

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.1380/Hyd/2017
(Assessment Year: 2012-13)

Dy. Commissioner of Income Tax, Circle 2(2) Hyderabad <i>(Appellant)</i>	Vs	M/s.Hycons Infrastructure Ltd Hyderabad PAN: AACCA 8494R <i>(Respondent)</i>
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ITA No.1621/Hyd/2017
(Assessment Year: 2013-14)

M/s.Hycons Infrastructure Ltd Hyderabad PAN: AACCA 8494R <i>(Appellant)</i>	Vs	Dy. Commissioner of Income Tax, Circle 2(2) Hyderabad <i>(Respondent)</i>
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For Revenue :	Shri M.H. Naik, DR
For Assessee :	Shri Mohd. Afzal

Date of Hearing:	24.07.2019
Date of Pronouncement:	09.08.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

ITA No.1380/Hyd/2017 is the appeal filed by the Revenue for the A.Y 2012-13 whereas the appeal in ITA No.1621/Hyd/2017 is filed by the assessee for the A.Y 2013-14.

2. Brief facts of the case are that for the A.Y 2012-13, the assessee company filed its return of income on 30.09.2012 admitting gross total income of Rs.2,15,35,765/-. The case was selected for scrutiny through CASS and a notice u/s 143(2) was issued on 20.09.2013 by the Dy. CIT (Central Circle)-3 Hyderabad and the same was served on the assessee by affixture on 30.09.2013 at "8-2-293/82/A/406B, Road No.18,m Jubilee Hills, Hyderabad" being the last known address i.e. the address that has been mentioned in the return of income filed by the assessee for the A.Ys 2012-13 to 2014-15 and the address which is also appearing in the MCA Website as registered office of the assessee. Thereafter, the case records were transferred to the AO, Circle 2(2) Hyderabad, who issued another notice u/s 143(2) on the assessee on 20.01.2015. A questionnaire along with notice was issued to the assessee. In response to the same, the assessee submitted that another notice u/s 143(2), seems to have been issued prior to 30.09.2013 and therefore, requested a copy of the notice issued or served prior to 30.09.2013. The AO provided the details of the service of notices u/s 143(2) of the Act. The assessee, thereafter, raised objections that the Officer who issued the notice u/s 143(2) dated 20.09.2013, had no jurisdiction over the assessee. It was also submitted that the assessee is being regularly assessed with the AO at Circle 2 (2) Hyderabad, for the past several years and most of the assessments from the A.Y 2004-05 onwards are made u/s 143(3) of the Act, with the Officer at Circle-2 (2). Therefore, it was submitted that no valid notice u/s 143(3) was served on the assessee within the time allowed, and hence the assessment is not valid. The AO however, rejected the assessee's objections and

proceeded to make addition as “income from other sources” to the returned income of the assessee.

3. Aggrieved, the assessee preferred an appeal before the CIT (A) both on the question of jurisdiction of the AO who initially issued notice u/s 143(2) notice and also against the merits of the additions made. The CIT (A) after considering the assessee's submissions at length observed that the assessee was not served u/s 143(2) of the Act nor was it notified at any point of time and therefore, notice u/s 143(2) issued by the Dy. CIT, Central Circle-3 is not a valid notice as he was not the jurisdictional officer of the assessee. He, therefore, held that the first notice u/s 143(2) dated 20.09.2013 is not issued validly and further that the second notice u/s 143(2) is beyond time and therefore, the consequential proceedings are also not valid. Against this decision of the CIT (A) granting relief to the assessee, the Revenue is in appeal before us.

4. We find that under similar circumstances, the assessment of the assessee was set aside by the CIT (A) for the A.Y 2013-14, but in the A.Y 2014-15 the CIT (A) upheld the validity of the notice issued by the Dy. CIT, Central Circle-3, Hyderabad and against that order, the assessee is in appeal before us.

5. The learned Counsel for the assessee has drawn our attention to the notice u/s 143(2) of the Act, dated 20.01.2015 for the A.Y 2013-14 and the address of the Pr. A.O is ACIT, Circle 2(2) Hyderabad who has the actual jurisdiction over the assessee. He

submitted that when the AO Central Circle had issued notice and since the same could not be served, the same was served through affixture. It is submitted that the address at which the said notice is issued by affixture also is not the correct address of the assessee. He submitted that the Department has obviously not taken any steps to find out the correct address of the assessee to serve the notice and it is only the notice dated 20.01.2015, that is issued notice to the correct address of the assessee. It is submitted that the notice u/s 143(2) can be issued only within six months from the end of the relevant A.Y and since the correct Officer having jurisdiction over the assessee, issued notice u/s 143(2) much beyond the said date, the notice u/s 143(2) issued for both the A.Ys 2012-13 & 2013-14 are invalid and accordingly, the assessments needs to be held as invalid.

6. The learned DR, on the other hand, supported the orders of the AO and the CIT (A) for the A.Y 2013-14.

7. Having regard to the rival contentions and the material on record, we find that the assessee has filed its return of income with the address at Jubilee Hills i.e. with AO Circle 2(2) Hyderabad as is evident from the ITR copies filed in the paper book. Further, there is also no dispute that the correct AO who is having jurisdiction over the assessee is the AO Circle 2(2) Hyderabad. The argument of the learned DR that the AO i.e. Dy. CIT, Central Circle also had jurisdiction over the PAN and therefore, the notice has been issued initially by him should be considered as a valid notice is not acceptable. As soon as the Dy.

CIT, Central Circle realised that he had no jurisdiction over the assessee, he should have transferred the files immediately to the AO having correct jurisdiction over the assessee and such an Officer should have issued notice u/s 143(2) of the Act. We find that the Dy. CIT, Central Circle, had issued notice u/s 143(2) of the Act just before the end of the limitation period i.e. in September, 2013 and thereafter, the AO having jurisdiction over the assessee issued notice only in January, 2015. Thus, clearly there is an inordinate delay on the part of the AO to take up the assessment proceedings by issuance of notice u/s 143(2) of the Act. Further, as rightly pointed out by the learned CIT(A) for the A.Y 2012-13, the assessee's case is neither a search case nor is it a notified person, so that the Dy. CIT, Central Circle gets jurisdiction over it. Therefore, we are in agreement with the findings of the CIT (A) for the A.Y 2012-13 and therefore, hold the notice u/s 143(2) for both the A.Y as invalid and the consequential proceedings also as invalid.

8. In the result, Revenue's appeal for the A.Y 2012-13 is dismissed and the assessee's appeal for the A.Y 2013-14 is allowed.

Order pronounced in the Open Court on 9th August, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 9th August, 2019.

Vinodan/sps

Copy to:

- 1 Dy. CIT, Circle 2(2), Room No.513, 5th Floor, Signature Towers, Kondapur, Hyderabad
- 2 M/s. Hycons Infrastructure Ltd, C/o Shri Visakha Timber & Saw Mills, Sy. No.183, Masjid Band, Kondapur, Hyderabad 500084
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 2 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order