

**THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA No. 5363/Del/2017  
(Assessment Year: 2012-13)

M/s. Kevin International, C/o. Balesh Bhargava-Adv, 56, Niranjani Akhara, Mayapur, Haridwar (Appellant)	Vs. Dy. CIT, Circle, Haridwar	(Respondent)
<b>PAN: AAJFK4514C</b>		

Assessee by :	Shri. K. K. Juneja, Adv
Revenue by:	Smt Poonam Sharma, Add. CIT

Date of Hearing	11/12/2023
Date of pronouncement	22/12/2023

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No. 5363/Del/2017 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)- Dehradun, [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No.187/CIT(A)/DDN/2015-16 dated 29.05.2017 against the order of assessment passed u/s 143(3)/ 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.03.2015 by the Dy. CIT, Circle-Haridwar (hereinafter referred to as 'ld. AO').

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

*"1. That the order passed by the Ld. Authorities below are against the law and on fact of the case.*

*2. That Ld. Authorities below are not justified in passing and confirming the order U/s 143(3)/144 of the I.T. Act 1961 without considering the facts on record.*

3. That the Ld. Authorities below are not justified in rejecting the claim of deduction u/s 80IC of the L.T. Act 1961 of Rs. 2,82,25,584/- and the confirming the same while the appellant has complied with all the conditions of section 80IC of the I.T. Act 1961 and produced all the relevant documents in support of its claim.

4. That Ld. Authorities below are not justified in disallowing the claim of depreciation f Rs. 3,82,226/- on the fixed assets purchased during the year and also on fixed assets purchased in previous years and confirming the same and ignoring the fact that the assessment of the appellant for the immediate preceding assessment year had also been completed u/s 143(3) of the I.T. Act 1961 on the basis of books of accounts and other documents and claim of depreciation has been allowed thereon.

5. The appellant craves permission to elucidate, add, amend, modify, delete any ground or grounds of appeal before the disposal in the interest of substantial justice."

3. The assessee has raised the following additional grounds on 10.10.2023 which reproduced as under:-

"1. On the facts and circumstances of the case and in law, the Id. ITO-2(2) Roorkee has issued the notice u/s.143(2) dt.12.08.2013 who was not having pecuniary jurisdiction to for the year under appeal ie. A.Y.2012-13, since returned income' shown at Rs.23,73,025/- as per CBDT Instruction No. 1/2011 dated 31.01.11 which is binding on IT authorities u/s.119; An issue of notice u/s. 143 (2) dated 12-08-2013 BY 'non jurisdictional ITO', whereas the Assessment have been completed u/s 143(3)/144 dated 31-03-2012 by Dy. Commissioner of Income Tax Circle Haridwar is void ab-initio, invalid, bad in law, non-est and the same is liable to be quashed."

2. On the facts and circumstances of the case, in the absence of issue of the statutory valid notice u/s. 143 (2) by the ITO, and no notice u/s 143(2) has been issued by the Jurisdictional Dy. Commissioner make the entire proceedings and passing of the assessment order is unwarranted and illegal."

4. Since the additional grounds raised by the assessee are legal issues and they go to the root of the matter and facts relevant for adjudication of those grounds are already on record, we are inclined to admit those additional grounds. We deem it fit to address the additional grounds first.

5. We have heard the rival submissions and perused the materials available on record. The assessee is a partnership firm engaged in the business of manufacturing electronic and electrical items. The return of income for AY 2012-13 was furnished by the assessee on 27.09.2012 declaring total income

