

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

ITA No.1049/Hyd/2015 (Assessment Year : 2010-11)		
Shri Vijayender Tulla, 8-2-503, Road No.7, Banjara Hills, Hyderabad. PAN ACYPT 3259L	Vs.	Dy. Commissioner of Income Tax, Circle 6(1), Hyderabad.
Appellant		Respondent

Appellant By : Shri A.V. Raghuram.

Respondent By : Shri Sunil Kumar Pandey (D.R.)

Date of Hearing : 29.04.2021.

Date of Pronouncement : 25.05.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2014-15 arises from the Commissioner of Income Tax (Appeals)-VI, Hyderabad's order dt.7.5.2015 passed in case No.01360/DCIT 6(1)/CIT(A)-VI/2014-15 in proceedings under Section 143(3) r.w.s. 148 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Apart from the assessee's main issue seeking to reverse both the learned lower authorities' action making section 69 unexplained investment addition of Rs.3.30 Crores in the course of assessment dt.10.03.2014 as affirmed in the CIT(A)'s order. It emerges at the outset that he has filed a petition dt.25.09.2017 seeking to raise an additional ground that the impugned assessment itself is invalid since framed without issuing 143(2) notice as per the case law **ACIT Vs. Hotel Bluemoon** 321 ITR 360 (SC).
3. Learned department representative strongly opposed the admission of assessee's foregoing additional ground(s) along with similar other issues, legal as well as factual in nature, for the reason that the same tend to give altogether a new texture to the assessee's already pleaded issues once and therefore, the foregoing petition deserves to be declined.
4. We find no merit in the Revenue's instant technical stand since the assessee foregoing additional ground(s); more particularly that of non-issuance of 143(2) notice before framing

the impugned assessment, goes to the root of the matter. Hon'ble apex court land mark decision in **NTPC Ltd. Vs. CIT 229 ITR 383 (SC)**, as considered in **All Cargo Global Logistics Ltd. Vs. DCIT (2012) 137 ITD 26 (SB) (Mum)** holds that we can very well entertain additional ground(s) so as to determine correct tax liability of an assessee provided all these relevant facts are already on record. We thus accept the assessee's petition(s) seeking to raise the above stated legal ground along with similar other pleadings.

5. Now we come to legality of the impugned assessment in absence of section 143(2) notice. Mr. Pandey invited our attention to the assessment order dt.10.03.2014 in page 2's 1st para that he had indeed issued such a notice to the assessee before framing the impugned assessment. The Assessing Officer has also filed its remand report dt.10.09.2018 to the effect that although the assessment order duly mentions section 143(2) notice, but no such notice has been found as part of the assessment records. The assessee has filed assessment notings before us right from section 148 notice's issuance along

with reasons upto the date of reassessment itself 10.03.2014 which nowhere states anything about any such section 143(2) notice. The assessment findings to this effect go contrary to the assessment records therefore and stand rejected accordingly. We conclude in light of hon'ble apex court landmark decision (supra) that an assessment framed without issuing 143(2) notice is indeed an invalid one; squarely applies in assessee's favour and against the department. We accordingly quash the impugned assessment dt.10.03.2014 for this precise reason alone.

6. All other pleadings on legal aspects as well as on merits are rendered infructuous.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 25th May, 2021.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt. 25.05.2021.

* Reddy gp

Copy to :

1.	Shri Vijayender Tulla, 8-2-503, Road No.7, Banjara Hills, Hyderabad.
2.	Dy. Commissioner of Income Tax, Circle 6(1), Hyderabad.
3.	Pr. C I T, Hyderabad.
4.	CIT(Appeals)-6, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.