

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1600/Del/2017, A.Y. 2011-12

Gaurav Agarwal 47-M-1, Jawahar Quarters Meerut PAN : ABAPA2051Q	Vs.	ITO, Ward-1(2) Meerut
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Adv., Sh. Deepesh Garg and Shrey Jain, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	14.09.2022
Date of Pronouncement:	22.09.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 20.01.2017 in appeal no. 41/2015-16 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by Commissioner of Income Tax (Appeals)- Meerut (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 26.03.2015 u/s 143(3)/ 147 of the Income Tax Act, 1961 passed by

ITO, Ward-1(2), Meerut (hereinafter referred to as the Ld. Assessing Officer or in short 'Ld. AO').

2. The facts in brief are assessee had filed return of Income declaring total income of Rs. 5,27,910/- and agricultural income of Rs. 40,000/-. It was observed from the record that for assessment year 2009-10 that the assessee was Treasurer of M/s. City Educational & Engineering & Technology, By-pass, Meerut and Trustee of M/s. Devbhumi Foundation, Haldwani, Nainital. The Ld. AO believed that a property sold by assessee along with Sh. Nipun Agarwal and Vishnu Sharan , to M/s. Devbhumi was at lesser value then circle rate. Hence, Section 50C was attracted. After taking approval, notice u/s 148 was issued on 05.03.2014 and thereafter notice u/s 143(2) and u/s 142(1) were issued on 17.03.2015. The assessee stated that return of A.Y. 2011-12 filed on 29.07.2011 may be treated as filed in compliance of notice u/s 148. Assessee also challenged the validity of notice u/s 148 which was disposed by Ld with a speaking order. Accordingly, Ld. AO made an addition of Rs. 71,24,000/- and which was confirmed by Ld. CIT(A).

3. In appeal before this Tribunal assessee made prayer for admission of following revised/ additional grounds :-

“1. That having regard to the facts and circumstances of the case, ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by ld. AO u/s 143(3)/148 without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961 and without obtaining valid approval/sanction u/s 151 as per law.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 143(3)/148, is bad in law and against the facts and circumstances of the case and not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without issuing/serving the mandatory notice u/s 143(2) within the statutory allowable period.”

4. Heard and perused the record. At the outset it is pertinent to mention that the revised and additional ground being legal in nature stand allowed. Further arguments were heard accordingly.

5. On behalf of the assessee it was submitted that the assessee was able to lay hand on the information under RTI in regard to one of the trustees Sh. Vishnu Sharan, and vide ITA No. 1601/Del/2017 and in case of co-trustee Nipun Agarwal vide ITA No. 1602/Del/2017, issue raised by present assessee in ground no 1 to 3, have been decided in their favour, on the basis that no notice u/s 143(2) of the Act was issued to the assessee within 6 months from the end of financial year in which return of income was filed. It was submitted that present assessee was also issued notice u/s 148 on 17.03.2015 and the copy of that notice is on record at page no. 75 and as the same was also beyond six months the exercise of jurisdiction in passing the assessment order is vitiated and the whole assessment proceedings are not sustainable.

5.1 Ld. DR did not dispute the facts however stood by the order of ld. Tax Authorities below on merits.

6. Giving thoughtful consideration to the matter on record, it can be observed that in the case of Sh. Nipun Agarwal and Sh. Vishnu Saran who were co-trustees with the appellant and whose assessment was reopened along with present assessee and their appeals have been allowed by co-ordinate Benches. The coordinate bench in case of Nipun Aggarwal vide ITA no 1602 referred to ITA no 1601 arising out of case of Vishnu saran and has quashed the assessment order in absence of issuance of notice u/s 143(2) within the statutory time limit and the relevant observations of the Tribunal in ITA no 1601, are as under :-

“12. We have carefully considered the rival submissions and perused the orders of the lower authorities. Assessee in response to notice u/s 148 of the act submitted a letter dated 22.02.2014 complying with the notice requesting to take the original return filed as compliance. Thus ROI in response to 148 notice was filed on 22.02.2014. In the paper book furnished before us by the assessee the respective order sheet entries are also given. The order sheet entries shown that the reasons recorded by the Id. AO on 03.02.2014 and on 21.02.2014 the assessee submitted a compliance letter of filing of the return of income. On 20.01.2015 the reasons were submitted to the assessee on 12.03.2015. The reasons were disposed of on 17.03.20 15, query letter was issued and information was not received. Assessee sought further time. Therefore, it is apparent that no notice u/s 143(2) of the Act was issued to the assessee within six months from the end of the financial year in which return of income was filed. As required notice has not been issued and no information is also produced

before us of issuance of any notice u/s 143(2) of the Act, we quash assessment order passed by the ld. AO. Accordingly, the additional ground of the assessee is allowed.”

7. The case of assessee is no different. The original return of income in the case in hand was filed on 29.07.2011 and after notice u/s 148, the assessee vide letter dated 12.03.2014 had requested that the original return be considered for the purpose of 147/148 re-assessment. The Proviso to Section 143(2) stipulates period of 6 months from the end of financial year in which return of income was filed, as mandatory for issuing the notice u/s143(2) of the Act. Thus, the limitation period expired in case in hand on 30.09.2014 while the notice u/s 143(2) was issued on 17.03.2015. Thus, the aforesaid delay vitiates the complete reassessment proceedings and accordingly the ground no. 1 to 3 deserve to be allowed and remaining no. 4 and 5 become redundant as the Bench has found irregular exercise of jurisdiction by the AO. **Consequently, the appeal of Assessee is allowed.**

Order pronounced in the open court on 22nd September, 2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 22nd .09.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI