

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.8326/Del./2018
Assessment Year 2008-2009

Sh. Narender Singh Sehrawat, S/o. Sh. Baru Ram, Gali No.16, Shiv Nagar, Hisar (Haryana). PAN AWYPS7367L	vs.	The Income Tax Officer, Ward 2, C/o. Commr. of Income Tax, Aayakar Bhawan, Sector-14, Hisar. Haryana-125 001
(Appellant)		(Respondent)

For Assessee :	Sh. Prem Rajpal & Sh. Pulak Rajpal, Advocates
For Revenue :	Sh. Om Prakash, Sr. D.R.

Date of Hearing :	15.06.2022
Date of Pronouncement :	08.07.2022

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), Hisar, dated 22.10.2018 relating to the A.Y. 2008-09.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is a electrical contractor and mainly executes electricity contracts for the DHBVNL. The assessee filed his return of income for A.Y. 2008-09 on 30.09.2008 declaring total income amounting to Rs.6,45,515/-, which was initially processed under section 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny and thereafter assessment was framed under sections 143(3) of the I.T. Act, 1961 vide order dated 21.10.2010 determining the total income at Rs.11,49,520/- .

2.2. Thereafter, the case of the assessee was reopened by the A.O. for re-assessment under section 147 of the I.T. Act, 1961 after recording of reasons and obtaining prior approval of the JCIT, Hisar. The A.O. thereafter in the order passed on 28.03.2014 under section 143(3)/144 of the I.T. Act, 1961 determined the total income of the assessee at Rs.24,25,470/-.

3. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated

22.10.2018 in Appeal No.195/HSR/TFR/2014-15 partly allowed the appeal of the assessee. Aggrieved by the order of CIT(A), the assessee is now in appeal and has raised the following grounds:

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:

- i) initiating proceedings u/s 147 of the Income-tax Act, 1961 and completing assessment u/s 147/143(3) of the Act at an income of Rs.24,25,470/- against the returned income in a sum of Rs. 646515/-;*
- ii) initiating proceedings u/s 147 of the Act without there being any reason to believe that income has escaped assessment;*
- iii) passing order u/s 147/143(3) of the Act without supplying copy of reasons & without giving opportunity to file the objection;*
- iv) passing order u/s 147/143(3) of the Act without service of notice u/s 143(2) of the Act making an addition of Rs.12,38,150/- on account of difference in closing stock;*
- v) Commissioner of Income tax (Appeals)-, Hisar has assessed income @ 10% of gross receipts, which is not according to law and order of the Assessing officer must be quashed.*

The above actions being arbitrary, erroneous, unwarranted and unjust must be quashed with directions for relief.”

4. Before me, on Ground No. (iv), Learned Counsel for the Assessee submitted that no notice under section 143(2) of the I.T. Act, 1961 was served upon the assessee and,

therefore, the consequential assessment is bad in law and liable to be quashed. In support of his contention, he pointed to the copy of the letter dated 28.02.2014 addressed to A.O, Ward-2, Hisar (which is placed at page 26 of the paper book) wherein he drew the attention of the A.O. about no notice said to have been issued under section 142(1) and 143(2) were received by the assessee and that notice under section 143(2) has crossed the time limit also as the time period of 06 months was lapsed from the end of the financial year in which the return was filed. The Learned Counsel for the Assessee further submitted that non issue of notice under section 143(2) after filing of the return makes the assessment order passed under section 143(3) read with section 147 bad in law and liable to be quashed. In support of his contention, the Learned Counsel for the Assessee relied on the following decisions :

1. Order of ITAT SMC Bench, New Delhi in ITA.No.3810/Del./2008 dated 21.08.2009 in the

case of Sh. Kewal Kumar Prop M/s. Kewal Rice Mills, Jakal, Dist. Fatehbad (Haryana) vs., ITO, Ward-2, Fatehbad.

2. Order of ITAT, Amritsar Bench in the case of Jai Bharat Rice Mills, Jalabad (W) vs., ITO, Ward-2, Abohar reported in [2005] 26 IT Rep. 158 [ITAT-Asr]
3. Order of ITAT, Delhi SMC-2 Bench, New Delhi in ITA.Nos.4171/Del./2015 etc., dated 16.10.2015 in the case of Ms. Meenakshi Aggarwal, Delhi vs., ITO, Ward-33(2), New Delhi.
- 4.1. The Learned Counsel for the Assessee, thus, prayed that the order of A.O. should be quashed as no notice under section 143(2) of the I.T. Act, 1961 was served upon the assessee after filing of return of income.
5. The Ld. D.R. on the other hand relied on the orders of the lower authorities and submitted that the impugned addition was made by the A.O. after considering the material

filed by the assessee. Therefore, the addition made by the A.O. and partly confirmed by the A.O. Ld. CIT(A) are in accordance with law and should be sustained.

6. I have heard the Learned Representatives of both the parties and perused the material on record. At the very outset, before going into the merits of the case, on perusal of the assessment record that were produced by the DR, I find that no order sheet entry dealing the issue of notice under section 143(2) of the I.T. Act, 1961 was found in the file. Further no material has been placed on record by the Revenue to demonstrate that the notice u/s 143(2) of the Act was served on the assessee. Therefore, I find force in the contention of the assessee that no notice under section 143(2) of the I.T. Act, 1961 has been served upon the assessee as is evident from the letter dated 28.02.2014 filed at page 26 of the PB. It is settled position of law that when the statutory notice under section 143(2) of the I.T. Act, 1961 is not served upon the assessee after filing of the return of income, the

consequential assessment framed by the A.O. under section 143(3)/144 of the I.T. Act, 1961, is bad in law and liable to be quashed as the absence of notice under section 143(2) is not a curable defect under section 292BB of the I.T. Act, 1961. The case laws relied upon by the Learned Counsel for the Assessee supports the contentions of the assessee and are squarely applicable to the facts and circumstances of the case. I, therefore, quash the assessment order and allow the grounds of the assessee. Since the assessment itself has been quashed, the adjudication of other grounds on merits are not required.

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

Order pronounced in the open court on 08.07.2022.

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 8th July, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent

3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "SMC" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.