

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND**

**SMT.BEENA PILLAI, JUDICIAL MEMBER**

**IT(TP)A No.2235(Bang)/2016  
(Assessment year : 2009-10)**

M/s The Himalaya Drug Company,  
Makali, Tumkur Road,  
Bangalore-562 162  
PAN No.AADFT3025B

Appellant

**Vs**

The Asst. Commissioner of Income Tax,  
Central Circle-1(1),  
Bangalore

Respondent

**Appellant by : Shri Padamchand Khincha, CA  
Revenue by : Ms Neera Malhotra, CIT**

**Date of hearing : 26-09-2019**

**Date of pronouncement : 23-10-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal has been filed by assessee against final assessment order dated 20/10/16 passed under section 143 (3) read with section 147 read with section 144(C ) of the Act by Ld. ACIT Central Circle -(1), Bangalore.

**2. Brief facts of the case are as under:**

Assessee is a partnership firm engaged in business of manufacture and sale of herbal pharmaceutical products (ayurvedic medicaments and preparations), consumer/personal care products and animal health care products. For year under consideration, assessee filed its return of income on 30/09/09 declaring total income of Rs.49,63,55,214/-.

2.1. The AO observed that assessee had international transaction with associated enterprises in respect of sale of finished goods, and advertisement, marketing and sales promotion. Ld.AO thus referred the issue to LD.TPO, for determining arms length price of international transaction. Ld.TPO called for economic details of international transaction and completed assessment by proposing adjustment of Rs.80,04,49,338/-. Ld.AO disallowed sum of Rs.3,12,25,891/-in respect of interest.

3. Aggrieved by the order passed by Ld.TPO, assessee filed appeal before Ld. CIT(A) vide order dated 31/07/13 and assessment order passed under section 143(3) read with 144C of the Act.

3.1 Subsequently, Ld.AO issued notice under section 148 dated 12/12/13, which was received by assessee on 16/12/13. In response to notice under section 148 of the IT Act, assessee filed return of income which, is placed at page 239 of paper book on 20/12/13. Assessee also filed letter to Ld.AO intimating return filed under section 148 of the Act, and sought for reasons recorded.

On 04/03/14 assessee filed letter seeking reasons for reopening. Reminder of the same was filed on 29/05/14. On 16/06/14 reasons recorded were issued by Ld.AO on 20/06/14. On 06/08/14 assessee filed its objection in respect of reassessment. On 21/10/14 Assessing Officer passed order disposing of objection. Thereafter, on 02/02/15 Assessing Officer issued notice under section 143(2) of the Act, which is placed at page 240 of paper book. Ld.AR at this stage submitted that notice issued under section 143 (2) of the Act on 02/02/2015 is time-barred as due date for issue of notice lapsed on 30/09/14. Ld.AR raised a preliminary issue by way of additional ground. It has been submitted that as the notice under section 143 (2) of Act has been issued beyond period of limitation, subsequent proceedings by Ld.AO is *void ab initio* and bad in law.

4. At the outset Ld.AR submitted that preliminary issue in respect of the validity of order passed by Ld.AO may be decided before dealing with grounds raised on merits.

5. Ld. CIT DR, on the contrary, objected for admission of additional ground so raised by assessee. She submitted that this issue has been raised for first time and therefore, cannot be entertained.

6. We have perused submissions advanced by both sides in light of records placed before us.

On perusal of assessment order, impugned before us, it is observed that issue regarding validity of draft assessment order arises out of records. Further it is observed that concise grounds filed by assessee i.e. ground 4.3 deals with jurisdiction of Ld.AO in passing

draft assessment order, as assessee alleges that notice under section 143(2) was issued beyond period of limitation. Hence, we do not find any force in objection raised by Ld.CIT DR and we admit ground regarding preliminary issue raised by assessee.

**Accordingly, additional ground raised by assessee stands admitted.**

Assessee's question of validity of assessment under section 143(3) read with 148 read with 144C goes to root of the matter, and it is necessary to decide first preliminary issue raised.

7. Ld.AR submits that period of limitation for issuance of notice under section 143(2) starts from date on which assessee filed return in lieu of notice under section 148 of the Act. He submitted that assessee filed its return on 20/12/13 pursuant to notice u/s 148. Therefore, revenue should have issued notice under section 143(2) on or before 30/09/2014. Ld.AR placed reliance on following decision in support of his prepositions:

- *ACIT vs Hotel Blue Moon, reported in (2010) 188 Taxmann 113 (SC)*
- *CIT vs Gitsons Engineering Co., reported in (2015) 53 Taxmann.com 108 (Mad);*
- *CIT vs Lakshmandas Khandelwal reported in (2019) 108 Taxmann.com 183 (SC)*

Ld.AR thus submitted that issuance of notice under section 143 (2) is mandatory. He submitted that section 292 BB will not safeguard interest of revenue in a case where mandatory notice under section 143(2) has not been issued within period of limitation. He

submitted that provisions of section 292 BB would come to rescue only in a case of improper service or wrong service of such notice.

8. The Ld.AR, thus argued that assessment or reassessment, Ld.AO has to issue notice under section 143(2) within limitation period from end of the assessment year in which return is filed. In the present case, being re-assessment proceedings under section 147, on receipt of notice under section 148, assessee filed its return of income on 20/12/13, and as per relevant provisions applicable for year under consideration, Assessing Officer should have issued notice u/s 143(2) within 6 months from end of financial year in which the return was filed that is on or before 30/09/14, whereas, Ld.AO issued notice under section 143(2) on 02/02/2015 which is beyond period of limitation prescribed under law.

9. On the contrary, Ld. CIT, DR submitted that assessee is precluded from taking such ground before this *Tribunal* at this stage, as it did not object same before authorities below. She submitted that there is no need for notice under section 143(2) for reassessment proceedings under section 148 of the Act. She placed reliance upon following decisions:

- *CIT vs Madhya Bharat Engineering Corporation Ltd reported in (2012) 20 taxman.com 557 (Delhi)*
- *Shri.Ashok Chadha vs ITO reported in (2012) 20 Taxmann.com 387 (Delhi)*
- *CIT vs Sri Durga Enterprises reported in (2014) 44 Taxmann.com 4 for 2 is (Karnataka)*

- *Venkatesh and Raghu Ram vs ITO reported in (2018) 94 Taxmann.com 249 (Madras)*
- *CIT vs Sudev Industries Ltd reported in (2018) 94 Taxmann.com 373 (Delhi)*

10. We have perused submissions advanced by both sides in light of records placed before us. We have also perused decisions relied upon by both sides very carefully.

10.1 On mere look at provisions of section 148, it is crystal clear that even in case of re-assessment under section 148 notice under section 143(2) is to be mandatorily issued within period of limitation prescribed under sub-clause (ii) of sub-section (2) of section 143. Issue of validity of notice under section 143(2) in a re-assessment proceedings was subject matter of consideration before various *High Courts* and *Hon'ble Supreme Court* on several occasions. Ld.AR placed before us recent decision passed by *Hon'ble Supreme Court in CIT vs Lakshmandas Khandelwal (supra)*, mandates service of notice under section 143(2) of the Act within the period of limitation as prescribed under law, pursuant to notice under section 148. *Hon'ble Court* has held that provisions of section 142(2) and (3) of section 143 has mandatorily application in a case where the Assessing Officer in repudiation of return filed in response to notice under section 148 which proceeds to make an enquiry. *Hon'ble Court* also analysed application of section 292 BB that came into effect from 01/04/08. It has been held by *Hon'ble Court* that scope of sec.292BB is to make service of notice having certain infirmity to be proper and valid if there was requisite participation on part of

assessee, where notice has emanated from Department within period of limitation.

11. In present facts of case, admittedly, notice has been dispatched beyond period of limitation and therefore, provisions of section 292 BB shall clearly not apply.

11.1 Ld. CIT DR relied upon decision of *Hon'ble Karnataka High Court* in case of *CIT vs Durga Enterprise (supra)*. On perusal of the same, it is observed that, this decision is rendered in context to issuance of notice under section 148 of the Act, wherein, requirement to file return within specified period was not specified. In our considered opinion, this decision is of no assistance to revenue as facts herein are distinguishable with issue before us. Further, other decision relied upon by Ld. CIT DR in case of *Venkatesh and Raghu Ramprasad vs IT (supra)* and *CIT vs Sudev Industries Ltd (supra)*, are in respect of improper service of notice. These decisions are also distinguishable from facts in present case, and therefore cannot be of any assistance to revenue.

Respectfully following the decision of *Hon'ble Supreme Court* in case of *CIT vs Laxman Das Khandelwal (supra)*, we hold that assessment order passed pursuant to notice under section 148 of the Act, to be *void ab initio* and bad in law. Accordingly the same is quash and set-aside.

We thus allow preliminary legal issue raised by assessee.

12. As we have quashed and set-aside re-assessment proceedings, grounds raised by assessee on merits becomes academic in nature.

**In the result appeal filed by assessee stands allowed on legal issue raised.**

Order pronounced in the open court on 23-10-2019

**Sd/-**  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Dated: 23-10-2019

**\*am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

**Sd/-**  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

By Order

Asst.Registrar