

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 1694/Chny/2016  
निर्धारण वर्ष/**Assessment Year:2007-08**

Shri K. Balasubramanian, The Income Tax Officer,  
Prop: M/s. Bharathi Khadi Vastralaya, Vs. Ward I(3), Pondicherry.  
No. 81, J.N. Street,  
Pondicherry 605 001.  
**[PAN:AAFPB8691P]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 29.06.2022  
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)–Puducherry, Chennai, dated 15.04.2016 relevant to the assessment year 2007-08.

2. Facts are, in brief that the assessee is an individual running a proprietary concern by name M/s. Bharathi Khadi Vastralaya, a retail concern trading in textiles, readymades, agarbathies, etc. at Pondicherry. There was a survey under section 133A of the Income Tax Act, 1961

["Act" in short] was conducted in the business premises of the assessee on 01.02.2007. At that time, his wife's (Smt. B. Jagadambigai) proprietary concern, M/s. Bharathi Kadhi Bhavan, Pondicherry was also covered in the survey. At the time of survey, it was found that the assessee was not maintaining the regular books of account and he voluntarily offered net income from business at ₹.32.40 lakhs. The assessee also offered trade credits of ₹.4.10 lakhs and sundry creditors of ₹.6.70 lakhs totalling ₹.10.80 lakhs. Similarly, in wife's case, an amount of ₹.5 lakhs was offered as additional income.

3. The assessee filed his return of income for the assessment year 2007-08 on 03.03.2008 admitting total income of ₹.27,31,800/-. The case was selected for scrutiny with issue notice under section 143(2) of the Act dated 04.04.2008. The assessment was completed under section 143(3) of the Act dated 31.12.2009 by making various additions/disallowances.

4. The assessee carried the matter in appeal before the Id. CIT(A), where he has raised issue of service of notice under section 143(2) of the Act by filing written submissions.

5. The Id. CIT(A) called for remand report from the Assessing Officer, Pondicherry. From the remand report, it was noticed that the Assessing

Officer has issued notice under section 143(2) of the Act dated 04.04.2008 for the assessment year 2007-08 and despatched to the assessee on 23.04.2008. But, the acknowledgement card for having served the notice under section 143(2) of the Act was not available in the record. Therefore, the Id. CIT(A) was of the opinion that the Assessing Officer has issued a notice and despatched the same. Therefore, the notice has been issued and also set in motion for service. Therefore, it cannot be said that the assessee has not received the notice. He also pointed out that a notice issued under section 142(1) of the Act. Further, the Id. CIT(A) has observed that during the course of assessment proceedings, the assessee has appeared 14 times before the Assessing Officer and the assessee has not raised the issue. As per section 292BB of the Act, once the assessee has not raised any issue in respect of non-receipt of notice, section 292BB of the Act applies and therefore, the assessee cannot raise the issue of non-receipt of the notice in subsequent proceedings. Accordingly, the ground raised by the assessee has been rejected and the Id. CIT(A) has held that the assessment is valid and passed within the time and jurisdiction.

6. Before us, the Id. Counsel for the assessee has submitted that section 292BB of the Act has no application for the assessment year

2007-08 and it only applies from the assessment year 2008-09. He also submitted that as per the decision of the Hon'ble Madras High Court in the case of CIT v. Gitsons Engineering Co. [2015] 370 ITR 87 (Mad), it is mandatory for the Assessing Officer to serve the notice under section 143(2) of the Act.

7. On the other hand, the Id. DR strongly supported the order passed by the authorities below and submitted that section 292BB of the Act squarely applies and once the assessee participated in the assessment proceedings and cooperated with the Assessing Officer, he cannot raise the issue of non-receipt of notice under section 143(2) of the Act.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the Assessing Officer has issued notice under section 143(2) of the At on 04.04.2008 and the same was despatched to the assessee on 23.04.2008, but, there was no evidence to show that the notice issued by the Assessing Officer has been served on the assessee. Therefore, the findings of the Id. CIT(A) that once the notice is set on motion, it must have been received by the assessee. But the Department is not able to place acknowledgement card on record that the assessee has received the notice. Therefore, it has to be concluded that the assessee has not

received the notice. In this context, the Hon'ble Jurisdictional High Court in the case of CIT v. Gitsons Engineering Co. (supra), by following the judgement of the Hon'ble Supreme Court in the case of ACIT v. Hotel Blue Moon (2010) 321 ITR 362 (SC), held that the service of notice under section 143(2) of the Act within the time limit prescribed shall be mandatory and not mere procedural requirement. Therefore, respectfully following the above judgement of the Hon'ble Madras High Court in the case of CIT v. Gitsons Engineering Co. (supra), we hold that the mandatory requirement provided under section 143(2) of the Act was not complied and thus, the assessment order is held as invalid.

9. In the present case, the assessment year pertains to assessment year 2007-08. So far as application of section 292BB of the Act is concerned, in the case of CIT v. Kuber Tobacco Producers P. Ltd. in ITA No. 1159/2010 dated 06.10.2010, wherein, the Hon'ble Delhi High Court has held that application of section 292BB of the Act is prospective i.e., applicable only from the assessment year 2008-09. Therefore, the application of section 292BB of the Act has no application to the present case for the reason that the assessment year involved in this appeal pertains to the assessment year 2007-08. Therefore, whether the assessee has raised this issue before the Assessing Officer or not is

immaterial. Once the mandatory notice under section 143(2) of the Act has not been served on the assessee and the assessment order passed under section 143(3) of the Act has been held as invalid, going to merits of the case is mere academic. In view of the above, the ground raised by the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 24<sup>th</sup> August, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 24.08.2022  
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.  
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.