

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 508/Del/2019
Assessment Year: 2013-14

Capt. Manohar Bhola, Houe No. 174, Sector-14, Faridabad (Hr.), PIN: 121007	Vs.	ITO, Ward-1(2), Faridabad.
PAN :AANPB0044N		
(Appellant)		(Respondent)

Appellant by	Shri K.C. Singhal, Adv.
Respondent by	Shri Om Prakash, Sr. DR

Date of hearing	10.03.2023
Date of pronouncement	31.03.2023

ORDER

This is an appeal by the assessee against order dated 30.11.2018 of learned Commissioner of Income-Tax (Appeals), Faridabad, for the assessment year 2013-14.

2. At the outset, learned Authorized Representative of the assessee, on instructions, did not press ground no.2 of the main grounds,

challenging the addition of Rs.35,12,500. Accordingly, this ground is dismissed.

3. In ground no.1 of the main grounds and the additional ground, the assessee has challenged the validity of the assessment order passed under Section 143(3) of the Income-Tax Act,1961, due to alleged failure of the Assessing Officer in issuing and serving the notice under Section 143(2) of the Act within the prescribed period of limitation.

4. Briefly, the facts relating to this issue are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his return of income on 31.07.2013 declaring income of Rs.5,52,660. Subsequently, the assessee filed a revised return of income on 10.11.2014 declaring income of Rs.5,52,660. Assessee's case was selected for scrutiny and the Assessing Officer issued a notice under Section 143(2) of the Act on 20.08.2015. Ultimately, the Assessing Officer completed the assessment under Section 143(3) vide order dated 18.03.2016 adding an amount of Rs.35,12,500 under Section 68 of the Act. Against the assessment order so passed, assessee preferred an appeal before learned Commissioner (Appeals), inter alia, on the ground that the assessment order is invalid due to

non-issuance of notice under Section 143(2) of the Act within the period of limitation. Learned Commissioner (Appeals) dismissed the legal ground raised by the assessee on the reasoning that, since, the assessee had participated in the assessment proceedings in pursuance to the notice issued under Section 143(2) of the Act, the irregularity, if any, would be cured under Section 192BB of the Act.

5. Before me, learned Authorized Representative of the assessee submitted that the return of income was furnished by the assessee on 31.07.2013. He submitted, as per section 143(2) of the Act applicable to the relevant assessment year, the Assessing Officer had time to serve a notice under Section 143(2) of the Act before expiry of 6 months from the end of the financial year in which the return is furnished. He submitted, in the present case, the Assessing Officer has issued the notice under Section 143(2) of the Act on 28.08.2015, which is much beyond the period of limitation prescribed under Section 143(2) of the Act. He submitted, keeping in view the fact that the assessee return of income was furnished in financial year 2013-14, the Assessing Officer had time to issue notice under Section 143(3) of the Act till 30.09.2014. He submitted, since, the assessee had filed the

revised return of income after the intimation was issued under Section 143(1) of the Act, it has to be treated as invalid return, since, as per section 139(5) of the Act, revised return can be filed any time before expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier. He submitted, since, the intimation under Section 143(1) of the Act was issued on 23.01.2014, the revised return of income is non est. Thus, the date of filing of revised return, cannot be reckoned for the purpose of limitation in issuance of notice under Section 143(2) of the Act. In support of the aforesaid contention, learned counsel relied upon the following decisions:

- i) Vipin Khanna vs. CIT – 255 ITR 220 (P & H);
- ii) Mohammed Farooque Sarang-vs-DCIT 164 ITD 573 (Mum);
- iii) Hari Mohan Das Tandon (HUF)-vs-PCIT 169 ITD 639 All); &
- iv) Budhewal Co-Operative Sugar Mills-v-JCIT 101 TTJ Chd.).

6. Learned Departmental Representative submitted, the intimation issued under Section 143(1) of the Act cannot be treated as an assessment order. Therefore, assessee's contention that the revised

return of income is non est, is unacceptable. He submitted, since, the assessee had filed the revised return of income on 10.11.2014 falling in financial year 2014-15, the notice under Section 143(2) issued and served on the assessee on 20.08.2015 is within a period of six months from the expiry of the financial year in which the revised return was filed, hence, within the period of limitation.

7. I have considered rival submissions and perused the material available on record.

8. As far as factual aspect of the issue is concerned, there is no dispute that the original return of income was filed by the assessee on 31.07.2013. The return of income was processed under Section 143(1) on 23.1.2014 and revised return of income was filed on 10.11.2014. Keeping in perspective the aforesaid dates and events, the following issues need to be examined:

- i) Whether, the intimation issued under Section 143(1) of the Act can be treated as an assessment order so as to make the filing of revised return of income invalid in terms of section 139(5) of the Act; (ii) Whether, the notice issued under Section 143(2) of the Act can be said to be within the period of limitation, keeping in view the provisions of section 143(2) of the Act applicable to the relevant assessment year ?

9. As far as the first issue is concerned, it is trite law that intimation issued under Section 143(1) of the Act cannot be treated as an assessment order. There are plethora of judicial precedents propounding the aforesaid legal position. Therefore, I do not want to discuss in detail all these decisions. Suffice to say, in case of ACIT vs. Rajesh Jhaveri Stock Broker (P) Ltd. (2007) 291 ITR 500 (SC) Hon'ble Supreme Court has laid down the aforesaid ratio. Thus, the contention of learned Authorized Representative, that the revised return of income filed after completion of assessment under Section 143(1) is to be treated as non est, is unacceptable.

10. Considering the fact that the revised return of income was filed within the time prescribed under Section 139(5) of the Act, in my view, it is a valid return.

11. Having held so, it is necessary now to examine the provisions of section 143(2) of the Act applicable to the impugned assessment year. On a reading of the said provision, it becomes clear that where a return has been furnished under Section 139 of the Act or in response to a notice under Section 142(1), the Assessing Officer can issue notice under Section 143(2) of the Act. However, the proviso to

section 143(2) makes it clear that no notice under Section 143(2) of the Act shall be served on the assessee after expiry of six months from the end of the financial year in which the return is furnished. To my understanding, section 139 used in section 143(2) of the Act is wide enough to include a revised return filed under Section 139(5) of the Act. Therefore, the Assessing Officer has time to issue notice before expiry of six months from the end of the financial year wherein the revised return of income was filed. In the facts of the present appeal, admittedly, the revised return of income was filed on 10.11.2014. Whereas, the notice under Section 143(2) of the Act was issued on 28.08.2015 i.e. before expiry of six months from the end of the financial year (F.Y. 2014-15) wherein the revised return of income was filed. Therefore, in my considered opinion, the notice issued under Section 143(2) of the Act is within the period of limitation. After carefully going through the decisions cited before me by the Learned Authorized Representative of the assessee, In my humble opinion, they are not applicable to the peculiar facts of the present appeal. Therefore, these decisions would be of no help to the assessee. Thus, ground no.1 and additional ground are dismissed.

12. In the result, the appeal is dismissed.

Order pronounced in the open court on 31st March, 2023.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 31st March, 2023.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi