

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 468/KOL/2021
Assessment Year: 2010-2011**

***M/s. Goyal Solar Systems Pvt. Limited,.....Appellant
Module No. 2802, Shilpangan Face II, LB-1,
Sector-3, Salt Lake, Kolkata-700098
[PAN:AACCG5890K]
-Vs.-***

***Principal Commissioner of Income Tax-2,.....Respondent
Kolkata,
Office of Principal Commissioner of Income Tax,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Akshay Ringasia, CA and Shri Taraknath Jaiswal, Advocate, appeared on behalf of the assessee
Shri Sudipta Guha, CIT (DR), appeared on behalf of the Revenue*

**Date of concluding the hearing : August 24, 2022
Date of pronouncing the order: August 24, 2022**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Principal Commissioner of Income Tax-2, Kolkata dated 11.05.2020 passed for the assessment year 2010-11. The assessee has taken fourteen grounds of appeal, which are argumentative and descriptive in nature and not in consonance with Rule 8 of the ITAT Tax Rules.

2. In brief, Id. Counsel for the assessee, at the very outset, submitted that though the Id. Assessing Officer has passed an assessment order under section 143(3) read with section 147, but he did not issue any notice under section 143(2) of the Income Tax Act. According to him, if the Id. Assessing Officer failed to issue a notice under section 143(2) of the Income Tax Act, then assessment order would be *void ab initio* and on that wrong order, no 263 action can be taken. In order to buttress his argument, that no notice under section 143(2) was issued, he took us through the paragraph no. 6 of the impugned order, where Id. Commissioner himself admitted this fact.

3. Id. CIT(DR) did not controvert this fact.

4. We have duly considered the rival contentions and gone through the record carefully. A perusal of sub-section 2 of section 143(3) would contemplate that where a return has been furnished under section 139, or in response to a notice under section 142(1), Id. Assessing Officer or the prescribed Income Tax Authority, as the case may be, if he 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, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend or to produce, or cause to be produced, before the Id. Assessing Officer any evidence on which the assessee may rely in support of the return. In other words, this section provides that if any Assessing Officer has any doubt about the claim made by the assessee in the return, which can be excess claim of loss understatement of the income or payment of taxes on a lower amount, then in order to cross verify his doubt, he would first provide an opportunity to the assessee to submit the details in support of the return filed by it. It is the first opportunity to be given to the assessee before cross verifying the claim by issuing a notice under section 142(1) for collecting the other details or in other words investigating the issue

claimed by the assessee in the return. Thus it is a jurisdictional notice and without giving this notice, he cannot scrutinise the return, though in the present case, the returned income is nil and assessed income is also nil. In a way, the Id. Assessing Officer has accepted the return as it is. But even before doubting the claim of assessee disclosing nil income, he has to first issue a notice under section 143(2), so that the assessee can submit evidence in support of its claim while it has shown nil income. After this notice only, he can verify other details and change the status of nil income. Thus the assessment order itself is not sustainable. If an order itself suffers from the patent irregularity, it cannot be made a foundation for subsequent proceedings either 263 or any other proceeding. It is also pertinent to note that as far as the fact regarding non-issuance of notice is concerned, it has been specifically observed by the Id. Commissioner in paragraph no. 6 of the impugned order, which reads as under:-

"6. I have carefully considered the facts of the case and gone through the submission of the assessee. On perusal of the assessment record, it is seen that, the case was re-opened on the basis of information received from the Investigation Wing in respect of bogus commodity profit on NMCE platform. On going through the assessment record, the following observations are made:

- 1. Notice u/s 142(1) issued is general in nature and some irrelevant requisitions have been made, except the issues for which the case was reopened.*
- 2. Notice u/s 143(2) was issued, but the order was passed u/s 143(3) r.w.s 147 of the I T Act.*
- 3. Profit & Loss A/c and Balance Sheet for the relevant period have not been obtained and placed on record by the officer.*
- 4. The assessee has filed an objection on 10.10.2017 against re-opening, where the assessee submitted that it had transacted on NMCE platform through broker "M/s Shyam Shree Commodities (P) Ltd." As per the date available, the company M/s Shyam Shree Commodities (P) Ltd. is a shell company of entry operator Mr. Hamish Toshniwal and the broker was suspended by NMCE. (A CD was provided by the Investigation Wing regarding data relevant to NMCE trade and involved entry operator / broker firm etc., but the same is not available on record). The officer has accepted the returned income, without delving into the evidences available in CD for such malpractices. The officer did not even make any inquiry from NMCE regarding the veracity of the transaction.*

5. *The order had been passed in a casual manner”.*

5. In view of the above discussion, the impugned order is not sustainable and accordingly it is quashed. For fortifying ourselves, we draw the support from the decision of the Hon’ble Jurisdictional High Court in the case of PCIT -vs.- Oberoi Hotels (P) Limited reported in 96 taxmann.com 104 or 409 ITR 132 (Calcutta).

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

Order pronounced in the open Court on August 24, 2022.

**Sd/-
(Girish Agrawal)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 24th day of August, 2022

***Copies to : (1) M/s. Goyal Solar Systems Pvt. Limited,
Module No. 2802, Shilpangan Face II, LB-1,
Sector-3, Salt Lake, Kolkata-700098***

***(2) Principal Commissioner of Income Tax-2,
Kolkata,
Office of Principal Commissioner of Income Tax,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069***

(3) CIT- , Kolkata

(4) The Departmental Representative

(5) Guard File

TRUE COPY

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.