

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

|                           |
|---------------------------|
| ITA No.24/Bang/2021       |
| Assessment year : 2012-13 |

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| M/s. Silicon Estates,<br># 14, 6 <sup>th</sup> Floor, Geneva House,<br>Cunningham Road,<br>Bengaluru – 560 001.<br><b>PAN: ABEFS 6150N</b> | Vs. | The Deputy Commissioner<br>of Income Tax,<br>Central Circle 1(4),<br>Bengalure. |
| APPELLANT  |     | RESPONDENT  |

|               |   |  |
|---------------|---|--|
| Appellant by  | : | Shri Tata Krishna, Advocate                        |
| Respondent by | : | Shri K.Sankar Ganesh, Jt.CIT(DR)(ITAT), Bengaluru. |

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|-----------------------|---|------------|
| Date of hearing       | : | 06.12.2022 |
| Date of Pronouncement | : | 12.12.2022 |

**ORDER**

*Per Padmavathy S., Accountant Member*

This appeal is against the order the Commissioner of Income Tax (Appeals) – 11, Bengaluru dated 24.11.2020 for the assessment year 2012-13.

2. The assessee raised grounds with regard to legal issue as well as on merits. During the course of hearing the ld AR presented arguments only with regard to Ground No.4 and submitted that if this ground is

adjudicated in favour of the assessee the rest of grounds will become academic. The relevant Ground no.4 reads as under –

“4. Without prejudice, the assessment order is bad in law and void ab initio as the mandatory notice under section 143(2) has been issued beyond six months from the end of the financial year in which the return of income is filed.”

3. Brief facts of the case are that the assessee is a partnership firm engaged in business of development and construction of residential and commercial building. The assessee filed its return of Rs.6,37,236 after claiming deduction u/s.80IB(10) of Rs.7,52,10,634. A search was conducted u/s. 132 of the Income-tax Act, 1961 [the Act] in the premises of H.M. Constructions on 30.6.2011 and notice u/s. 143(2) issued. The AO completed the assessment u/s. 143(3) of the Act on 30.3.2014 treating the assessee partnership firm as an AOP denying the deduction u/s. 80IB(10) OF THE Act and levying interest u/s. 234B & 234C of the Act. The CIT(Appeals) partly allowed the appeal. Aggrieved, the assessee is in appeal before the Tribunal.

4. The ld AR submitted that the assessee filed the return of income on 29.09.2012 i.e. within the due date for filing the return of income u/s.139(1) of the Act. The ld AR drew our attention to the fact as mentioned in para 3 of the assessment order that the notice u/s.143(2) was issued on 06.12.2013. The ld AR submitted that the notice u/s.143(2) should be issued within six months from the end of the year in which the return of income is filed and accordingly the same should have been issued on or before 30.09.2013. The ld AR further submitted that the notice u/s.143(2) in assessee's case is issued on 06.12.2013

and therefore barred by limitation. The Id AR also submitted that the order u/s.143(3) is bad in law and liable to be quashed. The Id AR in this regard relied on the decision of the coordinate bench of the Tribunal in the case of *Shri Cherian Abraham vs DCIT (ITA No.1575/Bang/2016 dated 21.11.2017)* which is affirmed by the Hon'ble Karnataka High Court (2022) 137 taxmann.com 73 (Karnataka). The Id DR did not present any counter arguments against this factual submissions.

5. We heard the rival submissions and perused the material on record. We notice that the Hon'ble jurisdictional High Court in the case of *Shri Cherian Abraham (supra)* has considered similar issue where it is held that –

“16. The parameters set out in section 292BB of the Act are that the notice was :

- (a) not served upon assessee; or
- (b) not served in time; or
- (c) served upon assessee in an improper manner.

Thus, what is significant is service of notice. It is obvious that the issuance of notice is a pre-condition to cure the defects in service of notice.

17. In the case of *Lakshman Das Khandelwal (supra)*, the Hon'ble Apex Court has considered the law laid down by the Hon'ble Apex Court in the case of *Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113/321 ITR 362* regarding the question whether notice under section 143(2) of the Act would be mandatory for the purpose of making an assessment under the said provision and thereafter, considered the question whether section 292BB which came into effect on and from 1-4-2008 has effected any

change. It has been held that the law on the point as regards applicability of notice under section 143(2) of the Act is quite clear in the decision in the case of Hotel Blue Moon (supra). However, considering the impact of section 292BB on the issue, it has been held thus :

"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 the 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."

18. This judgment has a direct bearing on the facts of the present case. In the light of this judgment, it is clear that the infirmities in the manner of service of notice alone would be amenable to under section 292BB of the Act, but not the complete absence of notice itself. Notice issued beyond the period of limitation partakes the character of absence of notice itself in the eye of law. As such, section 292BB would not save such a notice de hors the limitation prescribed.

19. Though the learned counsel for the Revenue contended that Hotel Blue Moon (supra) was rendered in the regime prior to the insertion of S. 292BB of the Act, the said judgment has been considered by the Hon'ble Apex Court in the case of Lakshmandas Khandelwal (supra) as aforesaid, which is squarely applicable to the facts of the present case.

20. The Tribunal has rightly observed that the foundation process of reassessment is under section 148 of the Act, but such jurisdiction is subject to further compliance as being stipulated in the statute itself and thus, quashed the assessment being invalid. It is a well settled legal principle that issuance of notice beyond period of limitation or absence of notice goes to the root of the matter and is the jurisdiction aspect, not a procedural irregularity and the same is not curable.

21. Thus, we are of the view that the failure of the assessing officer in issuing the notice within the period of limitation under section 143(2) of the Act which is a notice giving jurisdiction to the assessing officer to frame assessment cannot be condoned by referring to S.292BB of the Act. We find no ground to interfere with the impugned order of the Tribunal.

22. For the reasons aforesaid, we answer substantial question of law in favour of the assessee and against Revenue.”

6. The facts in assessee’s case is similar to the above case wherein the notice u/s.143(2) is issued on 06.12.2013 which is beyond the time limit for issuing the notice which expires on 30.09.2013. Therefore respectfully following the decision of the Hon’ble High Court, we hold that the notice u/s.143(2) is issued beyond the period of limitation and accordingly the consequent assessment is not valid and liable to be quashed. Accordingly, the assessment order is quashed. It is ordered accordingly.

7. Since we have quashed the assessment as invalid, the other grounds raised by the assessee have become academic, not warranting any adjudication.

8. In result the appeal is allowed in favour of the assessee.

Pronounced in the open court on this 12<sup>th</sup> day of December, 2022.

Sd/-

Sd/-

( N V VASUDEVAN )  
VICE PRESIDENT

( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,

Dated, the 12<sup>th</sup> December, 2022.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.