

THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND

ITA No. 1964/Del/2022
Assessment Year: 2014-15

Sohanbir Singh, 1004, Plot No. 4, New Shivalik CGHS, Sector- 51, Gurgaon 122002 PAN AQCP5 5731 L	vs.	The Assessing Officer, NWR- W-(107) (91), NFAC, Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, Adv. Shri Deepesh Garg, Adv.
For Revenue :	Shri Sumesh Swani, Sr. DR

Date of Hearing :	05.04.2023
Date of Pronouncement :	23.06.2023

ORDER

Per Chandra Mohan Garg:-

This appeal filed by the assessee is directed against the order dated 19.07.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2014-15.

2. Application for admission of additional ground dated 22.11.2022. I have heard arguments of both the sides on the said application, wherein the assessee on the strength of various judgments including judgments of Hon'ble Supreme Court in the case of CIT vs Singhad Technical Education Society, (2017) 397 ITR 0344 (SC) and NTPC Ltd. Vs. CIT (1998) 229 ITR 0383 (SC) and judgment of Hon'ble jurisdictional Punjab & Haryana in the case of VMT Spinning Cp. Ltd. vs. CIT & Anr. (2016) 389 ITR 0326 (P&H) it has been submitted that the assessee should be allowed to raise following additional grounds:-

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s. 147 to 151 as envisaged under the Income Tax Act, 1961.*

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO inter alia on the ground that mandatory notices u/s. 143(2), 142(1) and 148 of the Income Tax Act, 1961 were not issued/served upon the appellant.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law on facts in not quashing the impugned reassessment order passed by Ld. AO inter alia on the ground that statutory and mandatory procedures laid down u/s. 144B has not been followed.*

3. The Id. counsel submitted that due to the lack of proper consultation the assessee could not raised these grounds before authorities below but these grounds are pure legal grounds which can be adjudicated on the basis of material available on record without any extraneous material or exercise therefore the same may kindly be admitted for hearing and adjudication. The Id. Senior DR strongly opposed to the admission of additional grounds. First of all, I note that the above noted additional grounds were not raised before the authorities below and the same are being raised first time before the Tribunal. It is also not in dispute that these additional grounds are pure legal grounds which can be adjudicated on the basis material available on record. Therefore respectfully following the proposition rendered by Hon'ble Supreme Court in the case Singhad (supra) and NTPC (supra) & judgment of jurisdictional High Court in the case of VMT Spinning (supra) the additional grounds of assessee are admitted for adjudication. Application of assessee is thus allowed.

4. Regarding additional ground no. 1 & 2 the Id. counsel submitted that as per the report of the Assessing Officer submitted by the Id. Senior DR vide dated 18.10.2022 it is clear that the Assessing Officer has not issued any notice u/s. 143(2) of the Act, in this case to assume valid jurisdiction to pass or frame reassessment order u/s. 147 r.w.s 144 or 143(3) of the Act. Placing reliance on the various judgment including judgment of Hon'ble High Court of Delhi in the case of CIT vs. Jay Shiv Shankar Traders P Ltd. 383 ITR 448 (Del.) The Id. counsel submitted that when not notice u/s. 143(2) has been issued by the Assessing Officer then the failure by the Assessing Officer is fatal to the order of reassessment and this defect is not curable u/s. 292BB of the Act.

5. Replying to the above, the Id. Senior DR supported the orders of the authorities below and submitted that the Assessing Officer vide letter dated 18.10.2022 have submitted factual report on the additional grounds of assessee and therefore no adverse inference can be taken against the department in this regard.

6. On careful consideration of above submissions, first of all, from the factual report submitted by the Assessing Officer vide letter dated 18.10.2022 I note that the Assessing Officer has submitted entire facts relevant to the action and notices issued by him at the time initiation of reassessment proceedings and during the relevant assessment proceedings but there is no mentioning by the Assessing Officer neither in the reassessment order dated 30.03.2022 nor in the said factual report regarding issuance of notice u/s. 143(3) of the Act. Therefore I safely presume that the Assessing Officer has not issued any notice u/s. 143 (2) of the Act before framing reassessment order dated 30.03.2022 u/s. 147 r.w.s. 144 of the Act. In view of above factual position I am compel to hold that the issue is squarely covered in favour of the assessee by the judgment of Hon'ble High Court of Delhi in the case of PCIT vs. Jay Shiv Shankar

Traders (supra) wherein their Lordship held that the failure of Assessing Officer to notice u/s. 143(2) in reassessment proceedings, prior to finalizing reassessment order, cannot be condoned by referring to s 292BB of the Act is fatal to the order of reassessment. Therefore respectfully following the same I hold that the impugned reassessment order dated 30.03.2022 is bad in law being passed without assuming valid jurisdiction by the Assessing Officer. Accordingly additional ground no. 1 & 2 of assessee are allowed. The Id. counsel submitted that assessee does not want to press additional ground no. 3 hence the same is dismissed as not pressed.

7. Since by the earlier part of this order I have allowed additional ground no. 1 & 2 of assessee and have quashed the impugned reassessment order and the Id. representatives of both the sides have not placed any arguments on the other grounds of assessee on merits therefore I don't deem it proper to adjudicate the same in absence of any submissions from the parties hence I am not adjudicating grounds of assessee on merits.

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

Order pronounced in the open court on 23.06.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 23rd June, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi