

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

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

ITA No.7457/Del/2017  
(Assessment Year : 2008-09)

|                                   |     |                              |
|-----------------------------------|-----|------------------------------|
| Shyam Products Pvt Ltd. New Delhi | Vs. | ITO, Ward-23(3)<br>New Delhi |
| Appellant                         |     | Respondent                   |
| <b>PAN: AADCS0943E</b>            |     |                              |

|             |                             |
|-------------|-----------------------------|
| Assessee by | Sh. Mukul Garg, Adv.        |
| Revenue by  | Shri Abhishek Kumar, Sr. DR |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 20.10.2022 |
| Date of pronouncement: | 07.11.2022 |

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the assessee against order dated 10/10/2017 in appeal no. 301/17-18 for assessment year 2008-09 passed by Commissioner of Income Tax (Appeal)-28, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 30/3/2016 u/s 147/144 of the Income Tax Act, 1961 ( hereinafter referred as the Act) passed by ITO wasd-23(3), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. Heard and perused the record.

3. Amongst other grounds raised on merits the appellant company vide the ground no 1(a) and 1(b) has challenged the assessment order on jurisdictional aspect for non issuance and service of notice u/s 143(2) of the Act after the assessee filed returns u/s 148.

4. On 24/5/22 the Bench had directed to file report regarding issuance and service of notice u/s 143(2) of the Act.

5. A report dated 7/7/22 of Ld. AO has been placed on record by the Ld. Sr. DR where in on the basis of assessment record it is submitted that no notice u/s 143(2) of the Act has been issued during proceedings u/s 144/147 of the Act while passing impugned assessment order dated 30/3/16.

6. In **ITA No. 1874/Del/2012 with C.O. No.223/Del/2012 (In ITA 1874/Del/12) for A.Y.: 2008-09 Titled Sh. Ajay Pal Singh, New Delhi Versus ITO Ward 21(1) New Delhi**, a coordinate bench has crystallized the law as to effect on assessment, when such notices are not served, in following words;

*“The Hon’ble High Court in the case of CIT vs. Adarsh Travel Bus Service (2012) 17 taxmann.com 140 (All.) at paras 5 to 9 has held as follows.*

*“5. By considering the rival submissions and on perusal of record, it appears that Section 143(2) of the Act is in two parts. The first part deals with jurisdiction and second with the procedure. The proviso to section 143(2) of the Act puts an embargo on the assessing officer to exercise jurisdiction after the expiry of 12 months from the end of the month in which the return was filed by the assessee. It is the discretion of the assessing officer to accept the return as it is or to proceed further with the assessment of income, once the assessing officer decides to proceed, he has to issue notice under section 143(2) within the prescribed time-limit to make the assessee aware that his return has been selected for scrutiny assessment.*

6. It may be mentioned that the Hon'ble Supreme Court in the case of *Asstt: CIT v. Hotel Blue Moon* [2010] 188 Taxman 113 observed that the notice under section 143(2) within the time prescribed, is mandatory. Similar views were expressed by this Court in *IT Appeal No. 134 of 2005 (CIT v. Bora Polyclinic (P.) Ltd.)* decided on 05.07.2010 as well as in *CIT v. Rajeev Sharma* [2010] 192 Taxman 197 (All.).

7. In view of well settled legal proposition (*supra*), we are of the view that proviso to section 143(2) applies to return filed in response to notice under section 148. Therefore, it was incumbent upon the AO to issue notice under section 143(2) within the period, as stipulated in the provision.

8. In the instant case, admittedly, the notice under section 143(2) has been issued beyond the period of one year from the date of filing of the return. Further, it may be mentioned that omission on the part of the assessing officer to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable, and, therefore, the requirement of notice under section 143(2) cannot be dispensed with as already observed in *Hotel Blue Moon (supra)*.

9. In view of the above, the impugned order passed by the Tribunal is hereby sustained along with the reasons mentioned therein. The answer to the substantial question of law is in favour of the assessee and against the revenue.

*The appeal has no merits and the same is dismissed.”*

Again the Hon'ble Allahabad High Court in the case of *CIT vs. Rajeev Sharma* (2010) 192 Taxman 197 (All.) at para 45 has held as follows.

“45. In view of the above, the provision contained in s.143(2) of the Act is mandatory in nature and it shall be obligatory for the AO to apply mind to the contents of the return filed in response to notice u/s 148 of the Act and record

*reasons and thereafter, issue notice u/s 143(2) of the Act before proceeding to decide the controversy with regard to escaped assessment.”*

*The Hon’ble Delhi High Court in the case of Alpine Electronics Asia Pte. Ltd. Vs. DIT (2012) 18 taxman.com 246 (Delhi) at para 24 has held as follows.*

*“24. S.143(2) is applicable to proceedings u/s 147/148 of the Act. Proviso to s.148 of the Act protects and grants liberty to the Revenue to serve notice u/s 143(2) of the Act before passing of the assessment order for returns furnished on or before 1st October,2005. In respect of returns filed pursuant to notice u/s 148 of the Act after 1st October,2005, it is mandatory to serve notice u/s 143(2) of the Act, within the stipulated time limit.”*

*7.5. Respectfully following the judgement of the Hon’ble High Courts, we hold that non service of notice u/s 143(2) results in the assessment order becoming bad in law. This is true even when the assessments are under normal provisions of the Act. Reliance is placed on the judgement in the case of ACIT vs. Hotel Blue Moon, 321 TTR 362 (SC).”*

7. Ld. Sr DR could not dispute aforesaid settled proposition of law. Thus the Bench is of considered opinion that the very exercise of jurisdiction in passing of the impugned assessment order is vitiated for non issuance and service of the notice u/s143(2) of the Act while assessment was concluded under section 144/147 of the Act.

8. Consequently, the ground no 1(a) and 1(b) are sustained. **The appeal is allowed** and the impugned assessment order is set aside.

**Order pronounced in the open court on 07<sup>th</sup> November, 2022.**

**-Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:07.11.2022*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI