

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH: 'C', NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 AND
 SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
 (THROUGH VIDEO CONFERENCE)

ITA NO. 3236/DEL/2015

A.Y. : 2004-05

M/S GANPATI BREWERIES LTD. UG-03, ANSAL MAJESTIC TOWER, PLOT NO. 17, G-BLOCK, COMMERCIAL COMPLEX, VIKAS PURI, NEW DELHI - 110 018 (PAN: AABCG3123C)	Vs.	ITO, WARD 12(1), NEW DELHI - 110 002
(Appellant)		(Respondent)

Assessee by	Sh. Ajay Wadhwa, Advocate & Ms. Ayushi Gupta, CA
Department by	Sh. M. Baranwal, Sr. DR.

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the impugned order dated 30.03.2015 passed by the

Ld. CIT(A)-4, New Delhi in relation to assessment year 2004-05 on the following grounds:-

1. That the order of the Ld. CIT(A) dated 30.03.2015 is bad in law and on facts.
2. That the Ld. CIT(A) has erred in upholding the action of the AO in issuing notice u/s. 148 on the ground that appellant company being entry provider failed to disclose the commission income amounting to Rs. 1,59,200/- estimated @2% on transactions amounting to Rs. 79,60,000/-.
3. That having held by the Ld. CIT(A) that the AO had erred in making addition of Rs. 1,59,200/- he should have cancelled the exparte assessment order passed by AO u/s. 147/144 dated 27.12.2011, as the basic reason for reopening the assessment u/s. 147 did not exist.
4. That the exparte assessment order u/s. 147/144 dated 27.12.2011 was bad in law and deserved to be annulled as the reasons recorded for issuing of notice u/s. 148 were not supplied to the assessee

despite of requests made vide letters dated 12.09.2011 and 28.11.2011.

5. That the exparte assessment order u/s. 147/144 dated 27.12.2011 is bad in law and deserves to be quashed as the basic requirement of issuing notice u/s. 143(2) within the stipulated period was not fulfilled by the AO.
6. That the Ld. CIT(A) has grossly erred in enhancing the income by Rs. 56,10,000/- by holding that the same represented unexplained cash credits liable to be added u/s. 68 of the I.T. Act, 1961.
7. That the order of the Ld. CIT(A) deserves to be set aside as the assessee was not allowed adequate opportunity of being heard and adducing evidence to establish that the deposits in the bank account were genuine and could not have been treated as unexplained cash credits liable u/s. 68 of the Act.
8. That the income enhanced by the Ld. CIT(A) is against the law as the exparte assessment was illegal and deserves to be quashed.

9. The appellant craves leave to add, alter, amend, delete, and substitute any or all the grounds of appeal before or at the time of hearing.

2. Facts narrated by the Revenue Authorities are not disputed by both the parties, therefore, no need to repeat the same for the sake of convenience.

3. We have heard both the parties and perused the orders passed by the revenue authorities. We have also perused the evidences filed by the Ld. Counsel for the assessee in support of the contention raised by the Assessee in the grounds of appeal. After hearing both the parties, we are of the view that no doubt the assessee has raised 09 grounds of appeal in which the assessee has challenged the notice u/s. 148 of the I.T. Act issued by the AO and non-issuance of notice u/s. 143(2) of the Act as well as challenge the addition in dispute on merits also. After hearing both the parties at length, we are of the view that the issue involved in ground no. 5 i.e. non-issuance of notice u/s. 143(2) of the I.T. Act is very much essential and important to decide the issues in dispute on legal as well as on merits. We have perused the impugned order in

which the Ld. CIT(A) vide para no. 5.5.2 at page no. 8-9 has held as under:-

"5.5.2 *Before me, the Ld. Counsel did not file any submission nor pleaded on the grounds of appeal mentioned in F.No. 35. No additional ground was filed. The Ld. AR made another plea (not covered by grounds of appeal) that in response to notice u/s. 148, no notice u/s. 143(2) was issued and served upon the appellant company. My attention in this regard was drawn to the impugned order dated 27.12.2011, in which there is no mention of issue of notice u/s. 143(2). It was pleaded that if the notice u/s. 143(2) is not issued, in view of the settled legal position, the AO does not get jurisdiction to make assessment. Reliance was placed on the Allahabad High Court's decision in the case of CIT vs. Adarsh Travel Bus Service (2010) 17 taxmann.com 140 (All.), in which it was held that in respect of return filed in response to notice u/s. 148, it is mandatory to*

serve notice u/s. 143(2) within the stipulated time period. Reliance was also placed on the following decisions:

- (1) CIT vs. Rajeev Sharma (2010) 192 Taxman 197 (All.)*
- (2) DGIT vs. Alpine Electronics Asia Pte. Ltd. (2012) 18 taxmann.com 246 (Delhi);*
- (3) ITO vs. Raj Kumar Chawla (2005) 1 SOT 934 (Del) (SB) ; and*
- (4) ITO vs. Aligarh Auto Centre (2013) 34 taxmann.com 322 (Agra-Trib.).*

However, no evidences in support of such allegation was filed. The L. AR could not explain whether any objection on this ground was made during the assessment proceeding. Further, no additional ground was filed before me in this regard.

The Ld. AR was asked to file the pending details called by me on the next hearing scheduled on 29.01.2015, in order to decide the appeal on the grounds of appeal filed in F.No. 35, for which an opportunity was further given

till 24.2.2015. However, on 24.2.2015, no one appeared.”

3.1 After perusing the aforesaid findings on the issue of non-issuance of the notice u/s. 143(2) of the Act, the Ld. First Appellate Authority mainly rejected the arguments of the Ld. Counsel for the assessee on the ground that Ld. AR could not explain whether any objection on this ground was raised during the assessment proceedings and further no additional ground was filed before the Ld. CIT(A) by the assessee and did not give any finding on the issue raised by the assessee relating to non-issuance of notice u/s. 143(2) of the Act.

3.2 At the time of hearing, the Bench suggested both the parties that the issue regarding non-issuance of notice u/s. 143(2) of the I.T. Act has not been decided by the Ld. First Appellate Authority and both the parties were agreed that the Bench may direct the Ld. CIT(A) to decide the issue involved in ground no. 5 as reproduced above, after examining the assessment records, as per law, after giving adequate opportunity of being heard to the assessee. Both the parties agreed that the issue of non-issuance of notice u/s. 143(2) of

the Act may be set aside to the Ld. CIT(A) to decide the same as per law, after examining the assessment records and give adequate opportunity of being heard to the assessee.

4. Keeping in view of the facts and circumstances of the case and on the consent of both the parties as well as in the interest of justice, we are sending the file to the Ld. CIT(A) with the directions to decide the ground no. 5 as reproduced above regarding the non-issuance of notice u/s. 143(2) of the Act, after examining the assessment records, and give full opportunity of being heard to the assessee, as per law. Even otherwise, after perusing the orders passed by the revenue authorities, we find that the revenue authorities have decided the issues in dispute against the assessee *ex parte* and Ld. CIT(A) has not passed the speaking order on merits also. The Ld. CIT(A) has not elaborately discussed the evidences filed by the assessee and decide the issues in a summary manner. Therefore, we are also of the view that the contentions raised by the Assessee in the grounds of appeal on merits also require re-adjudication at the level of the Ld. CIT(A). Therefore, in the interest of justice, we also direct the Ld. CIT(A) to decide the

case of the assessee on merits afresh also, after examining the evidences filed by the assessee and give full opportunity of being heard to the assessee to substantiate the claim of the assessee.

5. In the result, the Assessee's Appeal is allowed for statistical purposes.

The decision is pronounced on 22.09.2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi