

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2209/M/2023  
Assessment Year: 2015-16**

Ms. Neelam Sahewal, Bldg No.10/C/212, Sangeet Complex, Jesal Park, Thane- 401 105 <b>PAN: BLCPS6747N</b>	Vs.	Dy. Commissioner Of Income Tax, Central Circle-4(3), Room No.1921, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021
(Appellant)		(Respondent)

**Present for:**

Assessee by : S/Shri Ajay Daga/Ashok Bansal, A.R.  
Revenue by : Shri Ajay Singh, Sr. AR

Date of Hearing : 12 . 10 . 2023

Date of Pronouncement : 10 . 11 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Ms. Neelam Sahewal (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 20.04.2023 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2015-16 on the grounds inter-alia that :-

*"1. The Id CIT(A) erred in dismissing Gr. No. 1 & 1.i. raised before him with regard to challenge to the assessment order for non-issue of valid notice u/s 143(2) of the Act.*

*i. In doing so, the ld CIT(A) erred in relying on sec. 292BB of the Act without appreciating that non-issue of notice u/s 143(2) of the Act subsequent to the filing of return is a jurisdictional defect which cannot be cured even if the proceedings were attended by the appellant.*

*2. The Id. CIT(A) erred in confirming the addition in respect of seized bullion of Rs. 91490/- u/s 69 and seized cash of Rs.470000/- u/s 68 of the Act as unexplained.*

*Your appellant, therefore, submits that the order under appeal be quashed and in alternative the addition so made be deleted.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : during the search and seizure operation carried out in case of Rajkumar KD Agarwal on 13.06.2014 by Dy. Director of Income Tax (Investigation) [DDIT(Inv.)], Unit 3(3), Delhi certain incriminating material was found and seized from the premises and in the post search enquiries it has come on record that accommodation entries were provided to various beneficiaries by the group for commission in order to evade the payment of tax. The assessee's residence was also covered under search under section 132 of the Income Tax Act, 1961 (for short 'the Act'). On the basis of incriminating material the case of the assessee was centralized to the charge of DDIT, Central Circle, Mumbai. Return of income filed by the assessee for the year under consideration declaring total income of Rs.1,37,170/- was subjected to scrutiny and necessary notices under section 142(1) & 143(2) were issued on 13.06.2016 and the assessee filed necessary submissions. During the search a cash of Rs.4,70,000/- and jewellery/bullion of Rs.91,490/- was found from the locker No.91 of Central Bank of India maintained by the assessee. Declining the contentions raised by the assessee, the Assessing Officer (AO)

made addition of Rs.4,70,000/- and Rs.91,490/- being the cash credit and unexplained investment respectively and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

### **Ground No.1**

5. At the very outset, the Ld. A.R. for the assessee challenged the assessment order for want of issuance of valid notice under section 143(2) of the Act.

6. However, on the other hand, the Ld. D.R. for the Revenue stated that the notice was duly issued and served upon the assessee and also referred to para 6.1 and 6.3 of the impugned order passed by the Ld. CIT(A).

7. The Ld. A.R. for the assessee to support his contention that no valid notice under section 143(2) was issued drew our attention towards notice dated 30.12.2015 available at page 12 of the paper book which was issued under section 143(2) of the Act.

Furthermore, the Ld. A.R. for the assessee drew our attention towards notice dated 13.06.2016 issued under section 142(1) of the Act available at page 14 to 16 of the paper book. Apart from the notice dated 13.06.2016 issued under section 143(2) of the Act no other notice issued under section 143(2) as recorded by the AO in para 6 of the order is there on the record.

8. It is also not the case of the Revenue that two notices under section 143(2) one dated 30.12.2015 brought on record by the assessee at page No.12 of the paper book and another alleged notice dated 13.06.2016 referred in para 6 of the assessment order were issued. There was only one notice issued under section 143(2) by the AO which is prior to filing of the return of income filed by the assessee i.e. 30.03.2016. So it is proved on record that no notice under section 143(2) was issued by the AO to the assessee after filing of the return of income by the assessee on 30.03.2016.

9. Factum of not issuing notice under section 143(2) is also proved from para 5.3 recorded by the Ld. CIT(A) wherein he has recorded that “in the letter filed by the assessee it is nowhere contended that no notice under section 143(2) was issued or served upon the assessee. On the contrary the entire reply of the assessee is with reference to the notices dated 30.12.2015 under section 143(2) and 142(1) were issued by the AO and as such the provisions of section 292BB are applicable to this case and no further deliberation is required”. The AO in para 6 of the assessment order categorically recorded that the notice under section 143(2) of the Act was issued to the assessee on 13.06.2016 and was duly served.

10. We are of the considered view that when the AO has failed to comply with the statutory requirements to proceed with the assessment to be framed under section 143(3) of the Act i.e. issuance of the notice under section 143(2), this was a legal issue before the Ld. CIT(A) and he was required to decide the same even if this contention has not formed part of the reply filed by the assessee with the AO and section 292BB is not applicable to the proposition mooted out by the Ld. CIT(A). Moreover, in the instant case it is not the case that the notice was not served upon the assessee or not served upon the assessee in time or served upon him in an improper manner, rather no notice has ever been issued to the assessee under section 143(2) of the Act.

11. So in view of what has been discussed above, we are of the considered view that assessment framed by the AO without issuance of the notice under section 143(2) is not sustainable in the eyes of law, hence quashed without entering into the merits of the case.

11. Resultantly the appeal filed by the assessee is allowed.

**Order pronounced in the open court on 10.11.2023.**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 10.11.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.