

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 918/Bang/2016
Assessment Year : 2012-13

M/s. Green Orchard Farm Houses, #10/1, Lakshminarayana Complex, Palace Road, Bangalore – 560 052. PAN: AAGFG4507Q	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2[2], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri R. Ramakrishnan, CA
Revenue by	:	Shri Muzaffar Hussain, CIT (DR)

Date of Hearing	:	07-10-2021
Date of Pronouncement	:	14-12-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 15.03.2016 passed by Ld.CIT(A)-11 for Assessment Year 201213.

2. At the outset, Ld.AR raised following legal issue challenging the validity of the assessment order passed as a notice u/s. 143(2) was issued beyond a period of six months.

The legal issue is raised by an application dated 29.03.2018 seeking admission of additional grounds as under:

“4. The additions made by the DCIT to the extent of Rs.26,83,80,898 and confirmed by CIT(A) is illegal and bad in law against the facts and circumstances of the case.

5. Since this being a regular scrutiny assessment for the AY 2012-13 under appeal herein, the learned DCIT ought to have followed the necessary provisions of the Act before concluding the assessment.

6. The necessary notice u/s 143(2) ought to have been issued before 6 months from the end of the FY in which the ROI was filed u/s 139 by the appellant.

7. In this case the return of income for AY 2012-13 was filed u/s 139 on 31/07/2012 (in time) and the necessary notice u/s 143(2) ought to have been issued on or before 30/09/2013 but the 143(2) was issued ONLY ON 17/10/2013 (BEYOND THE DUE DATE).

8. Since the assessment proceedings is itself void ab initio for having issued the notice u/s 143(2) beyond the due date, the assessment order u/s 143(3) dated 12/03/2014 is ALSO NOT VALID BUT ILLEGAL and has to be quashed.

9. It is requested that the Hon'ble ITAT may please to admit the above additional grounds of appeal and render justice to the appellant.”

He submitted that no new facts needs to be looked into to adjudicate the issues. He pleaded for the additional grounds to be admitted in view of decision of *Hon'ble Supreme Court* in the case of *NTPC Ltd. vs. CIT* reported in 229 ITR 383. On the other hand, Ld.DR submitted that assessee had occasion before authorities below to raise the issues and that no reasonable cause has been made out for not raising these grounds on earlier occasion.

We have heard the submissions advanced by both sides and perused the records placed before us.

As the legal issue raised by assessee goes to the root cause of present appeal, respectfully following the decision of *Hon'ble Supreme Court* in the case of *NTPC Ltd. vs. CIT (supra)*, we are inclined to admit the additional grounds.

Accordingly, the additional grounds raised by assessee vide application dated 29.03.2018 stands admitted.

3. Brief facts of the case are as under.

The assessee is a partnership firm engaged in the business of real estate. For year under consideration it filed its return of income u/s. 139 on 31.07.2012 declaring taxable income @ Nil (loss of Rs. 26,83,80,898/-). A search and seizure operation u/s. 132 was conducted in case of Shri Dayananda Pai and group on 12.04.2011 where the office premises of assessee was also covered. In response the notice u/s. 142(1) dated 30.07.2013, the assessee filed its letter dated 20.09.2013 submitted copy of the return filed on 31.07.2012. The Ld.AR submitted that 143(2) notice was issued to assessee on 17.10.2013 which is beyond the due date and therefore the assessment order passed is without jurisdiction.

3.1 The Ld.AR submitted that the return filed on 31.07.2012 was processed u/s. 143(1) on 17.02.2013 and the time period to issue notice u/s. 143(2) expires on 30.09.2013. He placed reliance on page 5 of paper book wherein notice u/s. 142 issued by the Ld.AO for year under consideration is placed.

3.2 On the contrary, Ld.DR submitted that it is a procedural irregularity as the assessee participated in the assessment proceedings and the same is curable. The Ld.DR vehemently argued that the notice u/s. 143(2) dated 17.10.2013 is delayed only by 17 days which is curable u/s. 292B of the Act. He thus relied on the orders passed by the lower authorities.

4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

4.1 The legal issue is raised by assessee before us for the first time and there is no need to adduce any additional evidence in order to adjudicate it. The dates that needs to be considered for adjudicating this issue are as under.

- i. Date of filing of original return u/s. 139(1) – 31.07.2012
- ii. Date of processing the return u/s. 143(1) – 17.02.2013
- iii. Date within which the notice u/s. 143(2) is to be issued - on or before 30.09.2013
- iv. Date on which notice u/s. 143(2) was issued – 17.10.2013

4.2 It is noted that a search took place on 12.04.2011 in which the assessee was also considered. However, the assessment order passed by Ld.AO for year under consideration is u/s. 143(3). In our view, the jurisdiction by the Ld.AO is founded on issuance of notice u/s. 143(2). The notice u/s. 143(2) is a mandatory notice and is to be issued within the period prescribed under law. For year under consideration, limitation period expires within six months from the end of the Financial Year in which the return of income has been filed. In the present facts, the limitation period expired on 30.09.2013.

4.3 Section 292BB of the Act contemplates situations of irregularities wherein the notice has been served to the assessee in time and in accordance with the provisions of this Act. The present case assessee has not received the notice u/s. 143(2) in time and therefore the argument raised by revenue cannot be appreciated.

4.4 The Ld.AR has placed reliance on the judgment of *Hon'ble Supreme Court* in the case of *ACIT & anr. Vs. Hotel Blue Moon* reported in (2010) 321 ITR 362 wherein *Hon'ble Supreme Court*

held that an omission on part of the Assessing Officer u/s. 143(2) cannot be procedural irregularity and the same is not curable. As the notice was not issued within the period of limitation, the empathetic statement of law in the absence of issuance of notice u/s. 143(2) within the period of limitation by the revenue would therefore inure to the benefit of the assessee.

4.5 The Statute make its imperative that notice u/s. 143(2) is to be issued within the period of limitation and any omission or failure would be hit at the root of the jurisdiction applying the principles laid down by the *Hon'ble Supreme Court* in various judgments.

Accordingly, we hold the assessment order passed by the Ld.AO to be bad in law and the same is quashed. Accordingly, the legal issues raised by assessee stands allowed as we have decided the legal issue pursuant to which the assessment order stands quashed. The issues raised by assessee becomes academic at this stage.

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

Order pronounced in the open court on 14th December, 2021.

Sd/-
(B.R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 14th December, 2021.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore