

**IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP BENCH AT JALANDHAR**

**Before Sh. N. K. Saini, Hon'ble Vice President
and
Sh. Ravish Sood, Judicial Member**

ITA No.171/Asr./2017 : Asstt. Year : 2006-07

M/s Sardar Sons, 42, Saini Colony, Industrial Area, Jalandhar	Vs	Income Tax Officer, Ward-II(2), Jalandhar
(APPELLANT)		(RESPONDENT)
PAN No. AACFS6867P		

**Assessee by : Sh. S. K. Samrol, Adv.
Revenue by : Sh. Lalit Mohan Jindal, DR**

Date of Hearing : 17.01.2019	Date of Pronouncement : 17.01.2019
-------------------------------------	-------------------------------------------

ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 30.01.2017 of Id. CIT(A)-1, Jalandhar.

2. The main grievance of the assessee in this appeal relates to the upholding the assessment framed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the AO without issuing the notice u/s 143(2) of the Act.

3. Facts of the case in brief are that the AO framed the assessment u/s 143(3) of the Act at an income of Rs.6,20,036/- by making the addition of Rs.5,09,076/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the jurisdiction of the AO in framing the assessment without issuing the notice u/s 143(2) of the Act. The Id. CIT(A) did not find merit in the submission of the AO by observing that the assessee never raised this issue before the AO and that the mere technicality of non-issuance of notice u/s 143(2) of the Act cannot negate the fact that the assessee had availed several opportunities with respect to the opportunity that such a notice provides.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that non-issuance of notice u/s 143(2) of the Act is not a mere irregularity rather it is mandatory to issue the notice u/s 143(2) of the Act before framing the assessment u/s 143(3) of the Act. The reliance was placed on the decision of the Hon'ble Apex Court in the case of ACIT & Another Vs Hotel Blue Moon (2010) 321 ITR 362

6. In his rival submissions, the Id. DR strongly supported the orders of the authorities below.

7. We have considered the submissions of both the parties and perused the material available on the record. In the present case, from the observations of the Id. CIT(A), it is clear that no notice u/s 143(2) of the Act was issued before completing the assessment u/s 143(3) of the Act. On a similar issue, the Hon'ble Apex Court in the case of ACIT & Another Vs Hotel Blue Moon (2010) 321 ITR 362 (supra) held as under:

“If an assessment is to be completed under section 143(3) read with section 158BC, notice under section 143(2) should be issued within one year from the date of filing of the block return. Omission on the

part of the assessing authority to issue notice under section 143(2) cannot be a procedural irregularity and is not curable. Therefore, the requirement of notice under section 143(2) cannot be dispensed with.”

8. We, therefore, by keeping in view the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case are of the view that the assessment framed without issuing the mandatory notice u/s 143(2) of the Act was not valid. Accordingly, the same is quashed.

9. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 17/01/2019)

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 17/01/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR