

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5013/DEL/2011 (A.Y 2006-07)

Magnolia Estates (P) Ltd. C-5/44, Safdarjung Development Area New Delhi PAN : AACCM1851A (APPELLANT)	Vs	ITO Ward-6(1) New Delhi (RESPONDENT)
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Appellant by	Sh. K.V.S.Gupta, Adv
Respondent by	Ms. Rinku Singh, Sr. DR

Date of Hearing	02.07.2019
Date of Pronouncement	03.07.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 29/08/2011 passed by CIT(A)- IX, New Delhi for Assessment Year 2006-07.

2. The grounds of appeal are as under:

1) *The action of the Ld. CIT(A) in confirming the action of the Ld. A.O. in completing the assessment u/s 143(3) as valid without serving the notice u/s 143(2) within the statutory period is illegal, arbitrary, unwarranted, uncalled for & against the facts & circumstances of the case.*

2) *The action of the Ld. CIT(A) in confirming the action of the Ld. A.O. in disallowing a sum of Rs. 1,54,000/- being consultancy charges under the*

head income from business is illegal, arbitrary, unwarranted, uncalled for & against the facts & circumstances of the case.

3) The action of the Ld. CIT(A) in confirming the action of the Ld. A.O. in not accepting income as returned is illegal, arbitrary, unwarranted, uncalled for & against the facts & circumstances of the case.

4) The action of the Ld. A.O. in charging penal interest u/s 234B of the Income Tax Act, 1961 is illegal, arbitrary, unwarranted, uncalled for & against the facts & circumstances of the case.

5) The above grounds of appeal are without prejudice to each other.

6) The appellant reserve the right to add / alter / modify / amend or withdraw any ground of appeal.”

3. During the year, the assessee company derived income from rent and from other sources. The return of income was filed on 05.12.2006 declaring an income of Rs. 4,35,808/-. The case was selected for scrutiny and as per the assessment order the notice u/s 143(2) was issued and served. The assessment was completed u/s 143(3) vide order dated 10.12.2008 at an income of Rs. 6,44,710/- whereby expenses of Rs. 2,08,900/- were not allowed.

4. Being aggrieved by the said assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that Ground no. 1 is related to notice served u/s 143(3) of the Income Tax Act, 1961 and the said notice was not served within the statutory period given u/s 143(2) of the Act. Therefore, the Ld. AR submitted that the assessment itself is bad in law.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further submitted that the CIT(A) in para 4.7 of the order categorically mentioned that the notice u/s 143(2) was properly served.

7. The Ld. AR in rejoinder submitted that if notice was sent by speed post on 26.11.2007 then what was the necessity of sending the notice through hand delivery on 28.11.2007. The Ld. AR submitted that the notice should have been served on or before 30th November, 2007. The Ld. AR submitted that the speed post acknowledgement was never brought on record by the revenue either before the CIT(A) or before the Tribunal. Therefore the service was not at all completed as per the provisions given under the Income Tax Act. The Ld. AR further submitted that as regarding notice on one Shri Inderpal, he is the total stranger to the company. The notice has to be served on the principal officer which was not done by the revenue. The Ld. AR submitted that the said Shri Inderpal is not employee of the assessee company and he is not an employee of any companies in which Sri Atul Anand, Director of the assessee company was interested. Therefore the Ld. AR submitted that the assessment itself should be quashed and set aside.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the notice was not properly served on the assessee company as the one Sh. Inderpal was not an employee of the assessee company as well as not even the employee of the Director of the company. As per Section 143(2) the notice is statutory notice which has to be served properly on the assessee. The revenue cannot simply submit before the appellate authorities as well as before us that the speed post and the hand delivery of the notice were done. In fact the notices were issued at the very last dates of the time barring period of assessment and thus, the said cannot be served within the stipulated time through the speed post. The department realized the loophole and tried to make a hand delivery of the notice which was also not done on the Director of the company or the Principal Officer of the Company. This shows that the revenue has taken statutory notice provided under the statute/Act in the lighter way which is not permissible under the provisions of the Act. Therefore, we hold that the notice itself is bad in law as the same is not served on the assessee which is mandatory under the Act.

Therefore, the assessment order itself becomes invalid and is set aside. Even if the assessee appeared before the Revenue authorities during the assessment proceedings, the same was under protest and therefore, the Assessing Officer should have taken cognizance of the validity of the notice and its service into account. Therefore, we held that notice itself is void ab initio. Ground No. 1 is allowed. Since, Ground no. 1 goes to the root of the matter there is no necessity to decide the issues on merit. We, therefore, allow the appeal of the assessee.

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

Order pronounced in the Open Court on 3rd July, 2019.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 3/07/2019
B.R

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	02.07.2019
Date on which the typed draft is placed before the dictating Member	02.07.2019
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	