

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 7178/Del/2019  
(Assessment Year: 2007-08)

Rakyan's Fine Jewellery (formerly known as M/s. Varun Gems, M-31, M Block Main Market, Greater Kailash, Part-1, New Delhi) (Appellant) <b>PAN: AAAFV2804P</b>	Vs.	JCIT, Range-33, New Delhi  (Respondent)
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Assessee by :	Shri Abhishek Mathur, CA
Revenue by:	Shri Om Parkash, Sr. DR

Date of Hearing	21/08/2023
Date of pronouncement	25/08/2023

**ORDER**

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-31, New Delhi dated 25.06.2019 for AY 2007-08.

2. The assessee has raised the following grounds of appeal:-

*"1. That the Hon'ble Commissioner of Income Tax (Appeals) has erred in the law as much as on the facts of the case by not appreciating the fact that the Learned Assessing Officer did not assume the jurisdiction to complete the reassessment proceedings as the notice u/sec. 143(2) of the Income Tax Act, 1961 dated 16.09.2014 have not been served on the appellant during the course of the reassessment proceedings and that the notice that have been actually served had been served even before the appellant had made making compliance to the notice u/sec. 148 of the Act and thus, the assessment completed by the learned Assessing Officer u/sec 147/143(3) of the Act is liable to be quashed."*

3. I have heard arguments of both the sides. The Id Assessee's Representative (AR) submitted that no notice u/s 143(2) of the Income Tax Act, 1961 (for short the Act) has been served on the assessee as the Id CIT(A) noted in para 4.1.3. that notice u/s 143(2) of the Act was received un-served but derived contention of assessee by stating that section 292BB of the Act is applicable thus legal contention of assessee is not tenable. The Id AR placing

reliance on the order of Special Bench of ITAT in the case of Kuber Tobacco Products Pvt. Ltd Vs. DCIT 310 ITR 300 (Del) (SC) submitted that provision of section 292BB of the Act is applicable for AY 2008-09 onwards and the same is not applicable to present past Assessment Year 2007-08.

4. On the other hand the Id Sr. DR submitted that the assessee did not raise any objection regarding non service of notice u/s 143(2) of the Act during assessment proceedings. Therefore, provision of section 292BB is applicable in favour of the Revenue and thus, legal contention of assessee may kindly be dismissed.

5. On careful consideration of the above submission, I note that the Special Bench of ITAT in the case of Kuber Tobacco Products Vs. DCIT (supra) held that provision of section 292BB of the Act is applicable from AY 2008-09 onwards hence, the same cannot be applied to the present case of AY 2007-08.

6. Since the Id CIT(A) in para 4.1.3 noted the fact of non-service of notice u/s 143(2) of the Act on the assessee and even if the assessee did not raise any objection to non-service of notice u/s 143(2) of the Act before the AO, the legal contention cannot be dismissed on the strength of provision of section 292BB of the Act as the same has no application to present AY 2007-10. As per decision of Hon'ble in the case of Alpine Electronics Asia Pte Ltd Vs. DCIT 341 ITR 247 (Del) non-service of notice u/s 143(2) of the Act makes assessment order invalid. Accordingly, ground No. 1 of assessee is allowed and consequently, impugned reassessment order u/s 147/143(3) of the Act is quashed being bad in law and invalid.

7. No arguments on other grounds, hence, in absence of any submission I don't deem it proper to decide other grounds of appeal.

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

Order pronounced in the open court on 25/08/2023.

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 25/08/2023

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi