

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Ms. Sushma Chowla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6484/Del./2019 : Asstt. Year : 2010-11

Flovel Energy Pvt. Ltd., C/o RRA Tax India, D-28, South Extension, Part-I, New Delhi-110049	Vs	ACIT, Circle-9(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCF0582E		

**Assessee by : Dr. Rakesh Gupta, Adv. &
Sh. Somil Agarwal, Adv.
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing: 07.10.2019	Date of Pronouncement: 16.10.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-34, New Delhi dated 27.06.2019.

2. Following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order and that too without assuming jurisdiction as per law and without complying the statutory conditions as stipulated u/s 147 to 151 of Income Tax Act, 1961, more so when passing of four weeks was not allowed to the assessee after disposal of objections before passing the assessment order.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts

in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/143(3) even though no notice u/s 143(2) has been issued/served within the statutory allowable period as per law and by recording incorrect facts.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.2,07,91,550/- on account of business procurement expenses and that too by recording incorrect facts findings and by disregarding the submissions, evidences and material placed by the assessed and in violation of principal of natural justice.

4. That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.2,07,91,550/- on account of business procurement expenses, Is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.7,50,003/- on account of scrap sale and that too by recording incorrect facts and findings and in violation of principles of natural justice.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned reassessment order and various disallowances made therein are illegal, bad in law, contrary to law and facts, void ab-initio and not sustainable on various legal and factual grounds.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961."

3. Ground Nos. 1 & 2, the assessee has raised the issue of non-issuance of notice u/s 143(2) of the Income Tax Act, 1961 within the statutorily period. The facts relevant the issue are as under:

Sl. No.	Details of proceedings	Date
1.	Assessment year in question	2011-12
2.	Date of completion of assessment u/s 143(3) originally	13.06.2013
3.	Date of issue of notice u/s 148	09.01.2015
4.	Date of filing of reply by assessee	23.03.2015
5.	Date of receipt by revenue	26.03.2015
6.	Date of issue of notice u/s 143(2)	15.03.2016
7.	Due date for issue of notice u/s 143(2)	30.09.2016

4. These facts gathered from the records of the revenue and obtained through order u/s 7(1) of Right to Information Act, 2005 are not in dispute and the facts have been agreed upon by both the parties. The Id. AR argued that owing to delay in issue of the statutory notice u/s 143(2) of the Act, the assessment completed by the Assessing Officer be treated as *null and void*. On the other hand, the Id. DR argued that the assessee has not taken any objection during the assessment proceedings and hence, the provisions of Section 292BB of the Act are applicable. The Id. AR rebutted the argument of the Id. DR on the grounds that the assessee has raised objections before completion of the assessment also.

5. Heard the arguments of both the parties and perused the material available on record. We find that the judgment of Broadway Shoe Co. 99 Taxmann 83 relied by the Id. DR is not applicable to the facts of the case as in that case the assessee has not filed a return in response to the notice issued u/s 148

of the Act whereas in the instant case, the assessee has filed return u/s 139(1) of the Act in regular course and also replied to the notice that the return filed by them on 15.10.2010 may be treated as returned filed in response to the notice u/s 148 issued on 09.01.2015. Under such circumstances, it is incumbent upon the Assessing Officer to issue notice u/s 143(2) within the time stipulated as per the provisions of the Act which he failed to observe. Hence, keeping in view the judgment of Jurisdictional High Court in the case of Alpine Electronics Asia Pvt. Ltd. 341 ITR 247 wherein the judgment of Hotel Blue Moon 321 ITR 362 (SC) has been duly referred to, we hereby hold that omission to issue notice u/s 143(2) is not curable and the requirement cannot be dispensed with. It is mandatory to issue notice u/s 143(2) even in the case of reassessment u/s 148. Similarly, Section 292BB incorporates the principle of estoppel and stipulates that an assessee who has appeared in any proceeding and co-operated in any enquiry relating to assessment or reassessment shall be deemed to be served with any notice which was required to be served and would be precluded from objecting that the notice was not served upon him or was served upon him in an improper manner or was not served upon him in time. However, the principle of estoppel does not apply if the assessee has raised objection in reply to the notice before completion of assessment or reassessment which is the issue in the instant case. Hence, keeping in view, the entire facts of the case and established judgments on the issue, we hereby hold that the assessment completed by the revenue cannot be held to be valid in the eyes of law.

6. Since, the assessment has been quashed *ab initio*, adjudication on the other grounds would be infructuous and hence, we refrain from doing so.

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

Order Pronounced in the Open Court on 16/10/2019

Sd/-

(Sushma Chowla)
Judicial Member

Dated: 16/10/2019

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR