

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

|  |     |                               |
|--|-----|-------------------------------|
| ITA No.2794/Del/2017   |     |                               |
| A.Y. 2009-10   |     |                               |
| UMANG DESIGNERS PVT. LTD.<br>B-12, JALVAYU VIHAR,<br>SECTOR -21,<br>NOIDA-201 301<br>(PAN: AAACU8075G) | VS. | ITO, WARD 27(1),<br>NEW DELHI |
| <b>(APPELLANT)</b>   |     | <b>(RESPONDENT)</b>           |

Assessee by : Sh. M.P. Rastogi, Adv.  
Department by : Ms. Ashima Neb, Sr. DR

**ORDER**

The Assessee has filed the present appeal against the impugned order dated 26/10/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-9, New Delhi on the following grounds:-

1. That learned CIT [A] has erred in not quashing the re-assessment proceedings initiated u/s 148 of the Act.
- 1.2 That learned CIT [A] has erred in not quashing the re-assessment proceedings initiated by the AO acting at the directions of others and not on his own satisfaction arrived on his own examination of evidences

2.1 The learned CIT [A] has erred in confirming addition made by the learned AO without rebutting the confirmations & other evidences furnished by the appellant on cogent material and without establishing as to how the lender/ creditor company belonged to Surrinder Kumar Jain Group of companies as being alleged by the Department.

2.2 Additions made by using information collected behind the back of the assessee without confronting it and affording a chance of cross examination and chance to rebut them, despite a specific request for it thus the assessment is bad in law.

2.3 The authorities below have ignored the settled principle that a bald statement or scribbling by a third party, is a dumb evidence unless correlated with facts.

2.4 The learned AO / Department has not established that the said sum has been taxed in the hands of the lender or not-which is an essential ingredient.

3.1 The learned CIT[A] has erred in confirming addition of Rs 20,00,000 made by the learned AO as unconfirmed cash credit u/s 68.

3.2 The assessee has discharged its primary onus by furnishing confirmations etc furnished during the assessment proceedings for the sum received and returned.

3.3 The Authorities below have ignored the fact that a company before commencing business cannot earn disclosed /undisclosed income.

4. The above grounds are independent and without prejudice to each other.

5. The appellant seeks leave to add, amend, alter or abandon any of the above grounds at the time of hearing of the appeal.

2. On 27.09.2017, the assessee has filed the following additional ground :-

“That in the absence of issuance of notice u/s. 143(2) of the Income Tax Act, 1961 (the Act) after the filing of income tax return on 13<sup>th</sup> August, 2014,

the AO has no valid jurisdiction to frame the assessment and consequently the assessment order as passed by the AO in furtherance of such invalid jurisdiction is also invalid.”

3. Later on 21.02.2018, the assessee has also filed another additional ground which is reproduced as under-

“That the name of the assessee-company has been struck off from the register of the Registrar of Companies on 25<sup>th</sup> March, 2011 due to the dissolution of the company and consequently the issuance of notice dated 2<sup>nd</sup> September, 2013 u/s. 148 of the I.T. Act on a non-existent person is invalid and the assumption of jurisdiction by the AO in furtherance of such invalid notice is also invalid and bad in law and the order passed in furtherance of such invalid notice as well as assumption of jurisdiction is also invalid and bad in law.”

4. At the time of hearing, Ld. Counsel of the assessee stated that in view of the settled decision in the case of NTPC 229 ITR 383 (SC), (legal ground can be raised for first time in collateral and

second round also). The legal ground can be very well raised for first before the ITAT which goes to the root of the matter. Ld. Counsel of the Assessee has further stated that the above cited legal ground involves a question of law and arises from the facts that are already on records of the proceedings before the lower authorities. Hence, he requested that keeping in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) (Supra), the aforesaid legal additional ground raised by the assessee may be admitted and decided first.

4.1 But during the hearing, Sh. MP Rastogi, Advocate/Ld. Counsel for the assessee argued only additional ground raised on 27.09.2017 regarding issuance of notice u/s. 143(2) of the I.T. Act, 1961 which is before filing the return of income i.e. on 13.8.2014. In this regard, he submitted that AO has issued notice u/s. 143(2) of the I.T. Act, on 08.07.2014 which was prior to the filing of the income tax return i.e. on 13.08.2014. He also draw my attention towards the assessment order page no. 2 to support this contention where the AO has himself written that on 13.8.2014 the counsel for the assessee appeared and filed the return of income for the assessment year 2009-10 alongwith copy of balance sheet and audit report declaring NIL income. He has also filed the photocopy of the order sheet of the assessment proceedings in the case of the

assessee showing that on 08.07.2014 the AO has issued notice u/s. 142(1)/143(2) and fix the case of 16.7.2014. In nutshell, Ld. Counsel of the assessee stated that AO has issued the notice u/s. 143(2) on 08.07.2014 and subsequent to the notice the assessee has filed the return on 13.08.2014, which is not permissible under the law. Therefore, he submitted that the proceedings initiated are illegal, unsustainable and untenable under the law and needs to be quashed. To support his contention, he relied upon the following case laws:

- i) Hon'ble Delhi High Court decision dated 13.4.2010 in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications reported (2010) 323 ITR 0249.
- ii) Hon'ble Allahabad High Court decision dated 24.5.2010 in the case of CIT vs. Rajeev Sharma reported (2011) 336 ITR 0678.

