

IN THE INCOME TAX APPELLATE TRIBUNAL
“PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

ITA No.108/Pat/2017
Assessment Year: 2012-13

ITO, Ward-4(1), Patna.....Appellant

vs.

Shri Abhishek Kumar.....Respondent

303, Arya Niketan Apartment,
K.P. Shankar Road,
Patna-800001.
[PAN: AXSPK2577R]

Appearances by:

Shri A. K. Rastogi, Sr. Advocate, appeared on behalf of the appellant.

Shri Rupesh Agrawal, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 22, 2022

Date of pronouncing the order : November 30, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 26.04.2017 of the Commissioner of Income Tax (Appeals)-2, Kolkata [hereinafter referred to as ‘CIT(A)’] passed u/s 250 of the Income Tax Act (hereinafter referred to as the ‘Act’).

2. In this case, the Revenue is aggrieved by the action of the ld. CIT(A) in quashing the impugned assessment order.

3. The ld. CIT(A) quashed the assessment order on the ground that earlier the notice u/s 143(2) of the Income Tax Act was issued to the assessee by the ITO, Ward-Bettiah, however, without necessary orders u/s 127 from the competent authority, the case was transferred from ITO, Ward-Bettiah to ITO, Ward-4(1), Patna. Thereafter, the ITO, Ward-4(1), Patna proceeded to the assessment without issuing notice u/s 143(2) of the Act. The ld. CIT(A) held that issue of notice u/s 143(2) of

the Act was mandatory to proceed with the assessment by the ITO, Ward-4(1), Patna. He, therefore, quashed the impugned assessment order, the same being bad in law on the ground of non-issuance of mandatory notice u/s 143(2) of the Act before proceeding to frame the assessment order. The issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court of Patna in the case of Baidyanath Prasad Verma v. PCIT CWJ Case No.17508 of 2019 vide order dated 26.07.2022, wherein, the Hon'ble High Court has held that the transfer of jurisdiction from one ITO to other Assessing Officer without any order passed u/s 127 of the Act was invalid. Admittedly the jurisdictional Assessing Officer did not issue the mandatory notice u/s 143(2) of the Income Tax Act which was sine qua non to proceed with the assessment. Therefore, the assessment order passed by him is bad in law. Reliance, in this respect, can be placed on the decision of the Hon'ble Supreme Court in the case of ACIT vs. M/s Hotel Blue Moon reported in 321 ITR 362(SC).

The issue of notice u/s 143(2) of the Act by a non-jurisdictional Assessing Officer has no legal sanctity and the same is liable to be ignored. Similarly, the assessment framed by a non-jurisdictional Assessing Officer to whom the case is transferred without necessary permission of competent authority is also non-est in the eyes of law. The identical issue also came into consideration before the Coordinate Bench of the Tribunal in the case of Bhagalaxmi Conclave (P) Ltd. v. DCIT [IT Appeal No.2517/Kol/2019, dated 3-2-2021], wherein, the Tribunal, further relying upon various other decisions of the Co-ordinate Benches of the Tribunal, has decided the issue in favour of the assessee and held that when the notice u/s 143(2) was issued by an officer who did not have jurisdiction to proceed with the assessment and the assessment was framed by the other officer who did not issue the notice u/s 143(2)

before proceeding to frame the assessment, then such an assessment order was bad in law.

4. In view of the above discussions, we do not find any infirmity in the order of CIT(A) in quashing the assessment. Hence, there is no merit in the appeal of the Revenue.

5. In the result, the appeal of the Revenue is hereby dismissed.

Kolkata, the 30th November, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 30.11.2022.

RS

Copy of the order forwarded to:

1. ITO, Ward-4(1), Patna
2. Shri Abhishek Kumar
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches