

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 2453/Bang/2018

Assessment year : 2011 – 12

Shree Kiran Pandurang, No. 48, 1 st B Main, J. S. Nagar, Saraswathipuram, Nandini Lay Out, Rajajinagar, Bengaluru – 560096. PAN : AGKPP 7893 C	vs.	ACIT, Circle – 6 (2) (1), Bangalore
APPELLANT		RESPONDENT
Assessee by	:	Shree Rajiv C. Nulvi, C. A.
Revenue by	:	Smt. R. Premi, JCIT (DR)
Date of hearing	:	07.07.2020
Date of Pronouncement	:	07.07.2020

ORDER

Per A. K. Garodia, Accountant Member

This appeal is filed by the assessee and it is directed against the Order of CIT (A) – 6 Bengaluru dated 07.03.2018.

2. As per Ground No. 2 raised by the assessee before the tribunal, this is the grievance of the assessee that no notice u/s 143 (2) was issued by the AO

after the return was filed by the assessee in response to the notice issued by the AO u/s 148.

3. In course of hearing, learned AR of the assessee submitted that this issue was decided by CIT (A) as per para 8 of the impugned order and in that para, he has held that a notice u/s 143 (2) was issued by the AO on 28.08.2015 to M/s Penta Sun Solar Power Pack Technology and because this concern is owned by the assessee, it cannot be said that no notice was issued by the AO u/s 143 (2). He submitted that this finding of CIT (A) and this basis adopted by CIT (A) to decide this issue against the assessee is not as per law for two reasons. He pointed out that the concern M/s Penta Sun Solar Power Pack Technology is a partnership firm and not a sole proprietorship concern and therefore, any notice issued by the AO to this firm cannot be considered as a notice issued to the present assessee who is an individual. He submitted that second reason is this that notice u/s 148 was issued by the AO on 31.03.2016 as per the date noted by the AO on page 2 of the assessment order and although the AO has not noted the date when the assessee filed the return of income in response to this notice but the same was filed on 04.10.2016. He submitted that a notice u/s 143 (2) issued prior to issue of notice u/s 148 and filing of return by the assessee in response thereto cannot be considered a valid notice even if it is held that the notice u/s 143 (2) issued by the AO on 28.08.2015 to M/s Penta Sun Solar Power Pack Technology is a notice issued to the assessee. In reply, learned DR of the revenue submitted that time may be granted to her to produce assessment records. In rejoinder, learned AR of the assessee submitted that on two earlier dates i.e. on 04.12.2019 and on 12.03.2020, time was granted by the bench to the learned DR of the revenue to produce assessment records and therefore, no further time should be granted and the appeal may be decided on the basis of material available on record.

4. We have considered the rival submissions and we find that on two earlier dates i.e. on 04.12.2019 and on 12.03.2020, time was granted by the bench to the learned DR of the revenue to produce assessment records and the time was granted on both these dates on the request of the learned DR of the revenue. In spite of this, the assessment records are not produced by the DR of the revenue even today. Hence, it is seen that sufficient time was granted by the bench to DR and therefore, we feel that no further adjournment is required. Hence, we decide this issue in favour of the assessee because the

basis adopted by CIT (A) to decide this issue against the assessee is not as per law for both the reasons i.e. the said notice issued by the AO on 28.08.2015 to M/s Penta Sun Solar Power Pack Technology, a firm cannot be said to be a notice issued to the present individual assessee and this notice is prior to issue of notice u/s 148. We hold that for non issue and service on assessee of a valid notice u/s 143 (2), the assessment order passed by the AO on 06.12.2016 u/s 143 (3) r.w.s. 147 is not legally sustainable and it is quashed. However, in view of the present pandemic situation, we feel that in the interest of justice, liberty should be granted to revenue to approach this tribunal for recall of this order u/s 254 (2) if the AO finds that some tangible material is available in assessment records to establish that a valid notice u/s 143 (2) was served on the assessee within the prescribed time as per law. We order accordingly. In view of this decision, other grounds do not call for adjudication.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 7th July, 2020.

/NS/*AKG

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.