

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 549/DEL/2016 (A.Y – 2006-07)

DCIT, Central Circle – 08, New Delhi. (APPELLANT)	Vs	M/s. S.E.H. Realtors Pvt. Ltd., F-88, Okhla Industrial Area, Phase –I, New Delhi – 110 020. (PAN : AAGCS 7537 M) (RESPONDENT)
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Appellant by	Shri G. Johnson, Sr. D.R.
Respondent by	Shri M.P. Rastogi, Shri Deepak Malik, Adv.

Date of Hearing	07.01.2020
Date of Pronouncement	10.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 17.11.2015 passed by the Commissioner of Income Tax [Appeals]-23, New Delhi for Assessment Year 2006-07.

2. The Grounds of appeal are as under:-

1. *“That the order of Ld. CIT(A) is not correct in law and on facts.*
2. *That the Ld CIT(A) has quashed the assessment for the technical reasons without properly appreciating the fact that the notices were issued in time and on the basis of external information received and not on the basis of same facts and circumstances available on record itself.*

3. *That taking the approval for issue of notice u/s 148 and issuance of notice u/s 143(2) are procedural aspects only. The intention of legislature behind bringing the provisions of section 147 in the statute is to cure the possibility of escapement of income in any manner by the tax payers.*
4. *That the appellant craves leave to Add, amend and/all grounds of appeal before or during the course of hearing of the appeal.”*

3. The assessee is a Private Limited company incorporated under the Companies Act, 1956 on 16.02.2001. The case of the assessee company was reopened u/s 147/148 of the Income Tax Act, 1961 for the A.Y. 2006-07 after duly recording of the reasons for belief that income has escaped assessment. Notice u/s 148 of the Act was issued to the assessee on 30.03.2013. In response to the notice u/s 148 of the Act the assessee filed letter dated 28.11.2013 thereby stating that the assessee company has filed return of income u/s 139 on 01.11.2006 and the same may be treated as return filed in pursuance to notice u/s 148. The assessee company declared its total income of Rs. Nil for A.Y. 2006-07. From perusal of seized/impounded material, it was noticed that an amount of Rs.9.32 crores has come to the assessee company as interest income in the two deals (NH deals & Jaipur deals) during the Financial Year 2005-06, which remains out of books as per the observations of the Assessing Officer. The assessee was asked to show-cause vide letter dated 14.03.2014. The assessee did not file any reply in respect of incriminating documents seized/impounded as referred in the show-cause notice, therefore, the Assessing Officer held that this proves that the deals was actually a loan agreement in respect of NH 8. As regards Jaipur deal the Assessing Officer held that fixed investment has been made by the assessee which is secured by corporate guarantees, personal guarantees, PDCs and the right to resell the property to the seller at a fixed price determined beforehand. Thus, the Assessing Officer made addition of Rs.9.32 crores.

4. Being aggrieved by the assessment order the assessee filed an appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee. By allowing

the appeal of the assessee, the CIT(A) held that the very initiation of the reassessment proceedings and initiation of notice u/s 148 of the Act is legally invalid, as there is no approval of the Commissioner or Chief Commissioner having been taken as to Proviso of section 151(1) of the Act or that of notice u/s 143(2) of the Act having been issued to the assessee subsequent to the issue of notice u/s 148 of the Act which is mandatory for assessment proceedings.

5. The Ld. DR submitted that the CIT(A) has quashed the assessment for the technical reasons without properly appreciating the fact that the notices were issued in time and on the basis of external information received and not on the basis of the same facts and circumstances available on record itself. The Ld. DR further submitted that taking the approval of issue of notice u/s 148 and issuance of notice u/s 147 are procedural aspect only. The intention of legislature behind bringing the provision of section 147 in the statute is to cure the possibility of escapement of income in any manner by the tax payer.

6. The Ld. AR submitted that the CIT(A) has rightly quashed the assessment as there is no notice issued u/s 143(2) which can be clearly seen from the assessment order itself, as there is no mention of notice u/s 143(2) of the Act. The Ld. AR further submitted that the CIT(A) has also taken the issue on merit and decided the same in favour of the assessee. Thus, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. It is seen that there is no notice u/s 143(2) issued to the assessee. This fact was not denied by the Ld. DR as well. Further the approval u/s 141(1) proviso is also not taken. Section 143 is a mandatory provision and has to be applied by the Revenue in its strict sense. Therefore, the CIT(A) has rightly quashed the assessment order on the threshold itself. It is observed that the CIT(A) has also given a finding on merit which is not at all contested by the

Revenue in the present appeal. Therefore, there is no need to interfere with the finding of the CIT(A). The appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 10th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 10/01/2020
*Priti Yadav, Sr. PS **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	07.01.2020
Date on which the typed draft is placed before the dictating Member	08.01.2020
Date on which the typed draft is placed before the Other Member	10.01.2020
Date on which the approved draft comes to the Sr. PS/PS	10.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	10.01.2020
Date on which the fair order comes back to the Sr. PS/PS	10.01.2020
Date on which the final order is uploaded on the website of ITAT	10.01.2020
Date on which the file goes to the Bench Clerk	10.01.2020
Date on which the file goes to the Head Clerk	