

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "Friday" NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCE)

ITA No. 3463/DEL/2018
A.Y.: 2009-10

M/S SHREE DURGA HOME APPLIANCES P. LTD. VS. ITO, WARD 23(3),
C/O SH. SANJEEV KUMAR GUPTA, NEW DELHI
R-14/15, RAJNAGAR,
GHAZIABAD
(PAN:AAMCS3174L)
(Appellant) **(Respondent)**

Assessee by : Sh. Akhilesh Kumar, Adv.
Department by : Sh. Sandeep Kumar, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal filed by the Assessee is directed against the impugned order dated 22.09.2017 passed by the Ld. CIT(A)-28, New Delhi in relation to assessment year 2009-10 on the following grounds:-

- 1. On the facts and in the circumstances of the case and in law, the authorities below have erred in reopening of the case U/S 147/148 of Income Tax Act. The action of authorities below is wrong, illegal,*

misconceived and unjustified therefore it should be quashed.

2. On the facts and in the circumstances of the case and in law, the authorities below have erred in initiating the proceedings U/S 147/148 of the Income Tax Act as these became time barred therefore the whole action is wrong illegal, misconceived and unjustified therefore it should be quashed.

3. On the facts and in the circumstances of the case and in law, the authorities below have erred in ignoring the fact that no notice was U/S 143(2) was issued after issue of notice u/s. 148. The action of the authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

4. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition of Rs. 15,00,000/- on account of unexplained Share Capital/ Share Application Money to the income of the assessee U/S 68 of the Income Tax Act. The action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

5. On the facts and in the circumstances of the case and in law, the authorities below have erred in

confirming the addition of Rs. 30,000/- on account of unexplained commission paid in cash. The action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

6. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the interest U/S 234B of the Income Tax Act. The action of authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

7. The appellant craves the right to add/alter/amend all or any of the ground of appeals during or before the hearing of appeal.

2. The brief facts of the case are that assessee filed its return of income on 11.09.2009 for the assessment year 2009-10 declaring income at Rs. NIL. Thereafter the return was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") on 2.11.2010. The case of the assessee was not selected for scrutiny and subsequent to the processing of the return of income u/s. 143(1) on 2.11.2010, an information was received from Investigation Wing vide DIT(Inv.II), New Delhi dated 12.3.2013

which was duly served upon the assessee. The copy of the reasons recorded was also supplied to the assessee. In response to the notice u/s. 148 of the Act dated 29.3.2016 the assessee filed a letter dated 11.8.2016 by stating that copy of original return was filed on 11.9.2009 intimated that this may be treated its return of income filed in response to notice u/s. 148 of the Act. The AO issued notice u/s. 143(2) of the Act on 01.08.2006. The assessee has raised the objections for reopening of the assessment in dispute. The contents of the objections reproduced in para no. 3 at page no. 2 & 3 of the assessment order and finally after going through the documentary evidences filed by the assessee, in support of the claim the AO has not agreed with the averments made by the assessee before him and finally made the addition of Rs. 1.50 crores credited in the books of accounts of the assessee u/s. 68 of the Act and Rs. 30,000/- as a commission to obtain such accommodation entry and completed the assessment u/s. 143(3) read with section 148 of the Act on 26.12.2016. Aggrieved with the same, the assessee filed the appeal before the Ld. CIT(A), who vide his impugned order dated

22.9.2017 dismissed the appeal of the assessee. Now the assessee is in appeal before the tribunal.

3. At the time of hearing, Ld. Counsel for the assessee stated that the AO has issued notice u/s. 143(2) of the Act dated 1.8.2016 whereas vide letter dated 11.8.2016 filed by the assessee the assessee has stated that original return filed on 11.9.2009 intimated that this may be treated return of income filed in response to notice u/s. 148 of the Act. But the AO has issued notice u/s. 143(2) of the Act prior to the return filed by the assessee i.e. on 1.8.2016 which is not permissible under the law. Because the AO has not applied his mind before issuing the notice u/s. 143(2) of the Act dated 1.8.2016 whereas the return of the assessee was filed on 11.8.2016. Keeping in view of the various decisions of the ITAT, this is not permissible under the law, the assessment order is without jurisdiction and without application of mind and hence deserve to be canceled.

4. Ld. DR relied upon the order of the revenue authorities and stated that AO has rightly reopened the assessment on the basis of the valid reasons and Ld. CIT(A) has rightly upheld the same.

5. We find that the AO has issued notice u/s. 143(2) of the Act dated 1.8.2016 whereas vide letter dated 11.8.2016 filed by the assessee the assessee has stated that original return filed on 11.9.2009 may be treated its return of income filed in response to notice u/s. 148 of the Act, which shows that the AO has issued notice u/s. 143(2) of the Act prior to the return filed by the assessee i.e. on 01.8.2016 which is not permissible under the law. Because the AO has not applied his mind before issuing the notice u/s. 143(2) of the Act dated 1.8.2016 whereas the return of the assessee was filed on 11.8.2016. Keeping in view the judgment of the Hon'ble Supreme Court of India in the case of ACIT vs. Hotel Blue Moon, 324 ITR 372 (2010) (SC) wherein it has been held that in the absence of the notice u/s. 143(2) of the Act the assessment framed by the Assessing Officer is liable to be quashed. Hence, respectfully following the aforesaid judgment, we quash the assessment in dispute and subsequently order

passed by the Ld. CIT(A) is also cancelled and allow the appeal of the assessee on the legal ground. Since we have quashed the assessment on the legal grounds itself, the issues on merits have become academic.

4. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on 23.12.2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches

Order dictated on 18.12.2020..

Date on which the typed draft is placed before the Dictating Member 21.12.2020..

Date on which the approved draft comes to the Sr.PS/PS

Date on which fair order sent to Member for signature

Date on which the fair order comes back after pronouncement to the Sr. PS/PS

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Date on which the file goes to the Bench Clerk

Date on which the file goes to the Head Clerk.....

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Date of Despatch of the Order