

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3516/Del/2015  
Assessment Year: 2010-11

Income Tax Officer, Ward-2, Roorkee	<b>Vs.</b>	Smt. Reena Verma, Village-Khedi Kalan, Mubaraqpur, Laksar
<b>PAN :AGVPV0526B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Surender Pal, Sr.DR
Respondent by	Shri D.K. Gandhi, Adv.

Date of hearing	11.09.2019
Date of pronouncement	14.10.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the Revenue is directed against order dated 20/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals), Dehradun [in short 'the Ld. CIT(A)'] for assessment year 2010-11 raising following grounds:

- 1. That learned CIT(A) has erred in law and on facts in holding, without giving the AO an opportunity of being heard in this regard, that the notice of the I.T. Act had not been served on the assessee by due date i.e. 30.09.2011, while a soft copy of the notice had been sent to the assessee by e-mail on the e-mail address furnished in the return of income, and that*

*constituted a valid service of notice as per the provisions of section 282(1)(c) of the I.T. Act, 1961.*

*2. That the order of the learned CIT(A) be set-aside and that of the AO be restored.*

**2.** Briefly stated facts of the case are that against the return of income, declaring total income of Rs.2,86,145/- filed by the assessee, the assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), was completed at assessed income of Rs.1,36,55,359/-. On further appeal by the assessee, the Ld. CIT(A) held the assessment proceeding as invalid in absence of service of notice under section 143(2) of the Act on the assessee within the limitation period provided in the Act. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

**3.** At the outset, the Ld. counsel of the assessee submitted that the tax effect involved in the appeal being less than the limit prescribed by the CBDT for filing appeals before the Tribunal in recent Circular No. 17 Dated 08/08/2019, the appeal of the Revenue, might be dismissed as infructuous. Alternatively, he also submitted that ground raised is not arising from the order of the Ld. CIT(A), and thus it is not admissible as regular ground and accordingly appeal might be dismissed.

**4.** On the contrary, the Ld. DR submitted that as per the order of the Ld. CIT(A), tax effect involved in the case is of Rs.55,99,840/, which is more than the prescribed limit. He also submitted that in the instant case the Revenue challenged validity of the service of notice and, thus, the appeal falls under exclusions for applicability of the Circular (supra). On the alternative argument of the Ld. Counsel of the assessee, the Ld. DR submitted that the Ld. CIT(A)

did not provide any opportunity to the Assessing Officer and therefore, ground has been taken validly.

**5.** We have heard rival submission and perused the relevant material on record. In the case, the Ld. CIT(A) has annulled the assessment holding it to be invalid due to non-service of notice under section 143(2) of the Act within limitation period. In the ground, the Revenue has contested that a copy of the notice was served upon the assessee through email on the email address provided in the return of income within the limitation period. Thus, according to Revenue, service through email constitute a valid service of the notice as per provision of section 282(1)(c) of the Act. But, we find that this issue of service of notice through email was neither raised before the Ld. CIT(A), nor he adjudicated on this issue. For ready reference, the finding of the Ld. CIT(A) is reproduced as under:

*“9. Shri Tilak Raj, Advocate and Shri Jyoti Raj appeared on behalf of the assessee and also filed a written submission. It was submitted that no notice u/s 143(2) had been served upon the assessee in the due period but it had been served upon the assessee on 4.10.2011 and the assessee had raised an objection with the A O. in this regard vide his letter dated 21.11.2012. In this context the certified copies of the notice u/s 143(2) and the replies submitted by the assessee have been attached alongwith the paper book. It is seen from the above that the assessee had signed on the notice on 4.10.2011 in his own handwriting and thereafter he has submitted a letter on 21.11.2012 that he received the notice on 4.10.2011 and therefore, the proceedings are barred by limitation. The certified copy of the notice obtained from the O/o ITO, Ward-2, Roorkee clearly show that the notice dated 28.9.2011 was not served upon the assessee within the time allowed under the Act i.e. before 30.9.2011. In the circumstances, as the provisions of section 143(2) are clear that the notice u/s 143(2) must not only be issued but also be served within a period of 6 months from the end of the financial year in which the return is furnished. Since the return of the assessee has been furnished on 14.10.2010, the outer limit for the service of notice u/s 143(2) was 30.9.2011. Thus, the notice was barred by limitation and as the initiation of the proceedings is itself bad in law, it naturally*

*follows that the assessment would be void-ab-initio. Nor is the case of the assessee covered by the provisions of section 292BB because it is clear from the certified copy that the assessee filed a letter before the A.O. on 21.11.2012 that the notice u/s 143(3) was time barred and requesting the A.O. to drop the proceedings on this account. Therefore, after considering the following judgements cited by the assessee in support of his plea, I hold that the proceedings are void abinitio and, therefore / are annulled –*

1. *DCIT Vs. Mahi Valley Hotels & Resorts (2008) 193 Taxation 418 (Guj.)*
2. *CIT Vs. Lunar Diamond Ltd. (2005) 197 CTR 312 (Del).*
3. *CIT Vs. Vardhman Estate (P) Ltd. (2007) 208 CTR 251.*
4. *BHPE Kinhill Joint Ventrue Vs. Addl. Director of Income Tax(2008) 304 ITR 285 (Delhi Trib)*
5. *Babulal Sharma Vs. Asstt CIT (2006) 103 TTJ 722.*
6. *CIT Vs. Mahalaxmi Sugar Mills Ltd (1986) 160 ITR 920 (SC).*
7. *CIT Vs. Chaman Lai & Bros (1970) 77 ITR 383 (Del.)*
8. *Swaram Yash Vs CIT (1982) ITR 734 (Guj.).*

**6.** It is evident from the above finding of the Ld. CIT(A) that issue of service of notice through email has not been adjudicated by the Ld. CIT(A). Thus, the issue raised in the ground is not arising from the order of the Ld. CIT(A). It is settled law that any issue which has not been adjudicated by an appellate authority or not arising from the order of the appellate authority, same can be raised before the higher appellate authority by way of additional ground only. It has been held by the Hon'ble Supreme Court in the case of NTPC Vs. CIT, 229 ITR 383 that *“a legal ground can be raised for first-time before any appellate authority, if all the facts in relation to the grounds are already available on the record, no investigation of the fresh facts is required”*. In our opinion, the Revenue can raise this issue only by way of additional ground before the Tribunal, which may be admitted by the Tribunal in accordance with law, if the fact of the service of notice by email is available on record of the Assessing Officer and no investigation of the fresh facts is required. As the issue has not been raised by way of additional ground before

the Tribunal, we dismiss the appeal of the Revenue with liberty to file miscellaneous application by the appellant for recalling the appeal and raising the issue by way of additional ground in accordance with law, if advised so. We are not adjudicating on that issue of tax effect involved in the appeal, as we have already dismissed the appeal of the Revenue.

**7.** In the result, the appeal of the Revenue is accordingly dismissed.

***Order is pronounced in the open court on 14<sup>th</sup> October, 2019.***

Sd/-  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 14<sup>th</sup> October, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi