

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "एसएमसी", नई दिल्ली में

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

सुश्री सुषमा चावला, उपाध्यक्ष
BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT

आयकर अपील सं. / ITA No.5628/Del/2018

निर्धारण वर्ष / Assessment Year 2008-09

Dhandia Jewellers,
C/o Kapil Goel Adv
F-26/124 Sector 7 Rohini,
Delhi

PAN-AABFD1767E

.....अपीलार्थी/ Appellant

vs

ITO, Ward-30(5),
New Delhi

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Kapil Goel, Advocate

प्रत्यर्थी की ओर से / Respondent by : Sh. Pradeep Singh Gautam, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2020	घोषणा की तारीख / Date of Pronouncement: 21.02.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of CIT(A)-10, New Delhi dated 31.07.2018 relating to assessment year 2008-09 against order passed under section 143(3)/147 of the Act.

2. The assessee, during the course of hearing has raised additional ground of appeal which reads as under:-

“That Ld.AO erred in passing impugned order u/s 143(3)/148 of the Act without mandatory issue of jurisdictional notice u/s 143(2) of the Act when return in response to notice u/s 148 is validly filed accordingly assessment framed u/s 143(3) and order of Ld. CIT- Appeals may please be quashed being void ab initio.”

3. The learned AR for the assessee points out that the additional grounds goes to the root of jurisdiction by the assessee and does not require any adjudication of facts, hence the same be admitted for adjudication.
4. The assessee is aggrieved by the non issue of notice of notice under section 143(2) of the Act, after reopening of the assessment under section 147/148 of the Act. The issue raised vide additional grounds of appeal do not require any investigation into facts, hence the same is admitted for adjudication.
5. The learned AR for assessee pointed out that after reopening of the assessment under section 147 of the Act, notice under section 148 of the Act was issued on 27.3.2015. The return of income was filed on 25.4.2015. The assessee claims that thereafter no notice under section 143(2) of the Act was issued to the assessee. Hence the assessment framed in the case was baseless.
6. The learned DR for the Revenue produces the assessment record and admittedly no notice under section 143(2) of the Act is available on record. The learned DR for the Revenue places reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of Josh Builders & Developers (P) Ltd. vs. PCIT (2016) 389 ITR 314 (P&H). wherein the ratio

laid down was that non service of notice cannot be challenged when assessee participated in the assessment proceedings.

7. The learned AR for the assessee on the other hand relied on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Laxman Das Khandelwal, 417 ITR 325 (SC) that in the absence of any notice issued under section 143(2) of the Act, provisions of section 292BB were not available. The learned AR for the assessee placed reliance on the decision of Delhi Bench of the Tribunal in the case of M/s Solar Turbines International Co., vs. Asstt. Director of Income Tax, International Taxation, Dehradun in ITA No.1985/Del/2014 & others order dated 02.04.2019.

8. On the perusal of the record and after hearing both the authorized representatives, the first issue which needs adjudication is that in the absence any notice issued under section 143(2) of the Act can the re-assessment proceedings be upheld. Admittedly, in the facts of the present case, the proceedings were reopened under section 147/148 of the Act. The AO issued notice under section 148 of the Act on 27.03.2015. In response thereto, return of income was filed by the assessee on 25.04.2015. The requirement of law thereafter is to issue notice under section 143(2) of the Act in order to start the assessment proceedings against the assessee.

9. However, on perusal of the assessment records, it transpires that no notice under section 143(2) was issued to the assessee. In such facts and circumstances, in the absence of any notice being issued under

section 143(2) of the Act, the assessment proceedings initiated against the assessee cannot stand in the eyes of law. Such is the proposition laid down by the Hon'ble Supreme Court in Commissioner of Income Tax vs. Laxman Das Khandelwal (supra). In the total absence of issue of any notice under section 143(2) of the Act even if the assessee had participated in the assessment proceedings, no resort can be made to the provisions of section 292BB of the Act by the Revenue. Accordingly, it is so held.

10. The learned DR for the Revenue on the decision of the Hon'ble Punjab and Haryana High Court in Josh Builders & Developers (P) Ltd. vs. PCIT (2016) 389 ITR 314 (P&H). The ratio of the said decision is that non service of the notice issued cannot be challenged by the assessee when there was participation during assessment proceedings.

11. We find that Hon'ble Apex Court has decided the issue in Commissioner of Income Tax vs. Laxman Das Khandelwal (supra) and held that where there is total absence of issue of notice u/s 143(2) of the Act, then the assessment proceedings though participated in by the assessee, is invalid in law. The shelter of provision of section 292BB of the Act was held to be not correct.

12. Applying the said ratio to the facts of the present case wherein there was total absence of issue of notice under section 143(2) of the Act, the assessment framed in the case of the assessee is held to be invalid and bad in law. The additional ground of appeal raised by the assessee is

thus allowed. Since the assessment proceedings have been held to be invalid, there is no need to adjudicate the issue on merits.

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

Order pronounced in the open court on 21st February, 2020.

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष/VICE PRESIDENT

दिल्ली / दिनांक Dated : 21st Feb, 2020
SH/Amit Kumar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi