

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2231/Mum/2019  
(Assessment Year :2010-11)**

**&**

**ITA No.2232/Mum/2019  
(Assessment Year :2011-12)**

Shashikant M. Udani H-210, Ansa Industrial Estate Saki Vihar Road Andheri (E) – 400 072	Vs.	ACIT-26(3), Pratyaksha Kar Bhavan C-11, BKC Bandra (E) Room No.501, Mumbai – 400 051
<b>PAN/GIR No.AAPU2812L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri M Subramanian
Revenue by	Smt. Kanupriya Damor
<b>Date of Hearing</b>	<b>10/08/2022</b>
<b>Date of Pronouncement</b>	<b>26/08/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

These appeals in ITA Nos.2231/Mum/2019 & 2232/Mum/2019 for A.Yrs.2010-11 & 2011-12 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/ACIT-26(3)/IT-35/2016-17 & CIT(A)-38/ACIT-26(3)/IT-36/2016-17 respectively dated 31/12/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter

referred to as Act) dated 19/02/2016 by the Id. Asst. Commissioner of Income Tax-26(3), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

2. The first identical issue to be decided in these appeals is as to whether notice u/s 143(2) of the Act had been duly served on the assessee in the instant case at the correct address of the assessee.

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual - proprietor of M/s. Superplast Co., which is engaged in the business of manufacturing of rigid PVC conduit, PVC pipes. For the Asst Year 2010-11, the return of income was filed on 06/09/2010 by the assessee mentioning the address as under:-

**Address: H-210, Ansa Industrial Estate,  
Saki Vihar Road  
Andheri (E), Mumbai-400 072.**

3.1. This return was duly processed u/s.143(1) of the Act as mentioned in the assessment order. Later, this assessment was sought to be reopened vide issue of notice u/s.148 of the Act on 09/03/2015. The said notice u/s.148 of the Act contains the aforesaid address of the assessee. The assessee vide letter dated 13/03/2015 stated that return already filed on 06/09/2010 may be treated as a return in response to notice u/s.148 of the Act. The assessee vide letter dated 14/03/2015 requested the Id. AO to furnish the certified copy of reasons recorded for reopening the assessment. Subsequently after a gap of 8 months assessee was served

with a notice on 05/11/2015 show-causing as to why penalty u/s.271(1)(b) of the Act should not be levied for non-compliance of notice u/s.143(2) of the Act. In response thereto, the assessee vide letter dated 10/11/2015, which is enclosed in pages 13 & 14 of the paper book, categorically stated that notice u/s.143(2) of the Act were not at all issued and served on him for A.Y.2010-11. Accordingly, it was pleaded that there was no failure on the part of the assessee in complying with the notice. In the said letter, the assessee again requested for furnishing certified copy of reasons recorded for reopening the assessment. Thereafter, on 19/11/2015 the assessee was furnished copy of reasons recorded by the Id. AO to which a letter dated 27/11/2015 was filed by the assessee making his objections to the reasons recorded.

3.2. The re-assessment was ultimately completed u/s.143(3) r.w.s. 147 of the Act on 19/02/2016 determining total income at Rs.48,24,810/- after making disallowance on account of bogus purchases.

3.3. Before the Id. CIT(A), the assessee raised a specific ground that re-assessment framed is to be declared null and void as notice u/s.143(2) of the Act was not issued and served on him. The Id. CIT(A) sought for a remand report from the Id. AO in this regard, *interalia* among other issues. In the remand report, the Id. AO vide letter dated 10/10/2018 stated before the Id. CIT(A) that notice u/s.143(2) of the Act was issued in the following address:-

*Shri Shashikant Mulchand Udani  
H-210, Ansa Industrial Turab Hashmbhai Fidvi,  
42-20, L I G Colony, Vinobai Bhave Nagar,  
Kurla (W), Mumbai – 400 070*

3.4. The Id. AO in his remand report dated 10/10/2018 also furnished the acknowledgement of service of notice u/s.143(2) of the Act in the

aforesaid address i.e Kurla (W) address. These documents are enclosed in pages 72-74 of the paper book. Based on this, the Id. CIT(A) concluded that notice u/s.143(2) of the Act had been duly served on the assessee and hence, the re-assessment proceedings need not be treated as null and void.

3.5. We hold that from the remand report dated 10/10/2018 of the Id. AO, it could be safely concluded that notice u/s.143(2) of the Act has not been issued and served on the assessee in the correct address. The correct address of the assessee is mentioned in para 3 hereinabove. When assessee is staying in Andheri (E), issuance and service of notice u/s.143(2) of the Act by the Id. AO in a completely different address in Kurla (W) does not tantamount to proper issuance and service in accordance with law. Further, we also directed the Id. AR before us to furnish the details of address of the assessee mentioned in the income tax return for earlier as well as in subsequent years. From the perusal of the IT returns and 143(1) intimation for A.Yrs.2007-08, 2008-09, 2009-10, 2010-11, 2012-13, 2013-14, 2018-19 & 2019-20 which are placed on record, we find the address of the assessee has always been in Andheri (E). Hence, it could be safely concluded that notice u/s.143(2) was not issued and served on the assessee in the correct address. The Id. DR before us vehemently relied on the provisions of Section 292BB of the Act by stating that the assessee in the instant case had participated in the assessment proceedings pursuant to issue of notice thereon. Hence the Id. DR argued that even if the notice is not issued and served on the correct address, the said deficiency would get immunity from provisions of Section 292BB of the Act. For the sake of convenience, the provisions of Section 292BB are reproduced hereinbelow:-

*Notice deemed to be valid in certain circumstances.*

**292BB.** *Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—*

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:*

**Provided** *that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.*

3.6. It is pertinent to note that assessee had indeed raised his preliminary objection before the Id. AO vide letter dated 10/11/2015 clearly stating that notice u/s.142(1) & 143(2) had not been issued and served on him while giving response to show-cause notice for penalty proceedings u/s.271(1)(b) of the Act. Thereafter, the assessee having come to know of the scrutiny proceedings being in force, had decided to participate in the assessment proceedings as a good and law abiding citizen. This does not mean that assessee has acquiesced or accepted the deficiency in issuance and service of notice u/s.143(2) of the Act by the Id. AO within the meaning of Section 292BB of the Act. Rather, it clearly indicates that the proviso to Section 292BB of the Act would come to the rescue of the assessee which denies the immunity available to the Id. AO. We are unable to persuade ourselves to accept as to how the notice u/s.143(2) of the Act alone have been issued in a different address by the Id. AO for the year under consideration when the address mentioned in the correspondence for communication as per the e-filing portal of Income Tax department is the address mentioned in para 3 hereinabove and when all the returns of the assessee for earlier and subsequent years were duly processed by CPC u/s.143(1) of the Act by mentioning the correct address as per para 3 hereinabove. It is further pertinent to note

that the re-assessment order dated 19/02/2016, Form 35 filed by assessee before the Id. CIT(A), order of the Id. CIT(A) dated 31/12/2018, form 36 filed by the assessee before this Tribunal contain only the address mentioned in para 3 hereinabove i.e. Andheri (E) address. Hence, this is a clear case of notice u/s.143(2) of the Act not being issued and served on the assessee in the correct address. We would like to place reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal reported in 266 Taxman 171 (SC) wherein it was observed as under:-

*7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.*

*On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.*

*8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon's case (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.*

*9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.*

*10. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered. by the High Court and the Tribunal and the conclusion arrived at were correct. We, therefore, see no reason to take a different view in the matter.*

*11. These Appeals are, therefore, dismissed. No costs.*

3.7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that re-assessment has been framed without issuance and service of notice u/s.143(2) of the Act in the instant case and hence, reassessment deserves to be quashed. Accordingly, the ground no.3 raised by the assessee is hereby allowed.

3.8. Since the entire reassessment is quashed on the aforesaid legal ground, the adjudication of other legal grounds and grounds raised on merits becomes academic in nature and they are left open.

4. In the result, appeal of the assessee in ITA No.2231/Mum/2019 for A.Y.2010-11 is allowed.

#### **ITA No.2232/Mum/2019 (2011-12) Assessee Appeal**

5. We find that even in this year the assessee has raised a similar ground vide ground no.4 that notice u/s.143(2) has not been issued and served on him.

5.1. We find the facts are identical and even during the re-assessment proceedings, the assessee in response to show-cause notice issued for penalty u/s.271(1)(b) of the Act stating that assessee had not complied with notice u/s.143(2) of the Act, had categorically stated vide letter dated 10/11/2015, 27/11/2015 and 31/12/2015 by specifically drawing the attention of the Id. AO that he has not been issued and served notice u/s.143(2) of the Act. These letters are enclosed in pages 17-26 & 28 of the paper book. Hence, the facts are exactly identical to A.Y.2010-11 and accordingly, it could be safely concluded that re-assessment deserves to

be quashed for A.Y.2011-12 on this singular issue of non-issuance and service of notice u/s.143(2) of the Act on the assessee. Accordingly, the ground no.4 raised by the assessee is hereby allowed.

**6. In the result, both the appeals of the assessee are allowed.**

Order pronounced on 26/08/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 26/08/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai

