

आयकर अपीलीय अधीकरण, न्यायपीठ – “C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No.2320/Kol/2019
Assessment Year: 2010-11

Himanka Kumar Paul (PAN:AEWPP6436P)	Vs.	Income-tax Officer, Wd-34(3), Kolkata
Appellant		Respondent
Date of Hearing		23.01.2020
Date of Pronouncement		03.06.2020
For the Appellant		Shri Manish Tiwari, FCA
For the Respondent		Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-10, Kolkata dated 16-09-2019 for the assessment year 2010-11.

2. At the outset Ld. AR drew our attention to the ground no. 3 wherein the assessee had challenged the action of AO to frame re-assessment without issuing the mandatory notice u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. Since there was a legal challenge in respect of issue of notice u/s. 143(2) of the Act, the Ld. DR was requested to call for the assessment records and examine whether the AO had issued notice u/s. 143(2) of the Act before passing the impugned reassessment order. Therefore, during the hearing when the Ld. DR was asked about this fact, he stated that notice u/s. 143(2) of the Act is found in the file of the assessee. So, on a specific question from the Bench to the Ld. DR as to whether there is any mention about the issue of notice u/s. 143(2) of the Act in the order sheet maintained by the AO, the Ld. DR answered in the negative (means there was no mention of issue of notice u/s. 143(2) of the Act against the assessee). On further being asked by the Bench about any proof of service/dispatch of

notice u/s. 143(2) of the Act, the Ld. DR expressed his ignorance (meaning there was no proof of service of notice on assessee).

3. After hearing rival submissions and on careful perusal of the material available on record, it is noted that the notice under sub-section (2) of section 143 of the Act has not been served upon the assessee before the AO proceeded to frame the reassessment after resorting to reopening u/s. 148 read with section 147 of the Act. It is noted that in this case assessee had filed its return of income on 28.09.2010 for AY 2010-11 on a total income of Rs.18,30,827/-. Thereafter, the assessee filed revised computation in which he claimed refund of Rs.4,91,893/-. The AO noted certain discrepancy in the ITS data and corresponding claim of the assessee in his return of income. Therefore, he issued notice u/s. 148 of the Act pursuant to which assessee filed return on 14.03.2017 declaring total income of Rs.44,29,669/-. Thereafter, the AO framed the reassessment and made addition of notional rent of the property at Krishna Apartment, Bangalore to the tune of Rs.44,616/- as well as interest on income tax to the tune of Rs.15,046/-. Thus, computed the total income at Rs.44,89,330/- whereas assessee had reflected in the return of Rs.44,29,669/- so, Rs.59,661/- was added by the AO in the impugned reassessment order. On appeal, the Ld. CIT(A) has not adjudicated the legal issue raised by the assessee regarding non issuance/service of notice u/s. 143(2) of the Act. As discussed above, it is noted that the AO though had kept a copy of the notice under sub-section (2) of section 143 of the Act, however, has not mentioned the issuance of notice under sub-section (2) of section 143 in the order sheet maintained in respect of the assessee in its file. The Ld. DR also could not bring to our notice any proof regarding dispatch/service of notice to the assessee. It is trite law that notice u/s. 143(2) of the Act need to be issued then only the AO can validly assume jurisdiction for framing of scrutiny assessment u/s. 143(3) of the Act. For that we rely on the order of the Hon'ble Supreme Court in Hotel Bluemoon 321 ITR 362 (SC) and the decision of the Hon'ble Calcutta High Court in the case of PCIT Vs. Oberoi Hotels Pvt. Ltd. (2018) 96 taxman.com 104(Cal) wherein the Hon'ble High Court held that where the AO had completed assessment of assessee u/s. 143(3) read with section 147 of the Act without issuing any notice u/s. 143(2) of the Act, reassessment order passed was legally

unsustainable. In the light of the aforesaid finding that AO has not issued or served the notice u/s. 143(2) of the Act, the assessee succeeds in the legal challenge he has raised and, therefore, the usurpation of jurisdiction of AO is found without jurisdiction and, therefore, all actions thereafter are null in the eyes of law and, therefore, I quash the impugned re-assessment order passed by the AO.

4. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.*

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

Order is pronounced in the open court on 3rd June, 2020.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 3rd June, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Himanka Kumar Paul, Ajanta Apartment, Flat No. 2F, 10, Gurusaday Road, Kolkata-700 019.
2. Respondent - ITO, Ward-34(3), Kolkata.
3. CIT(A)-10, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar