

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 5360/Del/2019
Asstt. Year: 2014-15

ITO Ward-29(4) New Delhi.	Vs.	Ritesh Singh, HR-77/4, Pul Pehladpur, New Delhi -110 044 PAN BHJPS9443L
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	21.09.2023
Date of pronouncement	21. 09.2023

ORDER

PER ASTHA CHANDRA, JM

1. The appeal filed by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-33, New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2014-15.
2. The Revenue has raised the following grounds of appeal:-
 - “1. *Whether on the facts & in the circumstances of the case and in law, the Ld. CIT(A) is correct by deleting additions made by the Assessing Officer (AO) merely on technical ground rather on merit?*
 2. *Whether on the facts & in the circumstances of the case and in laws the Ld. CIT(A) is correct by treating the assessment proceeding null and void inspite of the fact that Notice u/s 143(2) was issued to the address of the assessee through Speed Post within limitation period?*
 3. *Whether on the facts & in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the additions made by the AO and treated the Assessment null and void, on the ground that issue of Notice is not sufficient as per requirement of proviso u/s 143(2) of I.T. Act, 1961 but is should be served within limitation period?*

4. *Whether on the facts & in the circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the Additions made by the AO by ignoring the Judgment of Hon'ble Supreme Court, in the case of V.R.A. Cotton Mills Pvt. Ltd. vs. Union of India, Civil Appeal No.34846/2011, wherein it was upheld that the expression "Serve" means the date of issue of Notice?*

5. *Whether on the facts & in the circumstances of the case and in law, the CIT(A) is correct by treating the Assessment proceeding null and void inspite of the fact that the Assessee had never challenged the jurisdiction or Assessment proceeding before the AO?"*

3. The assessee individual filed his return for AY 2014-15 electronically on 03.12.2014 declaring income of Rs. 7,17,470/-. His case was selected under CASS for complete scrutiny. Statutory notice under section 143(2) issued on 30.09.2015 fixing the hearing for 08.10.2015 sent through speed post and e-mail also was responded to by the assessee. His representative attended on 15.10.2015 and filed Power of Attorney. Thereafter, notices sent from time to time remained uncomplished with. The Ld. Assessing Officer ("**AO**") therefore passed ex-parte order dated 23.12.2016 under section 144 of the Income Tax Act, 1961 (**the "Act"**) determining the total income of the assessee at Rs. 1,80,40,240/-.

4. On appeal filed by the assessee before the Ld. CIT(A), challenging the assessment on ground, interalia that the assessment is violative of principles of natural justice; that assessment order is bad in law and that it was framed without providing any opportunity of hearing and the notice(s) issued under section 143(2)/142(1) of the Act were never served on the assessee. The Ld. CIT(A) decided the above grounds in favour of the assessee and held the assessment order as null and void. He did not adjudicate the appeal on merits.

5. Dissatisfied, the Revenue is in appeal before the Tribunal.

6. The grievance of the Revenue is that the Ld. CIT(A) has ignored the judgment of Hon'ble Supreme Court in the case of V.R.A Cotton Mills Pvt. Ltd. vs. Union of India, Civil Appeal No. 34846/2011 wherein it has been

upheld that the expression “serve” means the date of time of notice, as compliance of the requirement of proviso to section 143(2) of the Act.

7. On the facts and in the circumstances of the case, in our opinion, it would be appropriate and in the interest of justice and fair play to send the matter back to the Ld. CIT(A) with a direction to him to consider the decision of the Hon’ble Supreme Court in V.R.A Cotton Mills Pvt. Ltd. (supra) and decide the appeal afresh on merits after allowing reasonable opportunity of hearing to both the parties. We order accordingly.

9. In the result, appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 21st September, 2023.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 21/09/2023

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	