

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA 'A' BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.752 & 753/Kol/2023
Assessment Year: 2009-10**

Blueview Commodities Pvt. Ltd. 23/1, Principal Khudiram Bose Road, Kolkata-700006. PAN: AADCB 5974 E	vs	ITO, Ward-7(4), Kolkata
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Amit Agarwal, Advocate
Revenue by : Shri B.K. Singh, JCIT, Sr. DR

Date of Hearing : 03.04.2024
Date of Pronouncement : 21.05.2024

ORDER

PER SONJOY SARMA: JM

The captioned appeals are preferred by the assessee against the two separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 22.05.2023 for the AY 2009-10. ITA No. 752/Kol/2023 issues are relating to quantum of appeal on which assessment order was framed u/s 147/144 of the Act and ITA No. 753/Kol/2023 issues are relating to consequential penalty imposed u/s 271(1)(c) of the Act in relation with assessment order framed u/s 147/144 of the Act. Since both the appeals being inter connected with each other they were heard together for the sake of convenience it would appropriate to decide them by this common order.

2. First we take up ITA No. 752/Kol/2023.

3. Assessee is a company who is stated to have electronically filed its return of income for A.Y. 2009-10 on 27.09.2009 declaring income of Rs. Nil. AO has noted that notice u/s 148 of the Act was issued on 30.03.2016 after recording reasons. Thereafter, the case of the assessee was taken up for scrutiny and consequently, assessment was framed u/s 147/144 of the Act vide order dated 18.10.2016 and the total income was determined at Rs. 20,00,000.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 22.05.2023 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), Assessee is now in appeal and has raised the various grounds whereby assessee is challenging the validity of reassessment u/s 147/148 of the Act and on merits challenging the addition made. Since the grounds raised by assessee are argumentative, the same are not reproduced herein under.

5. The case file reveals that there is a delay of 2 days in filing of appeal. Assessee filed condonation application explaining the reasons for delay. Considering the submissions made by assessee, we condone the delay and admit the appeal.

6. Before us, Learned AR submitted that notice u/s 143(2) was not issued and served on the assessee. He submitted that the issuance of notice u/s 143(2) is a mandatory requirement and the non issuance of notice would result into the assessment order being void-ab-initio. To verify the contention of the assessee about the non-issuance of notice u/s 143(2) of the Act brought to our

notice by showing assessment order there was nowhere stated about issuance of such notice to assessee while framing the assessment order by AO. At the time of hearing, Learned DR after perusing the assessment order fairly admitted that the notice u/s 143(2) of the Act was not issued and served on the assessee. He further submitted that non service of notice u/s 143(2) of the Act is a curable defect u/s 292BB of the Act. On the other hand, learned AR submitted that Section 292BB of the Act does not give the power to condone the failure or delay in issuing the statutory notice required to be issued u/s 143(2) of the Act and to support his aforesaid contention, he placed reliance on the decision of Hon'ble Delhi High Court in the case of PCIT vs. M/s. Consortium Nussli Comfort Net in ITA No.63/2022 order dated 25th March, 2022.

7. We have heard the rival submissions and perused the material available on record. The assessee is challenging the validity of the assessment framed u/s 147/144 of the Act. It is the contention of the assessee that the assessee has not been issued and served notice u/s 143(2) of the Act which is a mandatory requirement. Before us, Learned AR has submitted that the notice u/s 143(2) of the Act was never issued or served on the assessee. Revenue has not placed any material on record to controvert the aforesaid submissions of Learned AR. We find that Hon'ble Delhi High Court in the case of PCIT vs. Silver Line (2016) 383 ITR 455 (Delhi) has held that reassessment order cannot be passed without compliance with the mandatory requirement of notice being issued by the Assessing Officer to the assessee u/s 143(2) of the Act. It has held that the requirement of issuance of such notice is a

jurisdictional one and it goes to the root of the matter as far as the validity of the assessment proceedings u/s 147/144 of the Act is concerned. It has further held that the failure of the AO, in reassessment proceedings, to issue notice u/s 143(2) of the Act prior to the finalizing the reassessment order cannot be condoned by referring the Section 292BB of the Act. Before us, Revenue has not pointed any contrary binding decision in its support. We, therefore, after relying on the decision of Hon'ble High Court of Delhi in the case of Silver Line (supra) hold that since the notice u/s 143(2) of the Act was not issued to the assessee by the AO, the reassessment order is bad in law. We accordingly set aside the reassessment. Since the entire assessment is quashed, we find no reason to adjudicate the appeal on other grounds as they have been rendered academic. Thus, the ground of assessee is allowed.

8. Since we allowed the quantum of appeal being ITA No. 752/Kol/2023 filed by the assessee. Therefore, penalty levied as against the re-assessment order has no legs to stand. Thus, the grounds challenged before us against the levied of penalty proceedings in ITA No. 753/Kol/2023 is hereby allowed.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 21.05.2024.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 21.05.2024.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Blueview Commodities Pvt. Ltd.
2. The Respondent: ITO, Ward-7(4), Kolkata.
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata