

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

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

ITA No.33/Ran/2016: Assessment Year: 2007-2008

ITA No.40/Ran/2016: Assessment Year: 2008-2009

M/s. S.P.Enterprises, 55, Mahto Para Road, Jugsalai, Jamshedpur	Vs.	DCIT, Range-3, Jamshedpur
PAN/GIR No. AATFS 9150 L		
(Appellant)	..	(Respondent)

ITA No.43/Ran/2016: Assessment Year: 2007-2008

ITA No.44/Ran/2016: Assessment Year: 2008-2009

M DCIT, Range-3, Jamshedpur	Vs.	M/s. S.P.Enterprises, 55, Mahto Para Road, Jugsalai, Jamshedpur
PAN/GIR No. AATFS 9150 L		
(Appellant)	..	(Respondent)

Assessee by: S/Shri S.K.Poddar/Devesh Poddar, ARs
Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 29/05/ 2018
Date of Pronouncement : 30 /05/ 2018

ORDER

Per N.S.Saini, AM

These are cross appeals filed by the assessee and revenue against the separate orders of the CIT(A) Jamshepdur both dated 27.11.2015 for the assessment years 2007-08 and 2008-09, respectively.



2. The revised Ground No.3 of appeal for both the assessment years is as under:

"3. For that no notice u/s.143(2) was issued even after written communication regarding submission of return. As a matter of fact, communication to the return filed in response to notice u/s.147 was communicated on 22.1.2013 when the appellant representative appeared in response to notice u/s.142(1)."

3. Brief facts of the case are that the assessee filed the original return of income for assessment year 2007-08 on 15.11.2007. Later on, notice under section 148 was issued to the assessee on 28.3.2012, which was served on the assessee on 29.3.2012. The Id A.R. of the assessee vide its letter dated 22.3.2013 submitted that the original return filed may be treated as the return filed in response to notice u/s.148 of the Act.

4. Similarly, for the assessment year 2008-09, the assessee filed the original return of income for assessment year on 30.9.2008. Later on, notice under section 148 was issued to the assessee on 28.3.2012, which was served on the assessee on 29.3.2012. The Id A.R. of the assessee vide its letter dated 22.3.2013 submitted that the original return filed may be treated as the return filed in response to notice u/s.148 of the Act.

5. The contention of the assessee is that notice u/s.143(2) of the Act was never issued and served on the assessee. Therefore, the reassessment



orders dated 25.3.2013 passed u/s.144/147 of the Act for the assessment year 2007-08 and dated 26.3.2013 passed u/s.147/144 for the assessment year 2008-09 are bad in law and, therefore, liable to be quashed. Ld A.R. furnished the Xerox copy of order sheets of the Assessing Officer for the assessment year 2007-08 and 2008-09, wherein, it is noted on 20.3.2013 that notice is issued to the assessee regarding proceedings under section 144 of the Act.

6. For this proposition, Id A.R. of the assessee relied on the decision of Hon'ble Delhi High Court in the case of Indus Towers Ltd vs DCIT, (2017) 82 TAXMANN.COM 430 (Del), wherein, it was held as under:

"Issue of notice 143(2)- Assessing Officer picked up assessee's return for scrutiny assessment and issued notice under section 148-Assessee informed that revised return filed under section 139(5) was to be considered as return filed in response to notice under section 148. Thereafter, Assessing Officer without issuing notice under section 143(2) passed reassessment order under section 148. Later, a notice under section 143(2) was issued but after expiry of limitation period prescribed for issuance of such notice- Whether reassessment notice under section 148 as well as order pursuant to said notice was to be quashed-Held Yes."

7. On the other hand, Id D.R. supported the orders of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The undisputed facts of the case are that no notice under section 143(2) of the Income tax Act, 1961 was issued to the assessee before completing the reassessment u/s.147 r.w.s 144 of the



assessment years 2007-08 and 2008-09 vide order dated 25.3.2013 and 26.3.2013, respectively.

9. We find that Hon'ble Delhi High Court in the case of Indus Towers Ltd(supra) has quashed the reassessment notice u/s.148 of the Act, wherein, it has been held as under:

""Issue of notice 143(2)- Assessing Officer picked up assessee's return for scrutiny assessment and issued notice under section 148-Assessee informed that revised return filed under section 139(5) was to be considered as return filed in response to notice under section 148. Thereafter, Assessing Officer without issuing notice under section 143(2) passed reassessment order under section 148. Later, a notice under section 143(2) was issued but after expiry of limitation period prescribed for issuance of such notice- Whether reassessment notice under section 148 as well as order pursuant to said notice was to be quashed-Held Yes."

10. We also find that Hon'ble Supreme Court in the case of ACIT & Anr. Vs. **Hotel Blue Moon**, 321 ITR 362 (SC) has held that completion of assessment under [Section 158BC](#) of the Act without issuance of notice under [Section 143\(2\)](#) of the Act within prescribed time was wholly without jurisdiction and void ab-initio. Respectfully following the decisions quoted above, we hold the reassessment orders passed in pursuance to this notice u/s.148 of the Act is also bad in law. We, therefore, cancel the reassessment order dated 25.3.2013 passed u/s.144/147 of the Act for the assessment year 2007-08 and dated 26.3.2013 passed u/s.147/144 for the assessment year 2008-09 and allow the grounds of appeal of the assessee.



11. As we have quashed the reassessment orders passed u/s.147 of the Act while deciding Ground No.3 of the appeal of the assessee, the other grounds of appeal of the assessee on merits of additions have become infructuous and not adjudicated upon.

12. In view of our decision in assessee's appeal, the appeals filed by the revenue are dismissed.

13. In the result, appeals filed by the assessee are allowed and the appeals filed by the revenue are dismissed..

Order pronounced in the open court on 30 /05/2018

Sd/-

sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated 30 /05 /2018

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant: M/s. S.P.Enterprises, 55, Mahto Para Road, Jugsalai, Jamshedpur
2. The respondent: DCIT, Range-3, Jamshedpur
3. The CIT(A), Jamshedpur
4. Pr. CIT, Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
 //True Copy//

BY ORDER,

SR.PS, ITAT,
 CAMP AT RANCHI