

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before
Shri A. Mohan Alankamony, Accountant Member
AND
Shri S.S. Godara, Judicial Member

ITA No.546/Hyd/2020		
Assessment Year: 2009-10		
The Dy. Commissioner of Income Tax, Central Circle 1(3), Hyderabad.	Vs.	Sri Imtiaz Farooqi, 1397, Nagarjuna Nagar, Street No.20, Tarnaka, Secunderabad. PAN : AADPF1807D.
(Appellant)		(Respondent)
Assessee by:	Sri P. Murali Mohan Rao, CA	
Revenue by:	Sri Rajendra Kumar, CIT-DR	
Date of hearing:	05.01.2022	
Date of pronouncement:	21.03.2022	

ORDER

Per S. S. Godara, J.M.

This Revenue’s appeal for A.Y 2009-10 arises from the Commissioner of Income Tax (Appeals) – 11, Hyderabad’s order dated 14.07.2020 in appeal No.11203/2016-17 involving proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, “the Act”).

Heard both the parties. Case file perused.

2. The captioned appeal filed by the Revenue is found to be barred by 1 day delay in filing. It has moved a petition requesting the bench to condone the delay. We heard the Revenue on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

3. Coming to the Revenue's sole substantive grievance that the CIT(A) has erred in law and on facts in quashing the re-assessment in issue for want of a valid section 143(2) notice, we note that the corresponding lower appellate discussion to this effect reads as under :

"6. I have considered the assessment order, submissions of the appellant, the Remand Report submitted by the AO and the Rejoinder of the AO and the further submissions made by the appellant. I have also perused the assessment record. The following factual position emerges from the above;

i) The notice u/s.148 was issued on 31.03.2016 and was served on 31.03.2016.

ii) The appellant filed letter to treat the earlier return filed on 23.10.2009 as filed in response to notice u/s.148 on 31.03.2016,

iii) The date of filing of return is to be reckoned as 23.10.2009, as the AO has treated the same as valid and passed order u/s.143(3) r.w.s 147 of the act.

iv) As per the order sheet, the AO issued notice u/s.143(2) on

07.07.2016, 10.08.2016. The copies of such notices are on record.

v) The AO's reference to issuance of notice u/s.143(2) in the Remand Report is understood as referring to the above.

vi) It is seen that the notice u/s.143(2) is issued on 07.07.2016 and 10.08.2016. Valid notice u/s.143(2) cannot issued before filing of the Return of income. The above are not valid notices. The decision of Hon'ble Hyderabad ITAT in case of ACIT, Central Circle, Tirupati Vs. Sri.Dr.N.Madhava Reddy in ITA No.1897 jHydj2011 is directly in favour of the appellant on this issue.

vii) There is no notice u/s.143(2) issued after filing of return and before passing of the order. In view of the above, the proceedings are vitiated and the order u/s.143(3) r.w.s 147 of the Act, dt. 30.12.2016 suffers from legal infirmity.

viii) The Hon'ble Supreme Court in the case of M/s ACIT Vs Hotel Blue Moon in 321 ITR 362 has held that non-issuance of valid notice u/s 143(2) is not a procedural violation which can be rectified nor is curable u/s. 292BB. The same view is also affirmed in the case of CIT Vs Laxman Das Khandelwal (Civil Appeal No.6261-6262 of 2019, dt. 13.08.2019)

ix) In view of the factual and legal position as brought out above, the order passed is void ab-initio and does not survive. The appellant succeeds on ground no.4 above.”

4. We have given our thoughtful consideration to rival pleadings and find no merit in the Revenue's stand. It has already come on record that the Assessing Officer had issued section 143(2) notices on 07.07.2016 and 10.08.2016 only whereas the assessee had filed his letter dt.26.09.2016. We thus hold that not only the CIT(A) has quoted the relevant case law that such a notice is not a valid one since issued in absence of a return but also there is case law PCIT Vs. Shri Jay Shiv Sankar 383 ITR 448 (Delhi) directly covering the issue against the department and in assessee's favour. We thus reject the Revenue's arguments seeking to apply the procedural aspect u/s 292BB of the Act on the instant legal issue and confirm the CIT(A)'s findings quashing the impugned re-assessment. The Revenue fails in its sole substantive grievance therefore.

5. This Revenue's appeal is dismissed.

Order pronounced in the Open Court on 21st March, 2022.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 21st March, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Sri Imtiaz Farooqi, 1397, Nagarjuna Nagar, Street No.20, Tarnaka, Secunderabad.
2	The Dy. Commissioner of Income Tax, Central Circle 1(3), Hyderabad.
3	The CIT(A)-11, Hyderabad
5	The Pr. CIT(Central), Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order