

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'SMC', KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.23/Kol/2023  
Assessment Year: 2012-13**

M/s. Vansa Properties Pvt. Ltd. 720/2, Block-P, First Floor, Ustad Amirkhan Sarani, New Alipore, Kolkata-700053. <b>PAN: AAACV 8944 R</b> (Appellant)	vs	ITO, Ward-10(2), Kolkata (Respondent)
--	----	--

**Present for:**

Appellant by : Shri S.M. Surana, AR  
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 03.05.2023  
Date of Pronouncement : 11.05.2023

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal in ITA No. 23/Kol/2023 for A.Y. 2012-13 is preferred by the assessee against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) [Ld. CIT in short], dated 10.11.2022. The assessee has raised the following grounds of appeal:

- "1. For that the assessment is bad in law since notice u/s 143(2) was never issued by the Ld. AO.*
- 2. For that the order of the Ld CIT(A) in rejecting the contention of the appellant that the proceedings-initiated us 147 by the AO was without application of mind, simply accepting the information without any further enquiry and therefore the initiation of the proceedings as well as the assessment itself is bad in law and is liable to be annulled.*
- 3. For that the Ld CIT(A) erred in rejecting the contention of the appellant in upholding the proceedings-initiated u/s 147 when the assessment was reopened on complete non existing facts since the assessee never incurred any loss nor claimed the same and no evidence has been brought on record to prove the same inspite of the fact that the same was duly brought to the notice of AO and Ld. CIT(A).*

4. For that the Ld CIT(A) erred in confirming the order of the AO when the objection raised to the proceedings u/s 148 were not disposed of.

5 For that the Ld. CIT(A) should have otherwise cancelled the assessment since the Ld AO failed to make any enquiry from the stock broker or the Stock Exchange when the transactions allegedly done by were specifically denied by the assessee.

6. For that the ld. CIT(A) erred in confirming the additions by simply relying on the report of Inv. Wing and holding that assessee failed to discharge its burden of proof when the assessee specifically denied having done any transactions with the broker and therefore, it cannot be asked to prove the negative.

7. For that the Ld. AO erred in computing tax on total income of Rs. 48,23,160/- when the said figure was not income but assessed loss and therefore, no tax was payable on the same.”

2. The assessee is a company which is engaged in the business of trading of shares. The return of income for the year under consideration was filed by it on 27.09.2012 by declaring loss of Rs. 61,66,215/-. The return was duly processed u/s 143(1) of the Act and subsequently information received from the Director of Income-tax (Inv.), Ahmedabad that misuses of CCM facility that is Client Code Modification for the tax evasion purpose through the broker M/s. Amrapali Aadya Trading & Investment Pvt. Ltd. and for this purpose, a show cause notice was issued upon the assessee stating that why factitious loss of Rs. 13,43,059/- showed by the assessee should be disallowed. In response to such show cause notice, assessee had filed its objection which was duly considered by the AO. However, doing so, an amount of Rs. 13,43,059/- was added to the total income of the assessee.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) wherein the ld. CIT(A) dismissed the appeal filed by the assessee.

4. Aggrieved by the above order, assessee filed the appeal before the Tribunal raising multiple grounds of appeal. At the time of hearing, ld. counsel submits that the assessment framed by the AO is bad in law since there was no notice u/s 143(2) issued upon the assessee from the ends of AO. The ld. counsel to substantiate his argument, he submitted that the notice u/s 148 was issued by the AO on 30.03.2016 is enclosed in the paper book at page no. 1 and in response to the same, assessee duly replied vide letter dated 05.11.2016 and the same is attached herewith in paper book at page no. 2 by which requested the AO to treat the original return filed by the assessee in response to notice u/s 148 of the Act. However, doing so no notice u/s 143(2) was issued upon the assessee from the ends of ld. AO. Therefore, the entire assessment should liable to be quashed. Further he contended that the proceeding initiated by the AO u/s 147 of the Act without application of mind, since the AO by doing so accepting the borrowed information without going into further enquiry of the matter, therefore, the assessment order was bad in law and liable to annulled. However, while passing the impugned order by the ld. CIT(A), did not consider the grounds taken by the assessee therefore, the present impugned order challenged before the Tribunal shall liable to be set aside. On the other hand, ld. DR relied on the order passed by the ld. CIT(A) and supported the same.

5. We after hearing the rival submission of the parties and perused the material available on record. We find that Hon'ble Apex Court in the case of Asst. Commissioner of Income Tax vs Hotel Blue Moon reported in 321 ITR 362 has held that procedure of section 143(2) is mandatory and to be followed in an assessment, Hon'ble Apex Court held as under:

- *“While notice u/s 143(2) is not necessary if the AO accepts the return as filed, the notice within the prescribed time is mandatory if the AO proposes to make an assessment u/s 158BC r.w.s. 143(3). Omission to issue notice u/s 143(2) is not a procedural irregularity and the same is not curable and the requirement of notice u/s 143(2) cannot be dispensed with. If the intention of the legislature was to exclude the provisions of section 143(2) legislature would have indicated that*

- *In Circular No. 717 dated 14.08.1995, the CBDT has directed that the AO "shall proceed to determine the undisclosed income of the block period and the provisions of section 142, sub-section (2) and (3) of section 143 and section 144 shall apply accordingly." This circular clarifies the requirement of law in respect of service of notice u/s 143(2). The circular is binding on the department though not on the court."*

6. In view of the above admitted facts that no notice u/s 143(2) of the Act was issued during the proceedings pending u/s. 148 of the Act within the prescribed time from the date of filing of return. The ratio laid down by Hon'ble Apex Court in the case of Hotel Blue Moon (supra), we are of the considered view that the reassessment framed without issuing notice u/s. 143(2) of the Act within the prescribed time limit from the date of filing of return is without jurisdiction. Section 143(2) incorporates the rule of audi alterem partem i.e., no man should be condemned unheard. The words "shall serve on the assessee notice" occurring in section 143(2) imply a duty to be performed and the word "shall" connotes that the provisions are mandatory and non-compliance of the same goes to vitiate the order of assessment itself. The legal ground raised by the assessee is accordingly allowed.

7. Keeping in view the decision rendered above on the legal issue quashing the assessment order made by the AO u/s 147/144, the other issues raised by the assessee in this appeal have become infructuous or academic in nature and therefore, we do not consider it necessary or expedient to adjudicate upon the same.

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

**Order pronounced in the open court on 11.05.2023**

**Sd/-**

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Copy to:

1. The Appellant: M/s. Vansa Properties Pvt. Ltd.
2. The Respondent: ITO, Ward-10(2), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR .

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata