

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 194/JP/2023
निर्धारण वर्ष/Assessment Year : 2012-13

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|---|-------------|--------------------------------|
| Shree Ganesh Associates 16, Shivraj Niketan, Gautam Marg Vaishali, Jaipur – 302 021 | बनाम Vs. | The ITO Ward 3(5) Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABTFS 8808 A | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Pawan Kumar Garg, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 10/05/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/05/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A) dated 16-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. That the AO had erred in initiating proceedings u/s 148, the said action is illegal and unjustified as the assessee had not made payment of Rs.1.00 lac on single date but paid Rs.20,000/- on 05 different dates.

2. The notice u/s 143(2) was not issued within the time limit, thereby resulting into whole of the assessment proceedings null and void.”

2.1 At the outset of the hearing, the ld. AR appearing on behalf of the assessee first of all raised the Ground No. 2 which is legal in nature and wherein the ld. AR submitted that in the present case the notice u/s 143(2) of the Income Tax Act, 1961 was not issued within time limit thereby resulting into whole of the assessment proceedings null and void. In this regard, the ld. AR submitted that the return for the year under consideration was furnished in response to notice u/s 148 of the Act on 30-03-2019 and time limit to issue notice u/s 143(2) expired on 30-09-2019. However, notice u/s 143(2) of the Act was issued on 03-10-2019 which clearly indicates that the said notice was issued after expiry of time limit.

2.2 On the other hand, the ld. DR relied upon the orders of the lower authorities.

2.3 After hearing both the parties and perusing the materials available on record and also the judgements cited by the respective parties, the Bench finds that this ground raised by the assessee goes to the root of the case as the same is legal in nature. Therefore, the Bench has decided to adjudicate upon this ground firstly. From the records, it is noticed that as per provisions of Section 143(2) of the Act, it is statutory obligation that no notice shall be served under this section after the expiry of six months from the end of the financial year in which the return is

furnished. In the instant case, the return for the year under consideration was furnished in response to notice u/s 148 of the Act on 30-03-2019 which is a copy of the return at Page 12 of the paper book and time limit to issue notice u/s 143(2) in this way expired on 30-09-2019. However, the notice u/s 143(2) was issued on 03-10-2019 and copy of which is at Page 13 of the paper book. Since the notice has been issued after the expiry of time limit, therefore, the said notice is not valid and infructuous. Although the assessee had raised its contentions before the Id. CIT(A) yet the Id.CIT(A) rejected the contentions of the assessee by holding that provisions of Section 143(2) of the Act apply to returns filed u/s 139 of the Act or in response to notice u/s 142(1). In the present case, the proceedings of reassessment was initiated by issuing notice and serving notice u/s 148 of the Act and the provisions of Section 148 clearly stipulates as under:-

“Before making the assessment, reassessment or recomputation under section 147, the assessing officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified to the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139”.

Since, the above provisions of Section 148 expressly provides that return filed u/s 148 of the Act will be treated as return furnished u/s 139 of the Act, therefore, no notice issued u/s 143(2) could have been served after expiry of 06 months from the end of the financial year in which return was furnished and as per the facts of the present case the return was furnished on 30-03-2019 and the time limit to issue notice u/s 143(2) expired on 30-09-2019. Therefore, the impugned notice which is at Page 13 of the paper book issued u/s 143(2) dated 03-10-2019 is clearly barred by limitation and in this regard the Bench draws strength from the decision of Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon [2010] 321 ITR 362 wherein it was held that AO has no jurisdiction to make assessment on the basis of belated notice issued u/s 143(2) of the Act as the said defect being **substantive** is not curable u/s 292B of the Act. Section 292BB of the Act also does not apply as notice issued u/s 143(2) has been issued after limitation period and merely served belatedly and thus it is non est and deserves to be quashed in view of the decision of Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon (supra). Accordingly, this ground No 2 of the assessee is allowed.

3.1 Since we have quashed the assessment order, therefore, there is no use of adjudicating the ground No. 1 of the assessee.

4.0 In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 30/05/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/05/2023

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Shree Ganesh Associates, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 3(5), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 194/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar