

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.341/Ind/2020

A/w.

CROSS OBJECTION No.16/Ind/2022

(Assessment Year: 2014-15)

Income Tax Officer Ward-2(1) Bhopal	Vs.	M/s. Shubham Mouth Freshner Private Limited H. No.32, Badwale Mahadev Mandir Road, Kayastyapur, Bhopal (M.P.)
PAN No.AAOCS0470R		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

Appellant by :	Shri S. N. Agrawal, A.R.
Respondent by :	Shri Ashish Porwal, Sr.D.R.

Date of Hearing	27.09.2022
Date of Pronouncement	29.09.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal and Cross Objection filed by the Revenue and assessee are directed against the order dated 07.09.2020 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Bhopal (in short 'CIT(A)'), arising out of the order dated 29.12.2016 passed by the DCIT-5(1), Bhopal

under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2014-15.

2. Since, the Cross Objection involves the maintainability point, we would like to address the same first.

3. At the very threshold of the matter, the Ld. Counsel appearing for the assessee argued the matter on the point of maintainability of the assessment proceeding which has been raised in the Cross Objection. The contention of the assessee is this that the assessee has filed his return of income on 22.11.2014. Therefore, the time limit of service of notice under Section 143(2) of the Act within 6 months from the end of financial year in which return is furnished was by 30th September, 2015. However, the notice under Section 143(2) of the Act was issued on 01.09.2016 and the same served upon the assessee on 28.11.2016 whereupon the assessee filed objection challenging the issuance of service of the notices upon the assessee on 28.11.2016 before the Ld.AO, but, without any result. This objection was further raised before the Ld.CIT(A) and a remand report dated 09.01.2018 was called for which is appearing at page No.198 of the paper book filed by before us. However, the said ground raised by the assessee was found to be not acceptable, hence, rejected.

4. It was further contended by the Ld.AR that the proof of service of notice under Section 143(2) of the Act was not provided to the assessee in spite of repeated request made to the authorities below. In this connection, he has drawn our attention at page No.59 of the paper book filed before us, which is

nothing but the copy of the notice issued under Section 143(2) of the Act dated 01.09.2016. On the said notice, it is appearing that the assessee was directed to produce any evidence in support of his case on 08.09.2016 at 11:00 am. in the Memo by F.No.DCIT-5(1)/BPL/u/s 142(1)/16-17. In fact, the submission made by the Ld. Counsel appearing for the assessee is further strengthened in view of the contents of the said notice dated 01.09.2016 issued under Section 143(2) of the Act. The Ld. DR also failed to controvert the submission made by the Ld.AR. In this connection, under these circumstances, the Ld.AR prayed for quashing of the order passed by the authorities below. He has also prayed for relying upon the judgment passed by the Hon'ble Delhi High Court in case of Alpine Electronics Asia Pvt. Ltd. vs Director General Of Income Tax & Ors. in Writ Petition (CIVIL) No. 7932/2010 & Hon'ble Karnataka High Court in case of M/s. Pai Vinod vs. DCIT(Inv.) reported in (2013) 353 ITR 622 (Kar.)

5. We have heard the Ld. Counsel appearing for parties. We have also considered the relevant materials and both judgments available on record. It is beyond doubt that the issuance of notice under Section 143(2) of the Act was not within time prescribed under the statute. On this aspect, we have further relied upon the judgment in case of Alpine Electronics Asia Pvt. Ltd. (supra). Ld. AR wherein it has been held that the service of notice under Section 143(2) of the Act within the statutory time limit is mandatory one and not a procedural requirement. Under these circumstances, since, there is admittedly a violation of mandatory provision, the assessment order passed was found to be illegal and liable to be set aside. In that view of the

matter, respectfully relying upon the same, we find that the issuance of notice and the service of the same is beyond time as prescribed under the statutory provision and the proceeding, therefore, itself became void-ab-initio and hence quashed.

6. In the result, Cross Objection filed by the assessee is allowed.

7. Since, Cross Objection is allowed, the appeal preferred by the Revenue became infructuous and thus dismissed.

8. In the combined result, assessee's Cross Objection is allowed whereas Revenue's appeal is dismissed as infructuous.

This Order pronounced on 29/09/2022

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Indore; Dated 29/09/2022

S. K. Sinha, Sr. PS

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

(Sr. Private Secretary)
ITAT, Indore