4. On the contrary, relied upon the orders of the authorities below and strongly opposed the request of admission of additional ground (legal) raised by the assessee, but could not produce any contrary decision.

5. After hearing both the parties as well as perusing the additional ground raised argued by the Id. Counsel of the assessee alongwith the orders passed by the Revenue Authorities, I am of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra), the additional ground raised by the assessee on 27.09.2017 relating to issuance of notice u/s. 143(2) of the I.T. Act, 1961 which is before filing the return of income i.e. on 13.8.2014 is purely a legal ground and did not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, I admit the aforesaid additional ground raised by the assessee, in view of the case law of NTPC Limited (Supra) and proceed to decide the legal additional ground first.

6. I find that AO has issued notice u/s. 143(2) of the I.T. Act, on 08.07.2014 which was prior to the filing of the income tax return i.e. on 13.08.2014. I further note that the AO in his assessment order at page no. 2 has mentioned that on 13.08.2014 the counsel for the assessee appeared and filed the return of income for the assessment year 2009-10 alongwith copy of balance sheet and audit report declaring NIL income. I have also perused the photocopy of the order sheet entry dated 08.07.2014 of the assessment proceedings wherein, the following order was passed:-

"8/7/14 notice u/s. 142(1)/143(2) issued  
fixing the case for 16.7.14.

Sd/- "

6.1 After perusing the aforesaid order sheet entry dated 8.7.14, I find that on 08.7.14 the AO has issued notice u/s. 142(1)/143(2) and fix the case of 16.7.2014. In view of above, it is established that AO has issued the notice u/s. 143(2) of the Act on 08.07.2014 and subsequent to the notice, the assessee has filed the return on 13.08.2014, which is not permissible under the law and therefore, the re-assessment proceedings initiated are illegal, unsustainable and untenable under the law and hence, the same is quashed. My aforesaid view is fortified by the following case laws:-

- i) Hon'ble Delhi High Court decision dated 13.4.2010 in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications reported (2010) 323 ITR 0249 – wherein the Hon'ble High Court has observed as under (*HEADS NOTES ONLY*):

Assessment – Validity – Notice under s. 143(2) issued before filing of return – Assessee filed return on 27<sup>th</sup> March, 2000 – Notice under section 143(2) issued on 23<sup>rd</sup> March, 2000 – Notice is

invalid – Contention that there was only a mistake in mentioning the date in the notice as 23<sup>rd</sup> March, 2000 instead of 27<sup>th</sup> March, 2000 was not raised before the lower appellate form and hence cannot be raised now – Even if the contention of the Revenue is accepted, the notice is still invalid as it has been stated that the notice under s. 143(2) was served on 27<sup>th</sup> march, 2000 upon the Authorised Representative by hand when he came and filed the return which indicates that the notice was kept ready even prior to filing of return whereas the notice can be served only after AO had examined the return – No interference in the order of the tribunal holding the assessment to be invalid is called for.

- ii) Hon'ble Allahabad High Court decision dated 24.5.2010 in the case of CIT vs. Rajeev Sharma reported (2011) 336 ITR 0678 wherein the Hon'ble High Court has observed as under (*HEADS NOTES ONLY*)

Reassessment-Validity-Absence of notice under s. 143(2)-As per s. 148, it is incumbent on the AO to send a notice under s. 143(2) within the statutory

period specified therein-Provision contained in sub-so (2) of S. 143 is mandatory and the legislature in its wisdom by using the words 'reason to believe' has cast a duty on the AO to apply mind to the material on record and serve notice after being satisfied with regard to escaped assessment-Thus, after receipt of return in response to notice under s. 148, it is mandatory for the AO to serve a notice under S. 143(2) assigning reason therein-In the absence of a notice under S. 143(2) after receipt of fresh return, the entire procedure adopted for escaped assessment shall be invalid -In the instant case, since the assessee filed a fresh return in response to notice under S. 148 pursuant to the letter of the AO informing him about the pendency of proceedings and rejecting his request for dropping the proceedings, the earlier notice cannot be treated as valid for the purpose of escaped assessment-AO has to apply his mind to the contents of fresh return and then issue a notice under S. 143(2)- Therefore, non-issuance of notice under S. 143(2) vitiated the reassessment proceedings.

- iii) Decision of the Hon'ble Gauhati High Court in the case of Smt. Bandana Gogoi Vs CIT (2007) 289 ITR 28 where in, the Hon'ble Gauhati High Court has held that in the absence of service of notice u/s 143(2) of the Act subsequent to the filing of return, the assessment order suffers from a jurisdictional error and the assessment will have to be made at the returned income.

6.2 Since I have already quashed the re-assessment, the other grounds raised by the assessee have become academic and hence, are not being adjudicated.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced on 31/05/2018.

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 31/05/2018*

***SRbhatnagar***

**Copy forwarded to: -**

1. Appellant -
  2. Respondent -
  3. CIT
  4. CIT (A)
  5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches