

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

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| ITA No.3137/Bang/2018 |
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| Assessment year : 2011-12 |
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| Shri Mazher Pasha, #1, 'A' Street, Coles Road Cross, Bengaluru-560 005. PAN – AFJPP 8468 H | Vs. | The Income-tax Officer, Ward-1(2)(2), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri V Srinivasan, Advocate |
| Respondent by | : | Smt. R Premi, JCIT |

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| Date of hearing | : | 05.02.2020 |
| Date of Pronouncement | : | 05.02.2020 |

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 29/2/2018 passed by Id CIT(A)-1, Bengaluru and it relates to asst. year 2011-12.

2. The assessee, inter alia, is challenging the validity of asst. order passed u/s 143(3) without issue of statutory notice prescribed u/s 143(2). This second round of proceeding. The Id counsel for the assessee submitted that assessee is carrying on the business of repairing motor vehicles under the name and style of M.P Auto

Engineering. The asst. was originally completed u/s 143(3) of the Act on 30/3/2014 wherein addition to the tune of 80 lakhs was made apparently u/s 68 of the Act. The contention of the assessee before ITAT, in the first round of proceedings, was that the notice u/s 143(2) was not issued to the assessee. Hence the Tribunal, vide its order dated 13/4/2017 passed in ITA No.312/Bang/2017 restored the above said legal issue to the file of Ld CIT(A), since the ld CIT(A) has not adjudicated the same. In the set aside proceedings, the ld CIT(A) called for remand report from the AO. The AO submitted that the asst. was completed u/s 143(3) of the Act after issuing notice u/s 142(1) of the Act. The AO further expressed the view that the assessee has participated in the asst. proceedings and did not raise any objections for non issue of notice us/ 143(2) and hence the asst. order is saved by the provisions of sec. 292BB of the Act. The ld CIT(A) also accepted the view expressed by the AO and accordingly rejected the ground of the assessee.

3. Aggrieved, the assessee has filed this appeal.

4. The ld AR submitted that the remand report furnished by the AO makes it clear that no notice u/s 143(2) was issued to the assessee. By placing reliance on the decision rendered by Hon'ble Supreme Court in the case of CIT Vs. Laxman Das Khandelwal (2019) 108 Taxmann.com 183, the ld AR submitted that the provisions of sec. 292BB does not save complete absence of issue of notice. Accordingly the ld AR submitted that the decision rendered by ld CIT(A) is not in accordance with the law. He

submitted that since no notice has been issued to the assessee u/s 143(2) of the Act, the impugned asst. is liable to be quashed.

5. The Id DR on the contrary supported the order passed by Id CIT(A).

6. We have heard the rival contentions and perused the record. For the sake of convenience, we extract below the remand report furnished by the AO before CIT(A) which is extracted by him in paragraph 3.1 of the order.

“3.1 Considering the submissions made by the appellant in this regard, the matter was remanded back to the AO for counter comments after verifying the record and the claim of the appellant. The AO in the RR-11 dated 06-12-2017 has reported as under:

"In this case the assessee is an individual and is deriving income from business of repairing the motor vehicles and rental income. The assessee is carrying on the business in the name and style of M. P. Auto Engineering. The assessee filed the return of income for the A Y 2011-12 on 26.03.2012 declaring a total income of Rs. 22,08,930/- which consisted of income from business and rental receipts. An enquiry u/s 131 was carried out in the case of assessee by the ITO (Inv)-2, Unit II, Bangalore on 01.08.2011. A statement was recorded from the assessee on 01.08.2011 and the assessee was unable to furnish

the source of funds with cogent evidences for having purchased a property at Site No. 1151, 4th T Block, Jayanagar for a consideration of Rs. 1.50 crores during the AY 2011 12. The jurisdiction over the case vests with this office and accordingly, the information was forwarded.

In view of the point of Written Submissions regarding non service of the notice u/s 143(2).

Based on the said information received from the Investigation Wing, the case was selected for scrutiny to verify the sources for the said transaction.

Notice u/s 142(1) was issued on 01.01.2013 and served on the assessee. Subsequently, the case was posted for hearing on various dates and Assessment was completed u/s 143(3) on 30.03.2014 assessing the total income of Rs.1,03,91,490/- as against 'the returned income of Rs.22,40,740/-.

As per Section 292BB, where the assessee has appeared in any proceeding or co-operated in any manner relating to an assessment or reassessment it shall be deemed that any notice which is required to be served upon him, has been duly served. The assessee cannot make any claim or raise an objection that the notice was-

a) not served upon him, or

b) not served upon him in time; or

c) served upon him in an improper manner.

Further CBDT in Circular No. 1/2009 has clarified the provision of Sec. 292BB which shall be applicable to all proceedings which were pending on 1.04.2008. In the present case, the assessee has not raised any objection that notice u/s 143(2) was not served to him before the completion of assessment. Hence, the AO has not erred in completing the assessment as the assessee's authorized representative did not raise any objection of not serving the notice u/s. 143(2) during the assessment proceedings. "

7. We noticed that the Id CIT(A), following certain decisions, has held that the assessee is precluded from challenging non issue of notice u/s 143(2) of the Act in view of provisions of sec. 292BB of the Act.

8. The question as to whether provision of sec. 292BB will save the asst. proceedings completed without issuing notice u/s 143(2) of the Act was examined by the Hon'ble Supreme Court in the case of Laxman Das Khandelwal (Supra). The Hon'ble Supreme Court held that complete absence of notice will not be saved by the provisions of sec. 292BB of the Act. The relevant observations

made by the Hon'ble Supreme Court in this regard are extracted below:-

“8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon’s case (Supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.

9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.

10. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered, by the High Court and the Tribunal and the conclusion arrived at

were correct. We. therefore. see no reason to take a different view in the matter.”

9. Admittedly, in the instant case, no notice us/ 143(2) of the Act was issued to the assessee. Accordingly the impugned asst. order is liable to be quashed as per the decision rendered by Hon'ble Supreme Court in the case of Laxman Das Khandelwal (Supra). Accordingly we quash the orders passed by the tax authorities for the year under consideration in the hands of the assessee.

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

Order pronounced in the open court on **5th February, 2020.**

**Sd/-
(Pavan Kumar Gadale)
Judicial Member**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, the 5th February, 2020.
/Vms/
Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed