismissed and the cross objection raised by the assessee is partly allowed.

10. In the result, appeal of the revenue is dismissed and the cross objection of the assessee is partly allowed.

Order pronounced in the open court on this 09th day of March, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 09th March, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-1, Pune
4. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune