



IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.3686/Mum/2016

(Assessment Year :2007-08)

DCIT – 5(3)(1) 5 th Floor, Room No.573 Aayakar Bhawan Mumbai – 400 020	Vs.	M/s. Sanghvi Realty Pvt. Ltd., Office No.1, 1 st Floor C-Wing, Purshottam Building, Tribhuvan Road Mumbai – 400 004
PAN/GIR No.		AAGCS0178J
Appellant)	..	Respondent)

Revenue by	Shri Rajat Mittal
Assessee by	Shri Sanjay Parikh
Date of Hearing	05/06/2018
Date of Pronouncement	12/06/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)-10, Mumbai dated 16/02/2016 for A.Y.2007-08 in the matter of order passed u/s.143(3) of the IT Act.

2. Following grounds have been taken by the Revenue:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding the order u/s.147 dated 28.01.2015 to be void on the ground that no notice u/s. 143(2) had been issued to the assessee.

2. On the facts and in the circumstances of the case and in law, the Ld. CJT(A) failed to appreciate that the assessee had not complied with the requirement of section 148 of filing a return

(in response to the notice u/s. 148) in the prescribed form and verifying the return in the prescribed manner and only a letter had been filed by the authorized representative of the assessee stating that the original return of income filed on 29.09.2007 of the assessment year 2007-2008 be treated as return filed in response to the notice u/s. 148.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the notice u/s. 143(2) is required to be issued before the expiry of 6 months from the end of the financial year in which the return is furnished and no notice u/s. 143(2) could be issued in the financial year 2014-2015 on a return of income filed on 29.09.2007.

4. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

5. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.

3. Rival contentions have been heard and record perused.
4. The facts of the case, in brief, are that the assessee is a company engaged in the business of 'Builders & Developers'. It furnished its return of income for A.Y.2007-08 on 29/09/2012 declaring total income at Rs.NIL. The return was processed u/s.143(1). There was no scrutiny originally. Based on the information received from DDIT (Inv) Mumbai, that the assessee company is involved in accepting bogus accommodation loans of Rs. 50 lakhs from two parties, the AO has reopened the assessment by issue of notice under section 148. The AO has completed the assessment u/s 147 of the Act determining the total income of Rs.50,00,000/- on 28/01/2015 after making addition stated at para-2 above. Aggrieved, the assessee approached to CIT(A).

5. Against the addition so made, assessee approached to the CIT(A). Before CIT(A) assessee objected that assessment concluded u/s.147 of the IT Act without issuing the statutory notice u/s.143(2) was bad in law.
6. By the impugned order, CIT(A) allowed assessee's appeal and treated the assessment concluded u/s.147 as void. Precise observation of CIT(A) was as under:-

4.2. I have carefully considered the facts of the case and the submissions of the Id.AR. I have also gone through the decisions relied on by the Id.AR. As seen from the above facts the AO himself has mentioned in the assessment order that he has not issued notice u/s 143 (2) for the reason that the appellant has not filed any return of income in response to notice issued by him under section 148. The argument of the AO is not acceptable in the eyes of law. Before making any scrutiny the AO is compulsorily issue notice u/s 143(2). Several courts have held that any assessment done without the issue of this notice will become void ab initio. The head-note of the Honorable Supreme Court in the case of Hotel Blue Moon (supra), relied on by the Id.AR reads as under-

Search and seizure - undisclosed income detected - Block assessment -issue of notice under section 143 (2) within the prescribed time - mandatory -income tax Act 1961,ss. 132, 143 (2), 158 BA, 158 BC, 158 BH - CBDT circular no. 717 dated August 14, 1995.

7. Revenue is in further appeal before us.
8. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that the AO has reopened the assessment by issue of notice under section 148 on 25/3/2014 to bring to tax the amount of accommodation loans of Rs. 50 lakhs. In response to this notice the assessee has filed letter dated 7/4/2014 communicating to the AO that the original return of income filed by the assessee on 29/9/07 be treated as a return filed in response to notice

under section 148. Since no return of income was filed in response to notice issued under section 148 the AO has chosen not to issue notice u/s 143(2) and proceeded to conclude the assessment by bringing to tax progress 50 lakhs under section 68 of the Act. The fact of not issuing notice under section 143 (2) was clearly mentioned by AO in his order as under-

"2.1....the notice under section 148 of the IT Act was issued to the assessee on 25/3/2014 after obtaining the satisfaction of the additional Commissioner of income tax range 53 Mumbai that it is a fit case for issue of notice under section 148. The said notice was served on the assessee and 26/3/2014. In response to the said notice, the authorised representative of the assessee M/s Salgia & Associates, chartered accountants vide their letter dated 7/4/ 2014 communicated that the original return of income filed by the assessee on 29/9/2007 be treated as a return filed in response to the notice under section 148. As no return was filed by the assessee in response to the notice under section 148, notice under section 143 (2) has not been issued to the assessee. Notice under section 142 (1) of the Income Tax Act was issued to the assessee. In response to the said notice Shri Mahesh Salgai, chartered accountant attended on different dates and filed the details and submissions in support of the return of income. The case was discussed with him."

9. It is clear from the above that the fact of notice u/s.143(2) having not been issued has been noted by the AO himself in his assessment order. The CIT(A) has held the assessment as void by following the decision of the Supreme Court in the case of Hotel Blue Moon 321 ITR 362. We do not find any infirmity in the order of CIT(A) for holding the assessment as void, in view of the decision of Hon'ble Supreme Court in case of Hotel Bluemoon (supra), when undisputedly notice u/s.143(2) was not issued before completion of assessment.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 12/06/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 12/06/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai