

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH "SMC" GUWAHATI

Before **Shri S.S, Godara, Judicial Member**

ITA No.138/Gau/2019
Assessment Year:2014-15

MTM Wines & Bottlers Pvt. Ltd., Tipi Industrial Estate, Bhalukpong, West Kameng, Arunachal Pradeh-790114 [PAN No.AADCM 7194 F]	बनाम/ V/s.	Income Tax Officer Ward-1, Tezpur, Aaykar Bhawan, Ex-Police Line Road, Tezpur-784001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sanjoy Mody, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri A.K. Bhardwaj, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	11-07-2019
घोषणा की तारीख/Date of Pronouncement	10-10-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2014-15, arises against the Commissioner of Income-tax (Appeals)-1, Guwahati's order dated 07.01.2019 passed in case No.Tez-58/2016-17/311 involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the assessee's legal ground challenges validity of the impugned assessment for want of section 143(2) issued by the Assessing Officer having territorial jurisdiction. I find that the very issue arose between parties in Assessment Year 2012-13 as well involving ITA No.134/Gau/2017 decided on 14.11.2018. Learned coordinate bench accepted the assessee's contention therein as under:

“3. Aggrieved, the assessee preferred an appeal before the ld. CIT(A) who was pleased to sustain the addition and dismissed the appeal of the assessee. Aggrieved, the assessee is before us and has assailed the decision by challenging the validity of assessment itself by contending that the assessee has not received notice u/s 143(2) from ITO, Ward-1, Tezpur so according to ld. A/R framing of scrutiny assessment u/s 143(3) of the Act in the absence of issue of notice u/s 143(2) by the Assessing Officer who framed the assessment u/s 143(3) (i.e. ITO, Ward-1, Tezpur) was without jurisdiction.

4. We have heard both the parties and perused the records. We note that the assessee e-filed return of income. The ITO, Ward-North Lakhimpur taking note of the PAN details of assessee issued notice u/s 143(2) on 12.08.2013. However, it was later found by him that the territorial jurisdiction in respect to assessee company was conferred on ITO, Ward-1, Tezpur so the case was taken over by ITO, Ward-1, Tezpur on 27.11.2014. The question before us is whether issuance of section 143(2) notice is mandatory for framing of scrutiny assessment u/s 143(3). This issue is no longer res-integra as held by the Hon'ble Supreme Court in CIT V Hotel Blue Moon (2010) 321 ITR 362 (S.C) wherein their Lordship held that before framing assessment u/s 143(3), [the scrutiny assessment] notice u/s 143(2) is mandatory. Admittedly, in this case, 143(2) notice has been issued by ITO, Ward-North Lakhimpur on erroneous assumption that he has jurisdiction as per the PAN details of the assessee. We note that the Income-Tax Act does not confer jurisdiction to Assessing Officer based on PAN. The territorial jurisdiction is conferred by the statute and in this case admittedly it falls in the jurisdiction of ITO, Ward-1, Tezpur. Therefore, ITO, Ward-1, Tezpur has the territorial jurisdiction to assess the assessee and not ITO, Ward-North Lakhimpur. Since, the notice u/s 143(2) is sine qua- non for assumption of jurisdiction to framing the assessment u/s 143(3) of the Act and since the ld. DR after going through the assessment records could not controvert the fact that ITO, Ward-1, Tezpur had not issued 143(2) notice, the impugned assessment framed u/s 143(3) is without jurisdiction and is, therefore, null in the eyes of law and therefore, we quash the assessment itself. Assessee succeeds on the Ground No.2 raised by it and therefore, other grounds are academic and therefore the assessee's appeal is allowed.”

3. Mr. Bhardwaj fails to pinpoint any exception in the facts of these two assessment years. I therefore quash the impugned assessment on this count alone by adopting the above detailed reasoning mutatis mutandis. The assessee's remaining pleadings on merits are rendered infructuous.

4. This assessee's appeal is allowed in above terms.

Order pronounced in accordance with Rule 34(3) of the ITAT Rules by putting on Notice Board on 10/10/2019.

Sd/-
(S.S. Godara)
Judicial Member

Gauhati,

*Dkp/Sr.PS

दिनांक:- 10/10/2019

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-MTM Wines & Bottlers Pvt. Ltd., Tipi Industrial Estate
Bhalukpong, West Kameng Arunachal Pradesh-790114
2. प्रत्यर्थी/Respondent-ITO Ward-1, Aayakar Bhawan,a Ex-Police Line Road, Tezpur
Assam-784001
3. संबंधित आयकर आयुक्त गृवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A)-1 Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण गृवाहाठी / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on Tour)
आयकर अपीलीय अधिकरण,
गृवाहाठी ।