

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 320/Kol/2022
Assessment Year: 2008-09

M/s. Osian Stock Broking Pvt. Ltd. Unit No. 1501, 15 th Floor Diamond Heritage 16, Strand Road Kolkata - 700001 [PAN: AAACO3479N]	Vs	Income Tax Officer, Ward - 6(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Pransukha, FCA
Revenue by :	Shri Manas Mondal, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 13/12/2023
घोषणा की तारीख /Date of Pronouncement: 16/01/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 17/05/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2008-09.

2. Though the assessee has raised several grounds of appeal, at the outset, the Id. Counsel for the assessee submitted that the case of the assessee is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the ITAT in the assessee's own case for Assessment Year 2009-10, wherein the Tribunal while dealing with the issue, that whether the date on which the Assessing Officer has signed the notice u/s 143(2) or the date on which the notice is actually sent to the assessee via e-mail, has to be considered for the purpose of determining

the date of issuance of notice before the prescribed time limit, the Tribunal, held as under:-

“4. At the outset, the ld. counsel for the assessee has submitted that since the question relating to the issue of notice u/s 143(2) of the Act hits at the very validity of the assessment order, therefore, the said issue may be adjudicated first. The ld. counsel has further submitted that the last date for issue of notice u/s 143(2) was on 30.09.2015. He has further submitted that though the notice has been shown to be signed on 30.09.2015 itself however, the same was sent at the email address of the assessee 03.11.2015. He, therefore, has submitted that by mere signing of the notice by the concerned Assessing Officer, it would not mean that the same was issued on the said date. That the date of issue of the said notice would be the date on which the email was sent on 03.11.2015. He, in this respect, has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of 'Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.' in WPA No.4382 of 2022 order dated 12.04.2022.

5. The ld. DR, on the other hand, has submitted in this case the notice for reopening of the assessment u/s 148 of the Act was issued within the time. That once the notice u/s 148 of the Act was issued, there was no relevance of delayed issuance of notice u/s 143(2) of the Act. He has further submitted even otherwise the identity of issuance of notice will be the date on which the Assessing Officer signed the said notice which was on 30.09.2015 and hence it cannot be said that the notice u/s 143(2) of the Act was time barred.

4. We have heard the rival contentions and gone through the records. The notice in this case has been shown to be signed on 30.09.2015, however, the same was emailed to the assessee on 03.11.2015. The Hon'ble Jurisdictional Calcutta High Court in the case of Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.' (supra) considering the facts that the notice u/s 148 of the Act was signed on March 31 2021, however, it was actually uploaded for communication on April 1 2021 at 3 a.m. thereby treating the 1st April 2021 as issuance of impugned notice u/s 148 of the Act, quashed the reassessment proceedings holding that the provisions of Finance Act 2021 would be applicable from 01.04.2021 and therefore, before issuance any notice u/s 148 of the Act, the Assessing Officer was required to observe the statutory formalities u/s 148A of the Act. In the case in hand also, the notice was set in motion only on 03.11.2015, in our humble view, signing of the notice would not constitute as issuance of notice. The date of issuance of notice would be when it is set in motion for delivery to the assessee. So far as the contention of the ld. counsel that the issue of notice u/s 143(2) of the Act within the prescribed period in relation to the reassessment proceedings u/s 147/148 was not mandatory, we find that the issue has been settled by the various High Courts holding that even in the case of reassessment proceedings u/s 147/148

of the Act, the issuance of notice within the specified period u/s 143(2) of the Act is mandatory and that the Assessing Officer cannot assume jurisdiction u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act and this defect cannot be cured by taking recourse to the deeming fiction provided u/s 292BB of the Act. Reliance in this respect can be placed on the decision of the Delhi High Court in the case of PCIT vs. Shree Jai Shiv Shankar Traders Pvt. Ltd. IT Appeal No.1068 of 2013 dated 18.02.2015; Hon'ble Madras High Court in the case of Sapthagiri Finance & Investment vs. ITO reported in (2013) 90 DTR (Mad) 289; Hon'ble Delhi High Court in the case of DIT vs. Society for Worldwide Interbank Financial Telecommunications reported in (2010) 323 ITR 249 (Del); Hon'ble Allahabad High Court in the case of CIT vs. Solarpur Cold Storage P Ltd (2014) 50 Taxmann.com 105 (All); Hon'ble Allahabad High Court in the case of [CIT vs. Rajeev Sharma](#) reported in [2011] 336 ITR 678 (All.). Since the Assessing Officer did not issue notice u/s 143(2) of the Act within the specified time period, therefore, the Assessing Officer could not have assumed jurisdiction to frame the assessment u/s 143(3) of the Act and, therefore, the impugned assessment order is bad in law and the same is accordingly held to be non-est.

Since we have allowed the appeal of the assessee on the aforesaid legal ground, therefore, at this stage, the other grounds raised by the assessee have been rendered academic in nature."

3. As the facts of the case on hand are similar, consistent with the view taken by us while deciding the appeal of the assessee for Assessment Year 2008-09, we allow the legal ground raised by the assessee which renders the assessment order *non-est* and bad in law. Other grounds raised by the assessee are rendered academic in nature.
4. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 16th January, 2024 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 16/01/2024

**SC SPB*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata