

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1038/JP/2018  
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Rajendra Gupta C/o O.P Batheja, Income Tax Practioner, D-18 Anand Vihar Railway Colony, Jagatpura, Jaipur-302017.	बनाम Vs.	D.C.I.T, Circle-1, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAZPG3181H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Batheja, ITP,ld.AR  
राजस्व की ओर से / Revenue by : Smt. Anuradha, JCIT, ld.DR

सुनवाई की तारीख / Date of Hearing : 25/04/2019  
उदघोषणा की तारीख / Date of Pronouncement: 26/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 31.07.2018 of Id. CIT (A), Ajmer for A.Y. 2015-16. The assessee has raised the following grounds:-

*(i) The Id. CIT(A), Ajmer has erred on facts and in law in confirming the addition of Rs. 81,657/-*

*" Additional Ground*

*The notice issued u/s. 143(2) by the DCIT, Circle-1, Ajmer on 03.11.2017 on the basis of which order u/s. 143(3) has been passed by him on 30.11.2017 was barred by limitation. Earlier notice issued u/s. 143(2) by DCIT, Central Circle-1, Jaipur on*

*12.08.2016 was without any jurisdiction and non est in the eye of law. Therefore, the order passed u/s. 143(3) on 30.11.2017 is itself barred by limitation, is bad in law and deserves to be quashed.*

*{This legal ground which goes to the root of the matter is being raised before the Hon'ble ITAT for the first time, for which no further investigation of facts is required. Therefore, the same may kindly be admitted in view of the decision of Hon'ble Supreme Court in the case of NTPC Ltd Vs. CIT 229 ITR 383(SC)}.*

2. The assessee has raised the said additional ground on the issue of validity of assessment order passed u/s. 143(3) in the absence of notice issued u/s. 143(2) of the Act. Since the legal issue raised by the assessee in the additional ground goes to the root of this matter and therefore, taken up first.

3. We have heard the Id. AR as well as the Id. DR on the admissibility of said additional ground. It is apparent that the additional ground raised by the assessee is purely legal in nature and it does not require investigation of any new facts. But, the issue can be adjudicated on the basis of the facts, which are already available on record. Therefore, being the legal issue, which can be adjudicated on the basis of the facts available on record, the additional ground raised by the assessee is admitted for adjudication by following the decision of the Hon'ble Supreme Court in case of NTPC Vs. CIT reported in 229 ITR 383(SC).

4. On the merits of addition, the Id.AR of the assessee has submitted that initially the jurisdiction of the assessee was with the ACIT, CC-1, Jaipur. However, by an order dt. 18-04-2016 passed u/s. 127 of the Act the jurisdiction was transferred to ITO, Kisangarh w.e.f 25-04-2016. He has further submitted that after transfer of said jurisdiction, the ACIT,CC-1, Jaipur issued a notice u/s. 143(2) of the Act on 12-08-2016, which is not a valid notice because he was not having jurisdiction over the assessee on the said date. The Id.AR has also submitted that an another notice dt. 03-11-2017 was issued by the DCIT, Circle-1, Ajmer u/s. 143(2) of the Act, however, the said notice was issued after the expiry of limitation and therefore, the same is also not a valid notice. Thus, the Id. AR contended that there is no valid notice issued u/s. 143(2) of the Act. Consequently, the assessment framed u/s. 143(3) of the Act is not valid and liable to quashed. In support of which contention, he has relied upon the following decisions:

- a. *In the cases of Jodhpur Sahakari Bhoomi Vikas Bank Vs. ITO (2015) 53 taxmann.com 113(Jodhpur-Trib)*
- b. *In the cases of Sunworld Infrastructure (P) Ltd Vs. ITO, WP ( C) 1741/2015 & CM No.3112/2015 Delhi High Court, D.O.J: 05.03.2015*
- c. *In the cases of Capstone Securities Analysis P.Ltd Vs. DCIT, ITA No. 177(Pune) of 2015 (2017) 85 taxmann.com 270 (Pune-Trib), and*
- d. *In the cases of ACIT Vs. Parvinder Vir Hans, C.O No. 04 (ASR)2011(Arising out of ITA No. 88(ASR)/201, ITAT, Amritsar*

5. On the other hand, the Id. DR has submitted that the assessee has not disputed the notice issued u/s. 143(2) dt. 12-08-2016, which was duly served on the assessee and no objection was raised by the assessee either during the assessment proceedings or before the Id. CIT(A). Therefore, the notice, which was not objected by the assessee cannot be questioned at this stage. The Id. DR, thus, contended that after completion of assessment and even order passed by the Id. CIT(A), the assessee cannot question the validity of said notice issued u/s. 143(2) of the Act.

6. We have considered the rival submissions as well as relevant material on record. There is no quarrel on the legal proposition that the notice issued u/s. 143(2) is a mandatory requirement for completing the scrutiny assessment u/s. 143(3) of the Act. Once the assessee has filed his return of income and the AO proposes to examine the correctness of the return in the scrutiny assessment, then the jurisdiction of the AO to conduct scrutiny of return of income is provided only by issuing notice u/s. 143(2) of the Act. Hence, the notice issued u/s. 143(2) is a mandatory requirement, which gives the AO jurisdiction to complete the scrutiny assessment u/s. 143(3). This issue is considered by Hon'ble

Supreme Court in the case of ACIT Vs. Hotel Blude Moon reported in  
321 ITR 362 in paras 15 & 16 as under:

*"15. We may now revert back to Section 158 BC(b) which is the material provision which requires our consideration. Section 158 BC(b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)/142 and complete the assessment under Section 143(3). This Section does not provide for accepting the return as provided under Section 143(i)(a). The assessing officer has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2)/142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) and (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of subsections which are to be followed by the assessing officer. Had the intention of the legislature was to exclude the provisions of Chapter XIV of the Act, the legislature would have or could have indicated that also. A reading of the provision would clearly indicate, in our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158 BC(a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act. Where the legislature intended to exclude certain provisions from the ambit of Section 158 BC(b) it has done so specifically. Thus, when Section 158 BC(b) specifically refers to*

*applicability of the proviso thereto cannot be exclude. We may also notice here itself that the clarification given by CBDT in its circular No.717 dated 14 August, 1995, has a binding effect on the department, but not on the Court. This circular clarifies the requirement of law in respect of service of notice under sub-section (2) of Section 143 of the Act. Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act. However, it is contended by Sri Shekhar, learned counsel for the department that in view of the expression "So far as may be" in Section 153 BC(b), the issue of notice is not mandatory but optional and are to be applied to the extent practicable. In support of that contention, the learned counsel has relied on the observation made by this Court in Dr. Pratap Singh's case [1985] 155 ITR 166 (SC). In this case, the Court has observed that Section 37(2) provides that "the provisions of the Code relating to searches, shall so far as may be, apply to searches directed under Section 37(2). Reading the two sections together it merely means that the methodology prescribed for carrying out the search provided in Section 165 has to be generally followed. The expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible. The learned counsel for the respondent has brought to our notice the observations made by this Court in the case of Maganlal Vs. Jaiswal Industries, Neemach and Ors., [(1989) 4 SCC 344], wherein this Court while dealing with the scope and import of the expression "as far as practicable" has stated "without anything more the expression `as far as possible' will mean that the manner provided in the code for attachment or sale of property in execution of a decree shall be applicable in its entirety except such provision therein which may not be practicable to be applied."*

**16.** *The case of the revenue is that the expression 'so far as may be apply' indicates that it is not expected to follow the provisions of section 142, sub-sections (2) and (3) of section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the revenue, since we do not see any reason to restrict the scope and meaning of the expression 'so far as may be apply'. In our view, where the Assessing Officer in repudiation of the return filed under section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of section 142, sub-sections (2) and (3) of section 143."*

7. Thus, the assessment framed without issuing notice u/s. 143(2) of the Act is not valid and the same is liable to be quashed. In case of assessee the first notice u/s. 143(2) of the Act was issued by ACIT,CC-1, Jaipur on 12-08-2016, however, the jurisdiction of the AO was already transferred from ACIT, Central Circle-1, Jaipur to ITO, Kisangarh w.e.f 25-04-2016 vide an order dt. 18-04-2016 passed u/s 127 of the Act. The revenue has not disputed the factom of transfer of jurisdiction of assessing officer from ACIT,CC-1, Jaipur to ITO, Kisangarh vide order dt. 18-04-2016 passed u/s. 127 of the Act. Therefore, the notice issued u/s. 143(2) dt. 12-08-2016 by the DCIT,Circle-1, Jaipur was not a valid notice as the said assessing officer was not having jurisdiction over the assessee and therefore, no jurisdiction was vested to him to issue notice u/s. 143(2) of the Act on 12-08-2016 on the assessee. It appears that to overcome the deficiency of notice issued u/s. 143(2), the DCIT,Circle-1, Ajmer again issued notice on 3-11-2017. However, the said notice was issued beyond the period of limitation provided under the said section. As the limitation for issuing the notice u/s. 143(2) expired on 30-11-2016, notice issued on 03-11-2017 is not valid being beyond the period of limitation provided u/s. 143(2) of the Act. Hence, we find that these two notices are not

valid and consequently, the assessment was framed by the AO without having any valid notice issued u/s. 143(2) of the Act. On our direction the Id. DR has produced before us the assessment record. On perusal of the assessment record, we find that other than these two notices dt. 12-08-2016 and 03-11-2017 there was no notice(s) issued u/s. 143(2). Accordingly, in the absence of a valid notice issued u/s. 143(2), the assessment framed u/s. 143(3) is invalid and the same is liable to be quashed. The Hon'ble Delhi High Court in the case of Sunworld Infrastructure P.Ltd Vs. ITO, W 24(3), Delhi (supra), while considering an identical issue has held in paras 4 & 5 as under:-

*"OFFICE OF THE INCOME TAX OFFICER WARD 69(1)(1), No. 14/3, 4<sup>th</sup> Floor, Rastrothana Bhavan (Opp. RBI Nrupatunga Road, Bangalore-560 001 F. No. TRF/ITO-W-6(1) (1)/2014-15 Dated: 16/12/2014 To Income Tax Officer, Company Ward-249(3), Central Revenue Building, IP Estate, New Delhi-11002 Madam/sir, Sub: Transfer of scrutiny assessment records in the case of M/s. Sunworld Infrastructure Pvt. Ltd-reg.*

*.....  
The above mentioned case was selected for scrutiny under CASS for A.Y 2012-13 & 2013-14 notices u/s. 143(2) was issued at the address available as per PAN data. On verification it is noticed that the jurisdiction of the vests with your office. Accordingly, case record is transferred herewith for necessary action at your end.  
Yours faithfully, (LOKESH) Income-tax Officer, Ward-6(1)(1), Bangalore"*

*4. It is evident from the aforesaid letter that it is only the records of the case which were transferred and if the case itself had been transferred, the same would have to be directed under section 127 of the said Act. No such order of transfer has been made and the above letter dated 16.12.2014 is indicative of the fact that the Bangalore Office of the Income Tax Department did not have jurisdiction in this case.*

*5. That being the position, the purported notice under section 143(2) on 10.09.2013 was one without jurisdiction and cannot be regard as a valid notice. The first notice, therefore, which was issued by an Officer having jurisdiction was on 24.12.2014. This was issued clearly beyond the period of limitation which has been prescribed, i.e beyond 30.09.2013 in this case. As such, the impugned notice dated 24.12.2014 issued under Section 143(2) of the Act is barred by time. The same is quashed."*

8. Therefore, the notice issued after the prescribed period of limitation is not a valid notice. Similarly, the notice issued by the DCIT, Cir-1, Jaipur without having jurisdiction over the assessee was also not a valid notice. Hence, the assessment framed u/s. 143(3) in the absence of notice issued u/s. 143(2) of the Act is not valid and accordingly, the same is quashed. Since we have quashed the assessment framed u/s. 143(3) of the Act, therefore, we do not propose to go into the issue of addition as made by the AO.

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

Order pronounced in the open court on 26/04/2019.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/04/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

**\*PP, SPS**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Rajendra Gupta
2. प्रत्यर्थी / The Respondent- The D.C.I.T, Cir-1, Ajmer
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1038/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

Sl. No.		Date	Initial
1	Date of dictation	25/4	
2	Date on which the typed draft is placed before the Dictating Member correction.....  Other Member.....	25/4	
		26/4	
3	Date on which the approved draft comes to the Sr.P.S./P S		
4	Date on which the fair order is placed before the Dictating Member for pronouncement		
5	Date on which the fair order comes back to the Sr.P.S./P.S.		
6	Date on which the file goes to the Bench Clerk		
7	Date on which the file goes to the Head Clerk		
8	The date on which the file goes to the Assistant Registrar for signature on the order		
9	Date of Dispatch of the Order		