

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1476/Del/2017  
Assessment Year: 2013-14

Uttam Enterprises Pvt. Ltd., 85-Golf Links, Delhi	<b>Vs.</b>	ACIT, Central Circle-8, New Delhi
<b>PAN :AAACU3119R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Arun Kishore, CA
Respondent by	Shri Vijay Kataria, Sr. DR

Date of hearing	11.05.2022
Date of pronouncement	25.05.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

This is an appeal by the assessee against order dated 26.12.2016 of learned Commissioner of Income-Tax (Appeals)-24, New Delhi for the assessment year 2013-14.

2. Ground No.1, being a general ground, does not require specific adjudication.

3. In ground no.2, assessee has raised a legal issue, challenging the validity of the assessment order passed under Section 153A read with section 143(3) of the Income-Tax Act, 1961 on the ground that the notice under Section 143(3) of the Act was not issued and served within the statutory time limit.

4. Briefly, the facts are, assessee is a resident company. A search and seizure operation under Section 132A of the Act was conducted on 16.01.2013 in case of Harman Singh Dhingra group of cases. Based on the information received in course of search and seizure operation, assessment proceedings, purportedly, under Section 153A read with section 143(3) of the Act was initiated against the assessee. Ultimately, the assessing officer completed the assessment vide order dated 26.03.2015 making couple of additions as under:

- i) Unaccounted interest income Rs.19,98,832/- ;
- ii) Disallowance under Section 14A read with Rule 8D Rs.3,03,571.

5. The assessment order so passed was challenged in appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) granted partial relief by deleting the addition of Rs.19,98,832.

6. Before us, learned counsel for the assessee submitted, in terms with section 143(2) read with its proviso, any notice issued under Section 143(2) has to be served on the assessee within a period of six months from the end of the financial year, wherein, the return of income under Section 139 or in response to notices issued under Section 142(2)(1) of the Act was filed. He submitted, in the

facts of the present appeal, assessee had filed the return of income on 30.09.2013. Therefore, as per the limitation prescribed under the proviso to section 143(2) of the Act, assessing officer should have served the notice under Section 143(2) of the Act on or before 30<sup>th</sup> September 2014. Whereas, the assessing officer has issued the notice under Section 143(2) of the Act on 13<sup>th</sup> October, 2014. Thus, he submitted, the notice under Section 143(2) of the Act having been issued beyond the period of limitation prescribed in the statute, it is an invalid notice. Therefore, the assessment order passed based on such invalid notice is unsustainable. He submitted, while dealing with an identical issue arising in case of an assessee covered under the very same search and seizure operation, the Tribunal has quashed the assessment order, since, the notice under Section 143(2) of the Act was issued after expiry of six months from the end of the relevant financial year, wherein, the assessee had filed the return of income. In this context, he referred to the decision of the co-ordinate Bench in case of Harnam Singh Dhingra Vs. ACIT ( ITA No.464/Del/2016) dated 24.09.2021.

7. Learned Departmental Representative submitted, the assessing officer has issued notice under Section 143(2) of the Act in proper time. Therefore, assessee's contention should be rejected.

8. We have heard the parties and perused the materials available on record.

9. Undisputedly, at the second appellate stage, assessee has raised additional ground challenging the validity of the assessment order. It is the say of the

assessee that the assessing officer had issued notice under Section 143(2) of the Act, beyond the period prescribed under Section 143(2) read with its proviso. Since, the issue raised in the additional ground is a purely legal and jurisdictional issue, going to the root of the matter, we are inclined to admit the additional ground. It is relevant to observe, the bench on 17<sup>th</sup> January 2022 had passed the following order:

“Ld. DR directed to submit report from AO on additional grounds filed by the Assessee on next date of hearing. The case is adjourned to 15/03/2022. Both parties informed.”

10. However, at the time of hearing today, learned Departmental Representative failed to furnish any factual report of the assessing officer regarding issuance of notice under Section 143(2) of the Act. A perusal of the assessment order reveals that the assessing officer issued the notice under Section 143(2) of the Act on 13.10.2014. There is no mention of any other notice issued under Section 143(2) of the Act prior to 13.10.2014.

11. Before us, one of the directors of the assessee company has furnished an affidavit stating as under:

- “1. That I am a Director of Uttam Enterprises Pvt. Ltd. PAN:AAACU3119R and I am competent to make this declaration.
2. That during AY 2013-14, the company filed its ITR on 30.09.2013 under Acknowledgement No. 807931791300913.
3. That for AY 2013-14, no notice u/s. 143(2) was received on behalf of Uttam Enterprises Pvt. Ltd. up to the statutory time limit of 30<sup>th</sup> September 2014.

4. That the only notice u/s 143(2) was issued by ACIT CC-8 New Delhi on 13<sup>th</sup> October 2014.”

12. The averments made in the affidavit, clearly reveal that assessee had filed its return of income under Section 139(1) on 13.09.2013. Thus, as per proviso to Section 143(2) of the Act, as it existed prior to its amendment by Finance Act, 2016 w.e.f. 01.06.2016, no notice under Section 143(2) of the Act 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 under Section 139(1) or section 142(1) of the Act. In the facts of the present appeal, assessee had filed its return of income on 30.09.2013, therefore, in terms with the proviso to section 143(2) of the Act, notice under Section 143(2) of the Act, should have been served on the assessee on or before 30<sup>th</sup> September 2014. However, as per facts available on record, notice under Section 143(2) of the Act was issued by the assessing officer on 13<sup>th</sup> October 2014. Thus, the notice issued under Section 143(2) of the Act in the instant case is beyond the period of limitation prescribed in the statute, hence, is an invalid notice. Based on such an invalid notice, assessing officer could not have assumed jurisdiction for completing the assessment under Section 143(3) of the Act. Therefore, in absence of a valid notice issued under Section 143(2) of the Act, the assessment order passed in consequence thereof is unsustainable. Similar view has been expressed by the co-ordinate Bench in case of Harman Singh Dhingra Vs. ACIT (supra).

13. In view of the aforesaid, we hold that the assessment order passed under Section 153C read with section 143(3) of the Act based on an invalid notice issued under Section 143(2) of the Act is equally invalid. Accordingly, we quash the assessment order. As a natural corollary, the impugned order of learned Commissioner (Appeals) is set aside. The additional ground is allowed.

14. In view of our aforesaid decision, grounds raised on merits having become academic, do not require adjudication. However, the issues raised in these grounds are left open for adjudication, in case, they arise in any other appeal in future. Additional grounds are allowed.

**15. In the result, the appeal is allowed as indicated above.**

***Order pronounced in the open court on 25th May, 2022.***

**Sd/-  
( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 25<sup>th</sup> May, 2022.  
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	13.05.2022
2.	Date on which the draft of order is placed before the Dictating Member:	17.05.2022
3.	Date on which the draft of order is placed before the other Member:	.05.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	23.05.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	24.05.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	25.05.2022
7.	Date on which the final order is uploaded on the website of ITAT:	25 .05.2022
8.	Date on which the file goes to the Bench Clerk	25.05.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	