of Rs. 23,73,025/- after claiming deduction u/s 80IC of the Act for Rs. 2,82,25,584/-. The assessee is situated in Roorkee, Haridwar District. The return of income was filed by the assessee with ITO, Ward—1(3)(4), Roorkee. This jurisdiction of the AO is apparently based on Permanent Account Number (PAN) allotted to the assessee. Accordingly, this jurisdiction is PAN based jurisdiction. Since the Central Board of Direct Taxes (CBDT) u/s 119 of the Act had issued instructions of the subordinate authorities vide Instruction No. 1/2011 dated 31.01.2011 which states that non-corporate assessees who have filed their returns having taxable income of more than 15 lakhs would be assessed only by authority in the rank of Assistant Commissioner and Deputy Commissioner (ACIT/ DCIT) and not by Income Tax Officer (ITO). Since the assessee is situated in a Mofussil area and having income more than 15 lakhs (assessee income is Rs. 23,73,025/- as per return of income), the jurisdiction of assessee for issuance of statutory notices and framing of assessment would be with ACIT/ DCIT and not with ITO. In the instant case, preliminary notice u/s 143(2) of the Act selecting the case of the assessee for scrutiny was issued on 12.08.2013 by the ITO, Ward-1, Roorkee. This notice is enclosed at page 13 of the paper book filed by the assessee. Later the Id ITO on realizing the fact that he does not possess jurisdiction over the assessee and in line with the CBDT Instruction dated 31.1.2011 referred supra, transferred the case of the assessee together with few other assessees to ACIT, Circle Haridwar, by way of letter dated 12.09.2013. The evidence to this effect is enclosed at page 14 of the paper book. Thereafter the Id DCIT started the scrutiny assessment proceedings on the assessee by issuing notice u/s 142(1) of the Act calling for various details from the assessee.

6. From the above, it is evident that as per the CBDT Instruction 1/2011 dated 31.01.2011, the moment the return of income has been filed by the assessee disclosing taxable income more than 15 lakhs or 20 lakhs for Mofussil and metro areas respectively, as the case may be, the scrutiny notice u/s 143(2) of the Act could be issued only by the authority in the rank of ACIT/ DCIT and not by ITO. In this regard, the Id DR vehemently argued that notice

u/s 143(2) of the Act was issued under the Computer Assisted Selection of Cases for Scrutiny (CASS) and not manually by any officer of the department. Even if this argument of the Id. DR is to be appreciated and accepted, still it is bounden duty on the part of the Id DCIT to have issued notice u/s 143(2) of the Act within the prescribed time provided in the statute after having assumed jurisdiction over the assessee, which is admittedly not done in the instant case by the Id DCIT. Hence, it could be safely concluded that the entire scrutiny assessment framed u/s 143(3)144 of the Act on 24.03.2015 by DCIT, Circle Haridwar without issuing a valid and legal notice u/s 143(2) of the Act become void abinitio and deserves to be quashed.

7. The Id DR before us stated that department would be rescued by the provisions of section 292BB of the Act and that the assessee would be precluded from raising this preliminary ground in the second appellate proceedings. We are unable to comprehend ourselves to agree to this argument of the revenue in as much as in our considered understanding, the provisions of section 292BB applies only in case of improper service/ wrong service of notice and not to objection not taken by the assessee during assessment proceedings. Section 292BB of the Act does not save the defect of non-issue of valid notice u/s 143(2) of the Act by the jurisdictional officer. Hence, in the absence of valid and legal notice issued by the jurisdictional officer, the assessment framed on the assessee requires to be quashed. This view of ours is further fortified by the following decisions:-

- a) Decision of the Hon'ble Punjab and Haryana High court in the case of CIT v. Cebon India Ltd reported in 347 ITR 583 (P&H).
- b) Decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Greater Noida Industrial Development Authority reported in 347 ITR 14 (All).
- c) Decision of the Hon'ble Madras High Court in the case of CIT Vs. Gitson Engineering Company reported in 370 ITR 87 (Mad).
- d) Decision of Hon'ble Supreme Court in the case of CIT Vs. Laxman Das Khadelwal reported in 266 taxman 171 (SC).

8. Respectfully following the aforesaid decisions and in view of the fact that notice u/s 143(2) of the Act has been issued in the instant case by an officer not having jurisdiction over the assessee and also in view of the fact that the new incumbent i.e. DCIT, Haridwar had not issued any further notice u/s 143(2) of the Act within the prescribed time thereon, we have no hesitation to quash the entire assessment proceedings for want of jurisdiction. Accordingly, additional grounds raised by assessee are allowed.

9. Since the entire assessment is quashed on legal issue, the other grounds raised by the assessee need not be gone into and they are left open.

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

Order pronounced in the open court on 22/12/2023.

-Sd/-  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 22/12/2023  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi