

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष

Before

DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 1028/KOL/2023
Assessment Year: 2010-11

ITO, Ward-27(3), Haldia.....Appellant

Vs.

Goutam Guria.....Respondent
[PAN: AFLPG 9942 B]

Appearances:

Department represented by: Arup Chatterjee, Addl. CIT.

Assessee represented by: None.

Date of concluding the hearing : May 8th, 2024

Date of pronouncing the order : June 5th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short 'AY') 2010-11 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 31.07.2023 arising out of the assessment order framed u/s 144/147 of the Act dated 11.12.2017.

2. The brief facts of the case of the assessee is that the assessee being a commission agent of betel leaves, filed its return of income for AY 2010-11 physically on 28.03.2011. The case of the assessee was reopened by the

Assessing Officer (in short ld. 'AO') on the basis of information received about huge cash deposit in his account. A show cause letter was issued and served upon the assessee asking the assessee as to why the said deposit should not be considered as sales turnover from the business and why Rs.23,18,994/- calculated @8% of the total sales turnover should not be considered as his income from such turnover. In response to the show cause notice, no reply was received from the assessee, accordingly, notice u/s 148 of the Act was issued. It is the case of the assessee that in response to the notice the assessee did not file any return of income. Therefore, after issuing a notice u/s 142(1) of the Act, the AO completed the assessment u/s 147 read with Section 144 of the Act on the basis of material available on the record and assessed the income after adding profit at the rate of 8% of the sales turnover.

Aggrieved by the said order, the assessee has preferred appeal before ld. CIT(A) challenging the validity of issuance of notice. Ld. CIT(A) has observed that there can be no doubt that the AO is required to issue statutory notice u/s 143(2) of the Act considering the legal proposition of law and held that assessment/reassessment made by the AO in the case in hand is invalid and illegal and assessment order passed by the AO has also been declared annulled. Being aggrieved by the said order, the Department has preferred the present appeal on the following grounds:

“1. That the Ld. CIT(A) has erred in accepting assessee's submission that Income- tax Return was filed in response to Notice u/s 148 of the Act, which is incorrect and suffers from perversity of findings of fact.

2. That the Ld. CIT(A) has erred in not considering the fact that when Income-tax Return was not filed in response to Notice u/s 148 of the Act, the Assessing Officer was right in his action in not issuing Notice u/s 143(2) of the Act.

3. That the Lt. CIT(A) has erred in not considering the fact that procedures as enumerated for reopening a case u/s 147 of the act and completion of assessment thereof has been scrupulously followed by the Assessing Officer and as such the assessment order u/s 144/ 147 of the Act does not deserve to be annulled.

4. That provision of the Section 143(2) of the Income-tax Act stipulates that the notice u/s 143(2) of the Act can only be issued on submission of a valid

Income-tax Return by assessee. The decision of Ld. CIT(A) has challenged the constitutional validity of the provisions of Section 143(2) of the Income tax Act, 1961 and hence the case falls within the ambit of exceptional clause no. 10(a) of the CBDT Circular No. 3/2018 dated 11/07/2018.

5. That the appellant craves leave for addition, modification, deletion of any of the grounds taken, during the appellate stage.”

3. The Ld. D/R has submitted that ld. CIT(A) has erred in not considering the fact that the procedures as enumerated for reopening a case u/s 147 of the Act as the provisions of Section 143(2) of the Act stipulates that the notice u/s 143(2) of the Act can only be issued on submission of valid income tax return by the assessee.

4. Contrary to that it has been argued by the ld. Counsel for the assessee that order passed by the ld. CIT(A) is well versed and reasoned order based on the legal propositions of the law. According to us, the assessee has already submitted his return of income for AY 2010-11 within time.

5. On the rival submission of the Counsels of the respective parties, we have perused the order of the ld. CIT(A) and find that the order passed by ld. CIT(A) on the only issue that the order passed by the AO u/s 144 read with Section 147 of the Act is illegal and invalid for want of service of any notice u/s 143(2) of the Act. We have perused the order of the ld. CIT(A) and find that ld. CIT(A) has discussed the law as well as the facts of the assessee. It is an admitted fact that the assessee has filed his return physical on 28.03.2011 for the AY 2010-11. It has further been opined by the ld. CIT(A) that the AO has not mentioned anywhere in his order the date of issuance of the notice u/s 148 of the Act and served upon the assessee. But he had mentioned the notice u/s 143(2) of the Act was issued on 13.11.2017, but not mentioned the date of service of such notice u/s 142(1) & 148 of the Act to the assessee. Ld. CIT(A) has discussed the law laid down in the case of *Alpine Electronics Asia Pvt. Ltd. vs. Director General of Income Tax* reported in [2012] 18 taxmann.com 246 (Delhi) wherein the Hon'ble High Court has observed and held as under:

“23. The requirement to comply with Section 143(2) of the Act in the block assessment proceedings and the effect of failure to issue notice u/s. 143(2)

was examined by the Supreme Court in Asst. CIT v. Hotel Blue Moon [2010] 321 1TR 362/188 Taxman 113 and it was observed as under:

“Clause (b) of section 158BC by referring to section 143(2) and (3) would appear to imply that the provisions of section 143(1) are excluded. But section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities should issue notice under section 143(2). However, if an assessment is to be completed under section 143(3) read with section 158BC, notice under section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice u/s. 143 (2) cannot be a procedural irregularity and the same is not curable and therefore, the requirement of notice under section 143(2) cannot be dispensed with’

24. Section 143(2) is applicable to proceedings under section 147/148 of the Act. Proviso to Section 148 of the Act protects and grants liberty to the Revenue to serve notice under Section 143(2) of the Act before passing of the assessment order for returns furnished on or before 1st October, 2005. In respect of returns filed pursuant to notice under section 148 of the Act after 1st October, 2005, it is mandatory to serve notice under section 143(2) of the Act, within the stipulated time limit” (emphasis supplied)”

6. Considering the facts of the case as well as law laid down, we do not find any merit of the appeal filed by the Department. Accordingly, the same is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 05th June, 2024.

Sd/-

[Manish Borad]
Accountant Member

Dated: 05.06.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Copy of the order forwarded to:

1. **ITO, Ward-27(3), Haldia.**
2. **Goutam Guria, C/o- Manindra Guria, Khanchi, Tamluk, Purba Medinipur, West Bengal, 721643.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata