

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.2785/Del./2018  
Assessment Year 2010-2011

M/s. Rajsri Infin Consultants Pvt. Ltd., 304B, Apra Plaza, Plot No.28, Road No.44, Pitam Pura Community Centre, New Delhi – 110 092. PAN AAACR4409B	vs.	The DCIT,  Circle-21(1),  New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Advocate.
For Revenue :	Shri Surender Pal, Sr. D.R

Date of Hearing :	14.03.2019
Date of Pronouncement :	25.03.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the order of Ld. CIT(A)-7, New Delhi, dated 19th February 2018, for the assessment year 2010-2011.

2. Briefly the facts of the case of that assessee filed return of income declaring income of Rs.2.42 crores on 10th August 2010. The case was reopened under section 148 of

the Income Tax Act, 1961, on 20th March 2015. The reasons for reopening of assessment recorded were conveyed to the assessee. In response to the notice under section 148 of the Income Tax Act, assessee filed reply dated 25th March 2015, has submitted that return of income filed in original on 11th August 2010 may please be treated as return filed in response to notice under section 148 of the Income Tax Act 1961. Thereafter, the assessee filed objections to reopening of assessment which were disposed of separately.

2.1. Notice under section 143(2) and 142(1) read with section 129 of the Income Tax Act, dated 9th February 2018 were issued. In complaints thereto, assessee filed requisite details. The assessing officer noted that as per information received from Pr.CIT [OSD] in-charge of DIT [Exemption] vide letter dated 27th February 2015 “that some brokers were alleged to be indulging in transferring the fictitious losses to different clients to reduce their tax liability and also fictitious profits to other clients and one among such client is assessee company. The above information shows

the assessee booked losses of Rs.29,42,952/-. The assessee furnished reply before assessing officer and explained that assessee has dealt with two brokers namely M/s. Stockholm India Limited and Parasram Holdings (P) Ltd., The assessing officer noted that claim of M/s. Stockholm India Private Limited appears in the information of DIT dated 27th February 2015 as one of the broker who indulged in transferring fictitious losses to different clients. On perusal of the ledger account of M/s. Stockholm India Limited submitted by assessee revealed that it was loss of Rs.1,84,99,541/- which the assessee has booked and which needs to be added to the total income of the assessee. The assessing officer after considering explanation of assessee made the above addition to the returned income.

3. The assessee challenged the addition before Ld. CIT(A), initiation of reassessment proceedings and that no notice under section 143(2) have been issued within the time, therefore assessment is time barred and shall have to be set aside. The Ld. CIT(A), however, dismissed the appeal of assessee.

4. The Learned Counsel for the Assessee, at the outset submitted that the copy of the notice under section 148 dated 20th March 2015 is filed at page 20 of the paper book. The assessee filed letter on 25th March 2015 in pursuance to notice under section 148 submitted before A.O. that original return may be treated as return having been filed in response to notice under section 148 of the Income Tax Act, 1961 [PB-21]. PB-36 is notice under section 143(2) of the Income Tax Act dated 9th February 2016. She has, therefore, submitted that last date for issue of notice under section 143(2) is 30th September 2015, therefore, assessment order is nullity, illegal and bad in law. Learned Counsel for the Assessee submitted that delay in issuing notice under section 143(2) of the Income Tax Act would be fatal to the reassessment proceedings and as such the orders of the authorities below are liable to be set aside. In support of her contention she has relied upon the following decisions :

1.	Indus Towers Ltd., vs. Dy. CIT WP(c) .1560/2014, dated 29.05.2017, Delhi High Court. SLP Dismissed by Supreme Court (SLP.No.34285/2018 Dated 21.01.2019.
2.	Pr. CIT v. Shri Jai Shiv Shankar Traders Pvt. Ltd., [2016] 383 ITI 448, Delhi High Court.
3.	Pr. CIT v. Staunch Marketing Pvt. Ltd., ITA NO. 935/2015 dt. 28.04.2017.
4.	C IT v. Delhi Kalyan Samiti, ITA No. 696, 697, 699/2015 dt. 22.03.2016.
5.	Pr. CIT v. Silver Line, [2016] 383 ITR 455, Delhi High Court.
6.	Alpine Electronics Asia PTE Ltd. v. Director General Of Income Ta & Others, [2012] 341 ITR 247, Delhi High Court.
7.	Pr.CIT v. Paramount Biotech Industries Ltd., ITA No. 887/2017 & 888/2017 dt. 24.10.2017, Delhi High Court
8.	Asst. CIT v. M/s. Hotel Blue Moon, [2010] 321 ITR 362 (SC).
9.	Rajender Kumar Sehgal v. ITO, W.P. (c) 11255/2017, CM No.46017/2017, dt. 19.11.2018
10.	Pr. CIT v. Gravity Systems Pvt. Ltd., ITA No. 896/2017 & 899/2017 dt. 27.10.2017, Delhi High Court
11.	CIT v. CPR Capital Services Ltd., [2011] 330 ITR 43, Delhi High Court.
12.	M/s. Supersonic Technologies Pvt. Ltd., M/S. SPJ Hotels Prival Limited, M/S. Shiv Sai Infrastructure (P) Ltd. M/S. Superior Buildwell Private Limited v. PCIT ITA.No.2269/Del./201 2857/Del./2017, 2527/Del./2017, 3301/Del./2017, dt. 10.12.2018, ITAT Delhi.
13.	A.C.I.T. v. M/s. Dimension Promoters Pvt. Ltd., ITA.No. 1105/Del/2011, C.O. 326/Del/2011 dt. 02.01.2018, ITAT Delhi.
14.	UKT Software Technologies Pvt. Ltd. v. ITO, ITA NO. 4719 4720/Del/2011, dt.16.01.2013, ITAT Delhi.

