

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

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 691/Bang/2020</b>
<b>Assessment Year : 2007-08</b>

Mrs. Saira Banu, # N-42, 9 <sup>th</sup> "B" Main, LIC Quarters, Jeevan Bhima Nagar, Bangalore – 560 075. PAN: AEBPB3345J	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle – 7 [2], Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	16-03-2022
Date of Pronouncement	:	16-03-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 31.08.2020 passed by Ld. CIT(A)-9, Bangalore for assessment year 2007-08 on following grounds of appeal:

*“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The order of assessment is bad in law in so far as the issues for which the A.O. initiated and completed the assessment proceedings on the basis of the details and information collected by him were not put to the appellant and thus, the order of assessment passed is in gross violation of the principles of natural justice and thus, the same deserves to be cancelled.*

3. Without prejudice to the above, the learned CIT[A] is not justified in confirming the addition made by the learned A.O. of Rs. 1,76,46,875/- considered as other income and enhancing the assessment by a sum of Rs. 14,31,250/- that was excluded by the learned A.O. as relating to the earlier assessment year 2006-07 under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] is not justified in enhancing the income of the appellant for the year under appeal by the sum of Rs.14,31,250/- without any issuing a notice of enhancement as contemplated under section 251 [2] of the Act under the facts and in the circumstances of the appellant's case.

3.2 Without prejudice to the above, the learned CIT(A) is not justified in making the enhancement after categorically observing that the aforesaid sum of Rs. 14,31,250/- related to the AY 2006-07 and not the year under appeal and therefore, the same could not be assessed at all under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in sustaining the addition of Rs.1,76,46,875/- assessed as other income based on the receipts of the appellant from M/s. Golden Gate Properties during the year under appeal, under the facts and in the circumstances of the appellant's case.

4.1 The learned CIT[A] failed to appreciate that the aforesaid sum of Rs. 1,76,46,875/- received by the appellant from M/s. Golden Gate Properties Ltd., was an advance for procurement of lands and the same was repaid by the appellant to the three persons upon instructions of M/s. Golden Gate Properties Ltd., when the transaction did not materialize under the facts and in the circumstances of the appellant's case.

4.2 The learned CIT[A] failed to appreciate that there was no income earned by the appellant in respect of the aforesaid sum received during the year and hence, the impugned addition made ought to have been deleted.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s. 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

**Additional Grounds:**

“1. The impugned assessment order u/s 143(3) of the Act dated 31/12/2009, is void ab initio in as much as there was no valid notice u/s 143(2) of the Act issued and served on the appellant within the time contemplated under the proviso to section 143[2] of the Act and hence, the assessment order passed without issue of a valid notice is bad in law and requires to be cancelled.

2. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.”

**Admission of additional grounds:**

The Ld.AR submitted that the additional grounds were raised as a general ground in the main grounds of appeal. He submitted that no new evidences need to be looked into to adjudicate these issues. He thus prayed for its admission.

The Ld.Sr.DR objected for admission of the same.

We have perused the submissions advanced by both sides.

We note that the additional grounds are directly connected with the main issue of disallowance and no new facts needs to be investigated for adjudicating the same.

Considering the submissions and respectfully following the decisions of *Hon’ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we are admitting the additional grounds raised by the assessee.

**Accordingly, the additional grounds raised stands admitted.**

As the issue raised by the assessee in the additional grounds goes to the root cause of assessment, we are inclined to consider this ground first.

**2. Brief facts of the case are as under:**

The Ld.AR submitted that assessee filed the return of income for the year under appeal on 29.10.2007 and it has been mentioned by the Ld.AO in the assessment order that a notice u/s. 143(2) of the Act was issued on 03.03.2009. Having regard to the proviso to section 143[2] of the Act, the Ld.AR submitted that the notice u/s. 143[2] ought to have been issued on or before 30.09.2008 being 6 months from the end of the financial year in which the return of income was filed. He submitted that the said notice was issued only on 03.03.2009, which is beyond the time permitted and hence, the said notice issued is non-est in law and such failure to issue notice u/s. 143[2] of the Act goes to the root of jurisdiction and the same is also not saved by the provisions of section 292BB of the Act.

On the contrary, the Ld.Sr.DR placed reliance on the orders passed by the authorities below.

**3.** 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 03.03.2009 is curable u/s. 292B of the Act. He relied on the orders passed by the lower authorities.

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

**3.1** 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) – 29.10.2007
- ii. Date of processing the return u/s. 143(1) – 30.10.2009
- iii. Date within which the notice u/s. 143(2) is to be issued - on or before 30.09.2008
- iv. Date on which notice u/s. 143(2) was issued – 03.03.2009

**3.2** 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 30.09.2008.

**3.3** 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.

**3.4** 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.

**3.5** 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.

**4.** 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 on merits becomes academic at this stage.

**In the result, the appeal filed by the assessee stands allowed on additional grounds raised.**

**In the result, the appeal filed by assessee stands allowed on additional ground.**

**Order pronounced in the open court on 16<sup>th</sup> March, 2022.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 16<sup>th</sup> March, 2022.  
/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