

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 4641/DEL/2016 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Harman Singh Dhingra 85, Golf Link New Delhi AADPD4472E (APPELLANT)	Vs	ACIT Central Circle-08 New Delhi (RESPONDENT)
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Appellant by	Sh. Arun Kishore, CA
Respondent by	Ms. Sunita Singh, CIT DR

Date of Hearing	15.09.2021
Date of Pronouncement	24.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 30/06/2016 passed by CIT(A)-24, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:

1. *“That the Order of Ld. CIT Appeals-24 in Appeal No. 123/15-16 DT. 30.06.2016 to the extent mentioned hereunder in confirming the action of the Ld. Assessing officer is illegal, unjust, opposed to facts and suffers from the vice of arbitrary acts.*

2. (i) *That on the facts and circumstances of the case and in law the Ld. CIT Appeals has erred in confirming the addition of Rs. 18,50,000/- towards family cash found at 85 Golf Links New Delhi.*

(ii) *That on the facts and circumstances of the case and in law the Ld. CIT*

Appeals has grossly erred in estimating the household expenses at Rs.75,000/- per month and in including the house renovations which are separately accounted for.

(iii) That on the facts and circumstances of the case and in law the Ld. CIT Appeals has failed to appreciate that all cash withdrawals of the family members are from the bank accounts which have been verified and found correct by the AO.

(iv) That on the facts and circumstances of the case and in law, the Ld. CIT Appeals has erred in holding that the appellant understated past household expenses to explain the cash holding of 2013, when all past returns had already been filed.

3. That the net income of the appellant be reduced by Rs. 18,50,000/-.

Additional Grounds

1. That on the facts and circumstances of the case and in law. the assessment made by Id. AO u/s 143(3) vide order dt.25.03.2015 is illegal and not sustainable, since no valid notice u/s 143(2) was issued by the Ld. AO within the statutory time limit specified u/s 143.

2. That the existing grounds of appeal already filed be renumbered and these grounds be treated as ground numbers 3 & 4 and original ground number 3 be renumbered as ground no. 5.”

3. Search and seizure action u/s 132 of the Income Tax Act, 1961 was conducted on the assessee on 16.01.2013. During the course of search, cash of Rs. 18,50,000/- and jewellery of Rs. 2,45,20,300/- was found from the possession of the family of the assessee. The individual assesseees of this family are Sh. Harman Singh Dhingra, Smt. Amrit Dhingra (mother of Sh. Harman Singh Dhingra) and Smt. Mala Dhingra (Wife of Sh. Harman Singh Dhingra). The jewellery was found as apportioned in the hands of the individuals by the Assessing Officer. After considering the submissions of the assessee, the

Assessing Officer made additions of Rs. 92,07,084/- on account of unexplained jewellery and Rs. 18,50,000/- unexplained cash.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the notice u/s 143(2) was not served to the assessee within the specified time. This is the seventh year of search. The notice u/s 143(2) was issued on 20/2/2015 which has to be served as per the statute till 30/09/2014. The Ld. AR relied upon the decision of Hon'ble Apex Court in case of ACIT Vs. Hotel Blue Moon 321 ITR 362 (SC) and Hon'ble Gujarat High Court in case of CIT Vs. Gujarat Foils Ltd. 377 ITR 324 (Guj). The Ld. AR further submitted that a post search assessment was completed without issuance of notice u/s 143(2) which is not valid in law apart from the fact that an outer time limit for completion of assessment had already lapsed and addition itself was not based on materials found during search, so that for any of these reasons, the additions made by the Assessing Officer was found to be invalid in first appeal and upheld by the Tribunal, so that the additions stood deleted in the case of DCIT Vs. Forum Sales Pvt. Ltd. (2019) 76 ITR (Tribunal) (S.N.) 51 (Delhi). Following the same principle in cases that of CIT Vs. Mita Gutgutia proprietor M/s Ferns and Petals (2017) 395 ITR 526 (Delhi) and CIT Vs. Kabul Chawla (2016) 380 ITR 573 (Delhi), the issue was decided in favour of the assessee therein. The Ld. AR further submitted that in cases where search and seizure took place though notice u/s 153A is issued but when no notice issued u/s 143(2) then the assessment is not valid as held in case of Chintels India Ltd. vs. DCIT 397 ITR 416 (Delhi). The Ld. AR further submitted that the reassessment u/s 147 will be invalid, if no notice u/s 143(2) was issued and will not be save even by Section 291BB, even if the assessee participates in the proceedings. The Revenue can avail Section 292BB only if notice u/s 143(2) was issued and not when admitted position is that no notice was issued as in the instant case. The Ld. AR relied upon the

decision in case of Travencor Diagnostics Pvt. Ltd. Vs. ACIT (2016) 74 taxmann.com 239 (Kerala). The Ld. AR further submitted that effect of non issue of notice u/s 143(2) within the specified time and invalid service, where no evidence of notice u/s 143(2) was given to the postal authority then the assessment has to be set aside. The Ld. AR relied upon the decision of the Hon'ble Gujarat High Court in case of Principal CIT Vs. Nexus Software Ltd. (2017) 81 Taxman.com 152 (Gujarat).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). In respect of additional ground, the Ld. DR submitted that from the records it appears that notice u/s 143(2) was not within the specified time.

7. We have heard both the parties and perused the material available on record. Since the additional grounds are legal grounds we are firstly deciding the same by admitting the additional grounds. It is pertinent to note that the notice u/s 143(2) should have been issued till the date 30/9/2014 but the same was issued after the statutory limit. This fact was not denied by the Ld. DR after going through the assessment records. Hence, the additional ground raised by the assessee are allowed. Thus, the assessment order itself becomes null and void ab initio as the notice issued was not issued within the specified time. Since, the assessment itself becomes nullity; there is no need to discuss the merits of the case. The appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 24th Day of September, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 24/09/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI