

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 2040/Del/2019
(Assessment Year : 2009-10)

S A Syncon Infrastructure Services Pvt. Ltd., Flat/door/block no. Unit No.2934, Plot No.D1/D2, Krish Industrial Estate, Mumbai – 400 705 PAN No. AAJCS 1364 H (APPELLANT)	Vs.	ACIT Circle – 22(2) New Delhi (RESPONDENT)
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Assessee by	Shri Prajnaraj Mohanty, Adv.
Revenue by	Shri B. M. Singh, Sr. D.R.

Date of hearing:	31.01.2023
Date of Pronouncement:	16.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 22.02.2018 of the Commissioner of Income Tax (Appeals)-28, New Delhi relating to Assessment Year 2009-10.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company who is stated to have electronically filed its return of income for A.Y. 2009-10 on 26.09.2009 declaring income of Rs.1,58,12,400/-. AO has noted that notice u/s 148 of the Act was issued on 31.03.2016 after recording reasons. Thereafter, the case of the assessee was taken up for scrutiny and consequently, assessment was framed u/s 147 of the Act vide order dated 30.12.2016 and the total income was determined at Rs.2,45,19,077/-.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 22.02.2018 (in Appeal No.120/17-18) granted partial relief to the assessee. Aggrieved by the order of CIT(A), Assessee is now in appeal and has raised the various grounds whereby assessee is challenging the validity of reassessment u/s 147/148 of the Act and on merits challenging the addition made. Since the grounds raised by assessee are argumentative, the same are not reproduced herein under.

5. The case file reveals that there is a delay of 30 days in filing of appeal. Assessee filed condonation application explaining the reasons for delay. Considering the submissions made by assessee, we condone the delay and admit the appeal.

6. Before us, Learned AR submitted that notice u/s 143(2) was not issued and served on the assessee. He submitted that the issuance of notice u/s 143(2) is a mandatory requirement and the non issuance of notice would result into the assessment order being *void-ab-initio*. To verify the contention of the assessee about

the non-issuance of notice u/s 143(2) of the Act, Revenue was directed to produce the assessment records. At the time of hearing, Learned DR after perusing the assessment records fairly admitted that the notice u/s 143(2) of the Act was not issued and served on the assessee. He further submitted that non service of notice u/s 143(2) of the Act is a curable defect u/s 292BB of the Act. Learned AR submitted that Section 292BB of the Act does not give the power to condone the failure or delay in issuing the statutory notice required to be issued u/s 143(2) of the Act and to support his aforesaid contention, he placed reliance on the decision of Hon'ble Delhi High Court in the case of PCIT vs. M/s. Consortium Nussli Comfort Net in ITA No.63/2022 order dated 25th March, 2022. He also placed on record the copy of aforesaid decision.

7. We have heard the rival submissions and perused the material available on record. The assessee is challenging the validity of the assessment framed u/s 147/148 of the Act. It is the contention of the assessee that the assessee has not being issued and served notice u/s 143(2) of the Act which is a mandatory requirement. Before us, Learned AR has submitted that the notice u/s 143(2) of the Act was never issued or served on the assessee. Revenue has not placed any material on record to controvert the aforesaid submissions of Learned AR. We find that Hon'ble Delhi High Court in the case of PCIT vs. Silver Line (2016) 383 ITR 455 (Delhi) has held that reassessment order cannot be passed without compliance with the mandatory

requirement of notice being issued by the Assessing Officer to the assessee u/s 143(2) of the Act. It has held that the requirement of issuance of such notice is a jurisdictional one and it goes to the root of the matter as far as the validity of the assessment proceedings u/s 147/148 of the Act is concerned. It has further held that the failure of the AO, in reassessment proceedings, to issue notice u/s 143(2) of the Act prior to the finalizing the reassessment order cannot be condoned by referring the Section 292BB of the Act. Before us, Revenue has not pointed any contrary binding decision in its support. We, therefore, after relying on the decision of Hon'ble Jurisdictional High Court of Delhi in the case of Silver Line (supra) hold that since the notice u/s 143(2) of the Act was not issued to the assessee by the AO, the reassessment order is bad in law. We accordingly set aside the re-assessment. Since the entire assessment is quashed, we find no reason to adjudicate the appeal on other grounds as they have been rendered academic. **Thus, the ground of assessee is allowed.**

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 16.02.2023

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 16.02.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI