

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.5539/Del/2016
[Assessment Year : 2009-10]**

Focus Heights Pvt.Ltd., (Formerly known as Mirage Homes Pvt.Ltd.), H.No.F-12, Ground Floor, Khasra No.570, Chhatarpur Extension, Pole No.1106, New Delhi-110074. PAN-AADCM1678C	vs	ACIT, CC-17(Old), CC-15(New), Jhandewalan, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Vikas Jain, Adv., Ms. Shrawani, Adv. & Shri Mohammad Imran Ahmed, Adv.	
Respondent by	Shri Vivek Kumar Upadhyay, Sr.DR	
Date of Hearing	15.01.2024	
Date of Pronouncement	23.01.2024	

ORDER

PER KUL BHARAT, JM

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-XXVI, New Delhi dated 30.08.2016 for the assessment year 2009-10. The assessee has raised following grounds of appeal:-

1. *“That on the facts and circumstances of the case and the provisions of law, the Ld CIT Appeals has failed to appreciate that the assessment order passed by the Ld AO u/s 143(3) is illegal, time barred and hence, bad in law and without jurisdiction. The additions made/sustained are unjust, unlawful and arbitrary and are made against the principles of natural justice.*
2. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT Appeals has failed to appreciate that the notice issued u/s 143(2) is time barred and hence, illegal and bad in law and*

therefore, the assessment order passed thereof, is also illegal, bad in law and without jurisdiction.

3. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (Appeals) has failed to appreciate that the assessment order u/s 143(3) passed by Ld AO is illegal and bad in law as the same has been passed without obtaining the prior approval of the ADIT/JCIT as mandated u/s 153 D.*
4. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeals has failed to appreciate that there being no incriminating material found during the search, the additions made and sustained are bad in law and without jurisdiction.*
5. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeals has erred in sustaining the addition of Rs.1,93,569/- in respect of depreciation of Gym Equipments which were installed in the office and used for business purposes. The evidences filed and available on records have been wrongly and illegally ignored and rejected.*
6. *That the Ld.CIT Appeals has erred in ignoring the explanations given, evidences and materials placed and available on record. The same have not been properly considered and judicially interpreted and the same do not justify the additions sustained.*
7. *That the Appellant craves the right to amend, append, delete any or all grounds of appeal.”*

2. At the outset, Ld. Counsel for the assessee contended that the impugned assessment order is barred by time. He submitted that the assessee had taken objection of limitation at the first instance before the Assessing Officer(“AO”). He drew our attention to the letter dated 24.12.2010 enclosed with the Paper Book. Ld. Counsel for the assessee submitted that on 30.06.2022, the Tribunal had directed the Revenue to produce the notice issued u/s 143(2) of the Income Tax Act, 1961 (“the Act”). He further submitted that as per the record, the only notice

dated 21.10.2010 was issued. Ld. Counsel for the assessee further filed a brief synopsis. For the sake of clarity, the relevant contents of the brief synopsis are reproduced a sunder:-

“A search operation was conducted at the premises of the assessee on 20.10.2008. Pursuant to search return of income for AY 2009-10 was filed on 30.09.2009 vide receipt No. 97110950300909. Subsequently, notice u/s 142(1) was issued on 29.03.2010. In response to notice u/s 142(1), the assessee had filed a letter stating that he already filed a Return of Income on 30.09.2009.

As per Section 143(2) of the Income Tax Act, 1961, the time limit to issue notice was six months from the end of the assessment year in which the return of income was filed. Thus, the last date to issue notice u/s 143(2) was 30.09.2010.

Subsequently, notice u/s 143(2) of the Act was issued on 21.10.2010 to assessee. Another notice u/s 142(1) along with a questionnaire was also issued on the same date to the assessee.

Upon receipt of notice u/s 143(2) dated 21.10.2010, the assessee had filed an objection to the AO vide letter dated 24.12.2010 that the notice issued u/s 143(2) was time-barred and beyond limitation.

However, the assessment order dated 31.12.2010 had erroneously recorded that notice u/s 143(2) was issued to the assessee on 29.03.2010.

Upon appeal, CIT(A) had decided this issue in favour of the Department. However, the assessee had appealed on this issue before Hon'ble ITAT relying upon the judgement of the Hon'ble Supreme Court in CIT vs Laxman Das Khandelwal (2019) 417 ITR 325 and the decision of a coordinate bench of this Hon'ble Tribunal in Roshan Lal Verma vs DCIT, Central Circle II, ITA No. 1934/Del/2015.”

3. On the other hand, Ld. Sr. DR for the Revenue fairly considered the fact that there is no notice dated 29.03.2010 available on record as mentioned in the assessment order.

4. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that specific direction was issued to the Revenue for furnishing the notice issued u/s 143(2) of the Act. In pursuance to the direction dated 30.06.2022, Ld.Sr.DR for the Revenue has produced assessment record. We have perused the assessment record. We find that there is no notice dated 29.03.2010, is available on record. This fact is fairly admitted by Ld. Sr. DR for the Revenue. Therefore, it can be safely inferred that the only notice u/s 143(2) of the Act was issued on 21.10.2010. However, as per record, in response to the notice u/s 142(1) of the Act, the assessee had filed return of income on 30.09.2009, declaring NIL income. Therefore, looking to the facts of the present case, we find merit into the contention of the assessee that notice u/s 143(2) dated 21.10.2010 is barred by time. The assessment order in consequence of time barred notice u/s 143(2) of the Act, is thus bad in law. Thus, grounds raised by the assessee are allowed since we have allowed the legal ground of the appeal of the assessee regarding assessment order being barred by limitation. The other grounds raised by the assessee become academic only.

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

Order pronounced in the open Court on 23rd January, 2024.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI