

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.375/Kol/2022
Assessment year: 2009-10

M/s Osian Stock Broking Pvt. Ltd.....Appellant
C/o S M Surana Advocate,
Unit No.1501, 15th Floor,
Diamond Heritage,
16, Strand Road, Kol-1.
[PAN: AAACO3479N]

vs.

ITO, Ward-1(1), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, FCA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 15, 2023

Date of pronouncing the order : May 12, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.05.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee is aggrieved by the action of the lower authorities in treating the unsecured loans of Rs.15,00,000/- taken by the assessee as unexplained income of the assessee.

3. The assessee has contested the impugned addition on various ground, inter alia, that the Assessing Officer had no reason to believe

that the income of the assessee has escaped assessment; that the concerned Assessing Officer did not have territorial jurisdiction to frame the assessment and further that the notice issued u/s 143(2) of the Act was time barred and, therefore, the assessment framed was void ab initio.

4. At the outset, the ld. counsel for the assessee has submitted that since the question relating to the issue of notice u/s 143(2) of the Act hits at the very validity of the assessment order, therefore, the said issue may be adjudicated first. The ld. counsel has further submitted that the last date for issue of notice u/s 143(2) was on 30.09.2015. He has further submitted that though the notice has been shown to be signed on 30.09.2015 itself however, the same was sent at the email address of the assessee 03.11.2015. He, therefore, has submitted that by mere signing of the notice by the concerned Assessing Officer, it would not mean that the same was issued on the said date. That the date of issue of the said notice would be the date on which the email was sent on 03.11.2015. He, in this respect, has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of 'Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.' in WPA No.4382 of 2022 order dated 12.04.2022.

5. The ld. DR, on the other hand, has submitted in this case the notice for reopening of the assessment u/s 148 of the Act was issued within the time. That once the notice u/s 148 of the Act was issued, there was no relevance of delayed issuance of notice u/s 143(2) of the Act. He has further submitted even otherwise the identity of issuance of notice will be the date on which the Assessing Officer signed the said

notice which was on 30.09.2015 and hence it cannot be said that the notice u/s 143(2) of the Act was time barred.

4. We have heard the rival contentions and gone through the records. The notice in this case has been shown to be signed on 30.09.2015, however, the same was emailed to the assessee on 03.11.2015. The Hon'ble Jurisdictional Calcutta High Court in the case of Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.' (supra) considering the facts that the notice u/s 148 of the Act was signed on March 31 2021, however, it was actually uploaded for communication on April 1 2021 at 3 a.m. thereby treating the 1st April 2021 as issuance of impugned notice u/s 148 of the Act, quashed the reassessment proceedings holding that the provisions of Finance Act 2021 would be applicable from 01.04.2021 and therefore, before issuance any notice u/s 148 of the Act, the Assessing Officer was required to observe the statutory formalities u/s 148A of the Act. In the case in hand also, the notice was set in motion only on 03.11.2015, in our humble view, signing of the notice would not constitute as issuance of notice. The date of issuance of notice would be when it is set in motion for delivery to the assessee. So far as the contention of the ld. counsel that the issue of notice u/s 143(2) of the Act within the prescribed period in relation to the reassessment proceedings u/s 147/148 was not mandatory, we find that the issue has been settled by the various High Courts holding that even in the case of reassessment proceedings u/s 147/148 of the Act, the issuance of notice within the specified period u/s 143(2) of the Act is mandatory and that the Assessing Officer cannot assume jurisdiction u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act and this defect cannot be cured by taking recourse to the deeming fiction provided u/s 292BB of the Act. Reliance in this respect can be placed on the decision of the

Delhi High Court in the case of PCIT vs. Shree Jai Shiv Shankar Traders Pvt. Ltd. IT Appeal No.1068 of 2013 dated 18.02.2015; Hon'ble Madras High Court in the case of Sapthagiri Finance & Investment vs. ITO reported in (2013) 90 DTR (Mad) 289); Hon'ble Delhi High Court in the case of DIT vs. Society for Worldwide Interbank Financial Telecommunications reported in (2010) 323 ITR 249 (Del); Hon'ble Allahabad High Court in the case of CIT vs. Solarpur Cold Storage P Ltd (2014) 50 Taxmann.com 105 (All); Hon'ble Allahabad High Court in the case of CIT vs. Rajeev Sharma reported in [2011] 336 ITR 678 (All.). Since the Assessing Officer did not issue notice u/s 143(2) of the Act within the specified time period, therefore, the Assessing Officer could not have assumed jurisdiction to frame the assessment u/s 143(3) of the Act and, therefore, the impugned assessment order is bad in law and the same is accordingly held to be non-est.

Since we have allowed the appeal of the assessee on the aforesaid legal ground, therefore, at this stage, the other grounds raised by the assessee have been rendered academic in nature.

5. In the result, the appeal of the assessee stands allowed.

Kolkata, the 12th May, 2023.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 12.05.2023.

RS

Copy of the order forwarded to:

1. M/s Osian Stock Broking Pvt. Ltd
2. ITO, Ward-1(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches