

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
And  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.1602 /Del./2017  
(ASSESSMENT YEAR : 2011-12)**

Shri Nipun Agarwal,  
47 - M - 1, Jawahar Quarters,  
Meerut.

vs.

ITO, Ward 2 (1),  
Meerut.

**(PAN : ADNPA9837D)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate

REVENUE BY : Ms. Rinku Singh, Senior DR

Date of Hearing : 23.12.2021

Date of Order : 23.12.2021

**ORDER**

**PER AMIT SHUKLA, JM :**

Aforesaid appeal has been filed by the assessee against the impugned order dated 25.01.2017 passed by the ld. CIT (Appeals), Meerut for the quantum of assessment passed under section 143(3)/148 of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2011-12.

2. Besides various grounds on merits with regard to addition of Rs.71,24,000/- , the assessee has challenged the validity of reopening, for which, assessee had taken additional grounds which read as under:-

**“Sub: Request for filing revised Ground of Appeal in the case of Sh. Nipun Agarwal for AY 2011-12 in ITA 1602/Del./2017 u/s 143(3)1148 of the Income Tax Act, 1961.**

**In the above said case, assessee has filed an appeal before Hon'ble Tribunal on 17-03-2017 against the order passed by Ld. CIT(A), Meerut, copy of acknowledgment of appeal filed is enclosed.**

**This is respectfully submitted that I am submitting following grounds as revised/concise grounds of appeal which may please be permitted and taken on record for adjudication of aforesaid appeal.**

**1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 143(3)/148 without assuming jurisdiction as per law and without complying with mandatory conditions U/S 147 to 151 as envisaged under the Income Tax Act, 1961 and without obtaining valid approval/sanction u/s 151 as per law.**

**2. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 143(3)/148, is bad in law and against the facts and circumstances of the case and not sustainable on various legal and factual grounds.**

**3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without issuing/serving the mandatory notice U/S 143(2) within the statutory allowable period.**

**4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.71,24,000/- on account of alleged short term capital gain and has further erred in applying the provisions of section 50C and that too by recording incorrect facts and findings and in violation of principles of natural justice.**

**5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.71,24,000/- on account of alleged short term capital gain and framing the impugned reassessment order is bad in law, illegal, unjustified, barred by limitation and contrary to facts and law, by recording incorrect facts and finding, without giving adequate opportunity of hearing, in violation of principles of natural justice and the same deserves to be quashed.**

**6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”**

3. At the outset, ld. counsel for the assessee arguing ground no.3, submitted that, the reassessment order passed by the AO is bad in law as the same has been passed without issuing and service of mandatory notice u/s 143(2) of the Act within the statutory allowable period. He further submitted that similar issue has come up for consideration before the Tribunal in the case of **assessee's father, Shri Vishnu Saran in ITA No.1601/Del/2017 for AY 2011-12 vide order dated 16.11.2021** wherein on exactly similar facts, assessee has filed similar additional grounds and the Tribunal quashed the assessment on the ground that no notice u/s 143(2) was issued and served on the assessee within six months from the end of the financial year in which the return of income was filed. He pointed out that here in this case, notice u/s 148 was issued on 17.02.2014 and in compliance thereof, assessee filed letter dated 21.02.2014 stating that return filed originally for AY 2011-12 may be treated as return filed in compliance to the said notice. Thus, effectively the assessee had filed the return u/s 148 on this date. Thereafter, the AO issued notice u/s 143(2) on 20.01.2015 which is evident from page 3 of the impugned assessment order. To corroborate this fact whether any earlier notice was issued u/s 143(2), the assessee had obtained information from the Department through RTI which is appearing at page 84 of the paper book wherein the Department has categorically admitted that the notice u/s 143(2) was issued on 20.01.2015 and the certified copy of notice dated 20.01.2015 was obtained along with the said reply, the copy of which is appearing at page 86 of the paper book. Thus, he submitted that the said notice is beyond the statutory time as the

notice should have been served upon the assessee before 30.09.2014, i.e., within six months from the end of assessment year in which the return was filed. Exactly on similar dates and on similar facts, the Tribunal decided the issue in favour of the assessee's father.

4. Ld. DR for the Revenue, on the other hand, submitted that this additional ground should not be admitted, because this was not raised before the AO or ld. CIT (A) and is being raised for the first time before the Tribunal, therefore, the same should not be adjudicated. However, insofar as the contentions raised by the ld. counsel for the assessee, he fairly admitted that notice has been served beyond the statutory time limit and is covered by the **decision of the Tribunal in the case of Shri Vishnu Saran** (supra).

5. After considering the aforesaid submissions and on perusal of the impugned material placed on record, we find that the facts as stated by the ld. counsel for the assessee is not in dispute. Notice u/s 148 was issued to the assessee on 17.02.2014. After the receipt of the said notice, the assessee had filed a letter dated 21.02.2014 submitting that original return filed on 26.07.2011 should be considered as return u/s 148. This is evident from letter placed in the paper book at page 76 and also from page 77 of the paper book. Thus, assessee had duly complied with the notice u/s 148 by filing the return of income on 26.07.2011. Now, in terms of the provisions of section 143(2) which is also applicable in the cases of return filed u/s 148, notice u/s 143(2) should have been served within six months from the end of the financial year in which the return was filed in terms of the provisions of section 143 (2) which was to be issued on 30.09.2014. Here, admittedly notice u/s 143(2) has been issued on 20.01.2015 which

was beyond the statutory time limit. This Tribunal in the case of assessee's father, wherein exactly similar proceedings were initiated and similar additional grounds were raised, vide **order dated 16.11.2021** (supra) had admitted the additional ground vide para 7, holding that non-issuance and non-receipt of notice u/s 143(2) within the prescribed time is a jurisdictional issue and, accordingly the same was admitted. Accordingly, following the same reasoning we also admit the said additional ground.

6. Further, the Tribunal vide para 12 has quashed the assessment order in absence of issuance of notice u/s 143(2) within the statutory time limit and the relevant observations of the tribunal are as under:-

**“12. We have carefully considered the rival submissions and perused the orders of the lower authorities. Assessee in response to notice u/s 148 of the act submitted a letter dated 22.02.2014 complying with the notice requesting to take the original return filed as compliance. Thus ROI in response to 148 notice was filed on 22.02.2014. In the paper book furnished before us by the assessee the respective order sheet entries are also given. The order sheet entries shown that the reasons recorded by the ld. AO on 03.02.2014 and on 21.02.2014 the assessee submitted a compliance letter of filing of the return of income. On 20.01.2015 the reasons were submitted to the assessee on 12.03.2015. The reasons were disposed of on 17.03.2015, query letter was issued and information was not received. Assessee sought further time. Therefore, it is apparent that no notice u/s 143(2) of the Act was issued to the assessee within six months from the end of the financial year in which return of income was filed. As required notice has not been issued and no information**

**is also produced before us of issuance of any notice u/s 143(2) of the Act, we quash assessment order passed by the ld. AO. Accordingly, the additional ground of the assessee is allowed.”**

7. Respectfully following the aforesaid order of the Tribunal which is also applicable in the present case, we hold that the impugned assessment order is bad in law as no statutory notice u/s 143(2) was issued after the filing of return of income within the statutory time limit. Accordingly, the appeal filed by the assessee is allowed.

**Order pronounced in open court on this 23<sup>rd</sup> day of December, 2021 after the conclusion of the hearing.**

**Sd/-  
(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

**sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Dated: 23.12.2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.