

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.1884/Del./2017  
Assessment Year: 2009-10

M/s. Pasupati Fabrics Ltd., 112, Competent House, F- 14, Connaught Place, New Delhi	<b>Vs.</b>	ACIT, Central Circle-9, New Delhi
<b>PAN :AAACP1338B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Rajan Bhatia, Adv.
Respondent by	Shri Satish Kr. Gupta, Sr.DR

Date of hearing	19.02.2020
Date of pronouncement	24.02.2020

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 30/01/2017 passed by the learned CIT(Appeals)-27, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds:

1. *That the impugned order is erroneous in law, facts & procedure.*
2. *That the Learned CIT (A) erred in arbitrarily rejecting the application filed under Rule 46 (A) for admission of additional evidence.*

3. *That the assessment was made in a rushed manner without grant of a full & proper opportunity of being heard of making full & proper representation. The CIT (A) also passed a mechanical order.*
4. *For that the learned CIT (A) has erred in upholding the disallowance of depreciation on "Plant and Machinery of Rs. 5,27,38,080/- and on Factory Building of Rs. 73,59,996/- & that depreciation as claimed may kindly be allowed.*
5. *That the AO has erred in observing that assets were not used for the purpose of business & the CIT (A) erred in upholding such observations.*
6. *That the learned CIT (A) has erred in upholding the action of the AO in disallowing Rs. 10,750/- from expenditure under the head "Professional Charges" & that the disallowance so made may kindly be deleted.*
7. *That the learned CIT (A) has erred in upholding the action of the AO in disallowing expenses amounting to Rs. 10,22,033/- claimed under the head "Consumable Stores & Machinery Spares consumed" & that the disallowance so made may kindly be deleted. In any case such disallowance is excessive.*
8. *That the learned CIT (A) has erred in upholding the action of the AO in disallowing "Manufacturing Expenses" claimed at Rs. 3,29,305/- & that the disallowance so made may kindly be deleted. In any case such disallowance is excessive.*
9. *That the learned CIT (A) has erred in upholding the action of the AO in disallowing under the head "Power & Fuel" amount of RS. 13,03,373/- & that the disallowance so made may kindly be deleted. In any case such disallowance is excessive.*
10. *That the learned CIT (A) has erred in upholding the action of the AO in disallowing Rs. 94,79,443/- from expenditure under the head "Employee Expenses " & that the disallowance so made may kindly be deleted. In any case such disallowance is excessive.*
11. *That the learned CIT (A) has erred in upholding the action of the AO & in disallowing a sum of Rs. 2,38,623/- u/s 40 A (3) of the Income Tax Act, 1961 & that the disallowance so made may kindly be deleted.*
12. *That the reasons assigned for disallowance of various expenses by the AO & confirmed by the CIT (A) that disallowance is warranted on account of " no production activity" are perverse & uncalled for & arbitrary.*
13. *That the Assessing Officer wrongly assumed jurisdiction. That no notice was issued u/s 143 (2) in relation to assessment proceedings for return filed & also notice u/s 143 (2) was issued & served beyond the period of limitation rendering the assessment as made ab- initio void & the CIT (A) erred is not outrightly quashing the said assessment. In any case issue of notice u/s 142(1) dated 19.07.2011 asking the assessee to file*

*a return vitiated the assessment as made based on return filed u/s 139(1).*

14. *That the order of both the learned AO & learned CIT (A) is mechanical, non - reasoned, arbitrary & based on irrelevant considerations & evidences while ignoring relevant considerations & evidence & the proceedings are vitiated for these reasons.*
15. *That charges of interest u/s 234A, 234B & 244A (withdrawal) is wrong & initiation of penalty proceedings u/s 271 (1) (c) is also wrong.*
16. *That no defect whatsoever was found by the learned AO in the audited books of accounts of the appellant company or in the method of accounting regularly employed by it & additions thus made were uncalled for.*
17. *That the appellant company craves leaves of your honour to take additional ground or ground of appeal at or before the time of hearing or to modify any ground.*

**2.** Briefly stated facts of the case are that the assessee filed return of income on 30/09/2009 (wrongly mentioned by the Assessing Officer in the assessment order as 30/09/2010). The case was selected for scrutiny assessment and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act'), was issued on 08/08/2011. The scrutiny assessment under section 143 (3) of the Act was completed on 30/11/2011 after making certain additions/disallowances. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee and upheld the disallowance/additions made by the Assessing Officer. Aggrieved, the assessee has filed appeal before the Tribunal, raising the grounds as reproduced above.

**3.** Before us, first of all, the assessee challenged the Ground No. 13 of the appeal, wherein jurisdiction assumed by Assessing Officer under section 143(2) of the Act has been challenged. It is the contention of the assessee that no notice under section 143(2) of the Act was issued within the limitation period. The learned

counsel filed a paper-book containing pages 1 to 119 and referred to page no. 1 of the paper-book, which is a copy of the acknowledgement of return of income filed in form No. ITR-V. The learned counsel also referred to the copy of the notice dated 08/08/2011 issued under section 143(2) of the Act, available on page 2 of the paper-book. According to him, in the instant case, no notice under section 143(2) of the Act could have been issued after 30/09/2010, whereas the Assessing Officer has issued notice under section 143(2) of the Act for the first time on 08/08/2011, which is beyond the period of the limitation and, therefore, the assessment is *void ab initio* and need to be quashed. The Ld. counsel relied on the judgment of the Hon'ble Supreme Court in the case of Hotel Blue Moon in Civil Appeal No. 1198 of 2010

**4.** The learned DR submitted that this issue has been raised for the first time before the Tribunal and, therefore, same should have been raised by way of additional ground only. On his objection, the learned counsel of the assessee requested to treat the same ground as additional ground and requested to admit the additional ground in view of the settled principal in the case of ***NTPC Vs. CIT, 1998 229 ITR 383 SC.***

**5.** We have heard rival submission of the parties on the issue in dispute. We admit the ground raised by the assessee in view of the settled principal in the case of ***NTPC*** (supra) as all the facts are available on record and no investigation is required as far as facts are concerned.

**6.** On perusal of copy of acknowledgement of return of income filed by the assessee, it is undisputed that the return of income

for the year under consideration having acknowledgement No. 97888000300909 has been filed on 30/09/2009. In the assessment order, the Assessing Officer has though mentioned the acknowledgement number correctly; however, the date of the filing has been wrongly mentioned as 30/09/2010. As far as issue of the date of 08/08/2011 of the notice under section 143(2) of the Act is concerned, after verification of the records, the learned DR did not dispute, that it is the notice issued for the first time in the case of the assessee. The provisions of section 143(2), during relevant period, specify the limitation period for issue of notice as under:

“143(1).....”

*[(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—*

*(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:*

*[**Provided** that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]*

*(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:*

**[Provided** that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]”

7. The proviso has put a bar or restriction on the Assessing Officer for issuing notice after the expiry of limitation period. The section 292BB of the Act is also cannot cure this illegality, in view of the embargo put on the Assessing Officer by way of proviso of section 143(2) of the Act. Had the notice been issued within the limitation period and service was disputed, then the Revenue could have invoked the section 292BB of the Act, but in present case undisputedly, notice for acquiring jurisdiction u/s 143(2) has not been issued within the limitation period. In our opinion, the Assessing Officer was required to issue notice under section 143(2) of the Act within six-month from the end of the financial year in which the return of income was furnished. Since the return of income has been furnished on 30/09/2009, the limitation for issue of the notice expired on 30/09/2010. Thus, there is no doubt that notice under section 143(2) of the Act for selecting the case under scrutiny has been issued beyond the limitation period. As requirement of issue of notice under section 143(2) of the Act within limitation period, being the jurisdictional requirement and not fulfilling of the same has rendered the assessment order illegal and *void ab initio*. Accordingly, the assessment framed under section 143(3) in the case is quashed. The additional ground (i.e. Ground No. 13) of the assessee is accordingly allowed. As we have already quashed the assessment, the other grounds raised by the assessee are rendered merely

academic and hence, we are not adjudicating upon those grounds.

**8.** In result, the appeal of the assessee is allowed.

***Order pronounced in the open court on 24<sup>th</sup> February, 2020.***

***Sd/-***  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 24<sup>th</sup> February, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi