

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

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.337/Hyd/2017
(Assessment Year : 2008-09)**

M/s. G J Trading Pvt. Ltd.,
Hyderabad.
PAN AAACG 7620HAppellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 2(3), Hyderabad.Respondent.

Appellant By : Shri P. Murali Mohana Rao.
Respondent By : Shri Rohit Majumdar. (D.R.)

Date of Hearing : 27.05.2021.
Date of Pronouncement : 12.07.2021.

O R D E R

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

This assessee's appeal for Asst. Year 2008-09 arises from the Commissioner of Income Tax (Appeals)-2, Hyderabad's order dt.28.07.2016 passed in case No.0336/2015-16 in proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Apart from assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in making addition of Rs.5,25,97,967 after estimation of income @ 2.5% of the gross receipts to the tune of Rs.210,39,18,689; Mr. Rao invited our attention to its petition dt.24.5.2021 seeking to raise an additional ground in view of hon'ble apex court in NTPC Limited Vs. CIT (1998) 229 ITR 383 (SC) to the effect that the impugned assessment dt.28.12.2010 itself deserves to be quashed on account of Assessing Officer's failure in issuing 143(2) notice within the specified period of "six months from the end of financial year in which the return is furnished." Learned counsel also quoted hon'ble apex court decision in ACIT Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC) as well as (2019) CIT Vs. Laxmandas Khandelwal 108 taxman.com 183 (SC) deciding the very issue in assessee's favour.

3. The Revenue, on the other hand has filed a detailed paper book running into 60 pages indicating the Assessing Officer i.e. ACIT, Circle 2, Hyderabad had issued 143(2) notice on 17.9.2009 followed by his yet another notice to this effect dt.25.05.2010. It clarifies that once the Assessing Officer had issued his former notice within the specified time limit u/s. 143(2) proviso (supra), the assessee's instant legal plea fails.

4. We have given our thoughtful consideration to rival pleadings against and in support of the correctness of the

impugned assessment on account of Assessing Officer's alleged failure; as per the assessee's stand, in issuing section 143(2) notice "within a specified time factor of six months from the end of financial year of furnishing of its return." We find merit in assessee's instant additional ground petition (supra) as per (2012) 137 ITD 26 (Mum) (SB) All Cargo Global Logistics Ltd. Vs. DCIT holding in light of hon'ble apex court's judgment in NTPC Ltd (supra) that this tribunal can very well entertain a pure question of law, in order to determine correct tax liability of an assessee provided all the relevant facts are already on record.

5. We next advert to this Revenue's paper book pages 14 & 16 containing the alleged section 143(2) notice(s) dt.25.5.2010 and 17.9.2009; respectively. We find no merit in Revenue's foregoing arguments since the said notices pertained to section 115WE(2) Fringe Benefit Tax "FBT" proceedings (abolished w.e.f. A.Y. 2010-11) than assuming jurisdiction for determining the assessee's correct taxable income despite the fact that it had duly filed its return on 29.09.2008. We thus quote Hotel Blue Moon (supra) and hold that the impugned assessment is not sustainable in law since framed in absence of a valid section 143(2) notice issued within the prescribed time period. The same stands quashed therefore. All other pleadings on merits are rendered academic.

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

Order pronounced in the open court on 12th July,2021.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt. 12.07.2021.

* Reddy gp

Copy to :

1.	M/s. GJ Trading Pvt. Ltd., 98/C, Sanjeeva ReddyNagar, Hyderabad-500 038.
2.	ACIT, Circle 2(3), Hyderabad.
3.	Pr. C I T-2, Hyderabad.
4.	CIT(Appeals)-2, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.