

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH.K.N.CHARY, JUDICIAL MEMBER**

ITA No.2848/DEL/2016  
Assessment Year: 2012-13

<b>ACIT Central Circle – 26, Room No.323, 3<sup>rd</sup> Floor, ARA Centre, Jhandewalan Extn. New Delhi (APPELLANT)</b>	<b>Vs</b>	<b>M/s. Ganesh Paper Mills (Delhi) P. Ltd. 14/78, Punjabi Bagh West, New Delhi PAN No. AAACG2635A (RESPONDENT)</b>
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Appellant by	Sh. Amit Katoch, Sr. DR
Respondent by	Sh. Manoj Gupta, CA Sh. Rajiv Malik, Advocate

Date of hearing:	25/03/2019
Date of Pronouncement:	26/03/2019

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-29, New Delhi dated 05.02.2016 pertaining to A. Y. 2012-13.

2. The substantive grievance of the revenue read :-

1. *That on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the assessment as void as notice u/s 143 (2) was not issued within the limitation period without appreciating the fact that the notice u/s 143 (2) was issued on 21.01.2014 in response to the return u/s 142 (1) filed by the assessee on 21.01.2014 and the fact that the above return of income was filed under protest is of no legal significance.*

3. Representatives of both the sides were heard at length. Case records carefully perused. Facts on record show that the assessee electronically filed its return of income on 26.09.2012 vide E-filing acknowledgment number 4958283541260912. The acknowledgment is placed at page 1 of the paper book.

4. On 06.01.2014 the Assessing Officer issued notice u/s 142 (1) of the Act asking the assessee to file return of income for the assessment year under consideration. In response to the same the assessee filed reply on 21.01.2014 where in the assessee has stated that the return for the assessment year 2012-13 has already been filed on 26.09.2012 and filed a copy of the acknowledgment of the return and the same is mentioned herein above.

5. The Assessing Officer issued notice u/s 143 (2) of the Act on 21.01.2014.

6. In response to such notice the assessee, interalia, replied as under :-

“5. In response to the above show cause the assessee filed reply dated -014 the extract of same is reproduced as under:

“2, At the outset, it is most respectfully submitted that instant assessment proceedings is barred by limitation as no notice under section 143(2) of the Act has been issued to the assessee company within the time as provided under section 143(2) of the Act. It is submitted that for the captioned assessment year i.e. 2012-13, the assessee filed its return of income on 26.09.2012, and to scrutinize the return of income for the aforesaid assessment year, notice under section 143(2) of the Act could have been issued to the assessee only upto 30.09.2013. It is however submitted that since no notice under section 143(2) of the Act was issued to the appellant on or before 30.09.2013 and notice under section 143(2) of the Act was issued to the assessee only on 21.01.2014, as such, instant assessment proceedings is barred by limitation and hence the initiation of the proceedings is without jurisdiction and is liable to be dropped.”

7. The Assessing Officer dismissed this contention of the assessee by observing as under :-

6. “The assessee also relied upon various judgments. As per para of the assessee’s reply, the assessee was given opportunity and the counsel for the assessee appeared on 20.3.2014 with whom the case was discussed. The en by the assessee’s counsel is not acceptable. In view of the fact that the search operation was conducted on 09.11.2011, the notice under section

*2) was issued when the assessee filed the return in response to the notice section 142(1) wherein the assessee was asked to file the return of income. Hence the notice u/s 143(2) was within the period and the objection of the assessee does not carry any weight.”*

8. From the aforesaid factual matrix there remains no doubt that the Assessing Officer has proceeded on an erroneous assumption that the assessee has filed return in pursuance to the notice u/s 142 (1) of the Act. The undisputed fact is that the assessee had simply filed acknowledgment of the return of income which was filed on 26.09.2012. The limitation for the service of notice u/s 143 (2) of the Act expired on or before 30.09.2013 whereas the notice u/s 143(2) was issued on 21.01.2014 which is beyond the period of limitation.

9. Considering the facts of the case in hand in totality we have no hesitation in upholding the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

10. In the result, the appeal filed by the revenue is accordingly dismissed.

Order pronounced in the open court on 26.03.2019.

**Sd/-**  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:- 26.03.2019

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	25.03.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	26.03.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	