5. On the other hand, Ld. D.R. relied upon the orders of the authorities below and also relied upon

Judgment of the Delhi High Court in the case of CIT vs. Madhya Bharat Energy Corporation Ltd., (2011) 337 ITR 389 (Del.) and Judgment of Punjab and Haryana High Court in the case of CIT, Amritsar vs. OCM India Ltd., (2008) 170 Taxman 150 (P&H). Learned Departmental Representative also submitted that whether letter filed by assessee on 25th March 2015 could be treated as a return furnished under section 148 is itself is a question which should be decided against the assessee.

6. Learned Counsel for the Assessee in the rejoinder submitted that Honorable Delhi High Court in the case of Principal CIT vs Shri Jai Shiv Shankar Traders Pvt. Ltd., (supra) has distinguished the Judgment relied upon by the Learned Departmental Representative in the case of CIT vs. Madhya Bharat Energy Corporation Ltd., (supra) as well as decided the submissions of the Departmental Representative against the Revenue.

7. We have considered the rival submissions. It is not in dispute that assessee filed original return of income

on 11th August 2010. It is also not in dispute that notice under section 148 was issued to assessee on 20th March 2015. It is also not in dispute that assessee, in response to notice under section 148 filed letter before assessing officer on 25th March 2015 submitting therein that original return filed on 11th August 2010 may please be treated as return filed in response to notice under section 148 of the Income Tax Act, 1961. In the case of Pr. CIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd., (supra), the assessee similarly made a statement before assessing officer to the effect that original return filed should be treated as return filed pursuant to notice under section 148 of the Income Tax Act and issue have been decided in favour of the assessee because notice under section 143(2) of the Income Tax Act was not issued within the time. Similarly in the same Judgment the Judgment of the Honorable Delhi High Court in the case of CIT versus Madhya Bharat Energy Corporation Ltd., (supra), relied upon by the Learned Department of Representative has been considered and is distinguished by the Honorable Delhi High Court and have

held that the said decision is not of any assistance to the Revenue as far as the issue in the present case is concerned i.e., failure to issue notice under section 143(2) of the Income Tax Act within the period of limitation.

7.1. Proviso to Section 143(2) provides that *“provided that no notice under clause (ii) shall be served on the assessee after expiry of six months from the end of the financial year in which the return is furnished”*. In the present case, the assessee filed letter on 25th March 2015 before assessing officer praying that original return filed on 11th August 2010 may be treated as return filed under section 148 of the Income Tax Act. Thus, the return under section 148 of the Income Tax Act shall be deemed to be furnished on 25th March 2015. According to the above proviso to Section 143(2) of the Income Tax Act, no notice in this Section shall be served upon the assessee after expiry of six months from the end of the financial year in which the return is furnished which would expire on 30th September 2015. However, in the present case, notice under section 143(2) have been issued on 9th February 2016. In the case

of Indus Towers Ltd., vs. Dy. CIT (supra), the Hon'ble Delhi High Court held that *“delay in issuing notice under section 143(2) of the Income Tax Act, would be fatal to the reassessment proceedings.”* The above Judgment has been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. In the case of Principal CIT versus Silverline (supra) and CIT versus CPR Capital Services Limited (supra), it was held that *“notice under section 143(2) within limitation is mandatory. Otherwise, assessment would be nullity and void. No reassessment order could be passed without compliance with the mandatory requirement of notice being issued by the assessing officer to the assessee under section 143(2) of the Income Tax Act.”* The above decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts of the case. The decisions relied upon by the Departmental Representative in the case of CIT vs. Madhya Bharat Energy Corporation Ltd., (supra) is already distinguished by the Hon'ble Delhi High Court and that the Judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT, Amirtsar vs. OCM India Ltd.,

(supra), cannot be given preference as against the Judgment of the Delhi High Court because Hon'ble Delhi High Court is a jurisdictional High Court in the case of the assessee.

7.2. In view of the above discussion and following the decisions of the Hon'ble Delhi High Court relied upon by the Learned Counsel for the Assessee and others as reproduced above, we are of the view that since notice under section 143(2) have been issued beyond the period of limitation, therefore, entire reassessment order is nullity and void abinitio. We, accordingly, set aside the orders of the authorities below and quash the reassessment order. Resultantly, all additions stand deleted. In view of the above, there is no need to decide other issues on merits.

8. In the result appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(O.P.KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 25<sup>th</sup> March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.