

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**  
[Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM ]**I.T.A. No. 587 /Kol/2021**  
Assessment Year:2011-12

M/s. Khaitan Winding Wire Pvt. Ltd. (PAN: AABCK3663K)	Vs.	Assistant Commissioner of Income-tax, Circle-4(1), Kolkata.
Appellant		Respondent

Date of Hearing	02.03.2022
Date of Pronouncement	04.03.2022
For the Appellant	Shri Sunil Surana, FCA
For the Respondent	Shri Sailen Samaddar, Addl. CIT

**ORDER****Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 10.12.2021 for AY 2011-12.

2. At the outset, the Ld. AR of the assessee Shri Sunil Surana has brought to our notice that in this case the original assessment of the assessee was made after scrutiny u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on 28.03.2014 and assessed at a total income of Rs.30,54,650/- as against the assessee’s returned income of Rs.25,38,380/- filed on 30.09.2011 u/s. 139(1) of the Act. According to Ld. AR, later on the AO issued notice u/s. 148 of the Act on 22.03.2018 conveying his desire to reopen the assessment of the assessee and directing the assessee to file the return of income for AY 2011-12. Pursuant to the notice u/s. 148 of the Act dated 22.03.2018, the assessee filed reply dated 28.03.2014 wherein it requested the AO to treat the original return already filed by the assessee u/s. 139 of the Act dated 30.09.2011 in response to the notice u/s 148 of the Act [copy of reply is found placed at page 4 of the paper Book]. However, the AO despite the assessee asking him to treat the return of income filed u/s. 139 of the Act [dated 30.09.2011] as return pursuant to the notice u/s. 148 of the Act dated 22.03.2018, the AO insisted the assessee to file return of income and thereafter, passed the reassessment order dated

26.12.2018 u/s. 144/147 of the Act making addition of Rs.25 lakh. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO. Aggrieved, assessee is in appeal before us.

3. At the outset, the Ld. AR drew our attention to ground no. 4 wherein the assessee has challenged the reassessment order passed by the AO dated 26.12.2018 u/s. 144/147 of the Act to be bad in law being passed without issuing notice u/s. 143(2) of the Act. According to Ld. AR, from a perusal of the reassessment order dated 26.12.2018 it is evident that the AO had issued notice u/s. 148 of the Act on 22.03.2018 and the AO himself has admitted that assessee company vide letter dated 28.03.2018 has requested the AO to treat the original return filed u/s. 139 of the Act as the return filed u/s. 148 of the Act. The Ld. AR drew our attention to the admission/acknowledgement made by the AO to this extent which is found at page 2 of the re-assessment order. Despite the said reply, the AO kept on insisting the assessee to file return of income and thereafter, he passed the re-assessment order u/s 144/147 of the Act, without issuing/serving notice u/s 143(2) of the Act. According to Ld. AR, the AO's action of non-issuing notice u/s. 143(2) of the Act goes to the root of the matter and, therefore, without issuing notice u/s. 143(2) of the Act the AO could not have made assessment u/s. 143/144 of the Act and for that he relied on the decision of this Tribunal in the case of ACIT, Circle-4(1) Vs. M/s. Asiatic Oxygen Ltd., ITA No.714/Kol/2017 & CO No.43/Kol/2017 order dated 01.07.2019.

4. Per contra, the Ld. DR opposing the contention of the assessee submitted that despite the AO directing the assessee to file the return of income vide notice u/s. 148 of the Act dated 22.03.2018, the assessee did not bother to file the return of income. According to Ld. DR, despite repeated reminders before framing the reassessment order u/s. 144 of the Act, the AO asked the assessee to file the return of income which he did not do and on the other hand only requested the AO to treat the earlier/original return of income filed u/s. 139 of the Act as compliance to the notice u/s. 148 of the Act. According to the Ld. DR, this practice could not have been accepted and, therefore, the AO has framed the best judgment

assessment u/s. 144 of the Act which does not require any interference from our part.  
[Certain other contention are dealt infra]

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the dates given above in respect to notice issued u/s. 148 and the letter written by the assessee to treat the original return of income as return of income pursuant to the notice u/s. 147/148 of the Act etc., which is essential for adjudicating the issue before us is not in dispute. According to Ld. AR, despite the assessee requesting the AO to treat the original return of income u/s. 139 of the Act dated 30.09.2011 pursuant to the notice u/s. 148 of the Act, the AO without issuing the mandatory notice u/s. 143(2) of the Act has framed the reassessment order dated 26.12.2018 which is per-se bad in law. Per contra, the Ld. Addl. CIT, DR supporting the action of AO submitted that as per sec. 143(2) the limitation period runs from the date of filing the return of income pursuant to notice u/s 148/147 of the Act and not any letter written by the assessee to treat the original return of income filed duly u/s 139 of the Act as the return filed pursuant to sec. 147/148 of the Act. According to Ld. Addl. CIT, DR, there is a difference between the letter written by the assessee and the return of income as prescribed by the statute. According to him, this difference between the letter and the return of income should be appreciated to adjudicate this issue. We note that the notice u/s. 148/147 of the Act dated 22.03.2018 pursuant to which the assessee filed letter dated 28.03.2018 requesting the AO to treat the original return filed u/s. 139 of the Act as return in response to notice u/s. 148/147 of the Act. As per sec. 143(2) of the Act, where a return has been furnished u/s. 139 or in response to notice under sub-section(1) of sec. 142, the AO considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under paid the tax in any manner, shall serve on the assessee a notice requiring him on a date to be specified therein either to attend the office of the AO or caused to be produced before the AO any evidence on which the assessee may rely in support of the return. The proviso to sec. 143(2) states that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return

is furnished. So, from a bare reading of this provision, it is clear that the AO is barred from serving any notice u/s. 143(2) of the Act on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. Therefore, in this case, since the assessee pursuant to the notice u/s. 147/148 of the Act dated 28.03.2018 had requested the AO to treat the original return of income filed u/s. 139 of the Act as the return in response to the notice u/s. 147/148 vide letter dated 22.03.2018 means the AO had to issue 143(2) notice before 30.09.2018. Admittedly, the 143(2) notice has not been issued before framing reassessment order dated 26.12.2018 and, therefore, the action of the AO to frame the assessment u/s. 144 of the Act is without jurisdiction and for that we rely on the decision of the Hon'ble Supreme Court in the case of Hotel Blue Moon (321 ITR 362) wherein it has been held that issuance of notice u/s 143(2) is mandatory for scrutiny assessment even in cases of assessments after search u/s 132 of the Act [Block Assessment]. Since issuance of notice u/s 143(2) is mandatory before scrutiny assessment, even section 292BB of the Act cannot come to the rescue of the AO. And the Hon'ble Madras High Court in the case of CIT vs. C. Palaniapan (284 ITR 257(Mad)] held that issuance of notice u/s 143(2) is mandatory in reassessment cases also. Further, we do not find any merit in the argument of the Ld DR that return of income should have been filed and not the letter requesting the AO to treat the original return as the return of income pursuant to the 147/148 notice. For that we rely on the judgment of the Hon'ble Calcutta High Court in the case of Iqbal Singh Atwal Vs. CIT (1984) 147 ITR 599 (Cal) and Hon'ble Delhi High Court in the case of Pr. CIT Vs. Shri Jai Shiv Shankar Traders Pvt. Ltd. (2016) 383 ITR 448 (Del.). Since no notice u/s. 143(2) of the Act had been issued by the AO before framing reassessment order dated 26.12.2018 it is bad in law because the A.O had no jurisdiction to frame the reassessment order dated 26.12.2018 without issuing the mandatory notice and therefore, all subsequent action is null in the eyes of the law and therefore we find merit in the appeal of the assessee and the order of the AO dated 26.12.2018 passed u/s. 144/147 of the Act is quashed. Appeal of assessee is allowed.

6. Other grounds are become academic in nature, therefore, not adjudicated.

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

Order is pronounced in the open court on 4th March, 2022.

Sd/-  
(Rajesh Kumar)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 4th March, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Khaitan Winding Wire Pvt. Ltd., P-38, India Exchange Place, Kolkata-700 001.
2. Respondent – ACIT, Circle-4(1), Kolkata
3. CIT(A) (NFAC), Delhi.
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar