

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.3478/Del/2023  
(ASSESSMENT YEAR 2013-14)**

Panna Lal Goel House No.1464 Sector-13 Haryana PAN:ABKPG0482H <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-2 Bhiwani <b>(Respondent)</b>
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Assessee by	Shri Suraj Bhan Nain, Adv. Shri Mahfuzur Rahman, Adv.
Respondent by	Shri Vivek Vardhan, Sr. DR
Date of Hearing	20/05/2024
Date of Pronouncement	26/06/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 10/10/2023 for Assessment Year 2013-14.

**2.** The brief facts of the case are, the assessee filed original return of income declaring an income of Rs.1,71,310/- + A. I. Rs.3,70,000/- for rate purposes and the same was processed u/s 143(1) of the Income Tax Act, 1961 ('the Act' for short) accepting the return of income filed by the assessee. Subsequently, the Assessing Officer received information that assessee had made sales to Dinesh Chandra Aggarwal R Infracon Pvt. Ltd. amounting to Rs.34,42,772/- which was not declared by the assessee in his return of income for the current Assessment Year 2013-14. Since, the above said sales were not declared by the assessee, he formed an opinion that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Accordingly, the case was reopened u/s 147 of the Act by issue of notice u/s 148 of the Act after obtaining proper approval from the Pr. Commissioner of Income Tax, Hisar. In response, the assessee filed his return of income on 13/11/2019 declaring the income of Rs.1,71,310/-.

**3.** The Assessing Officer by relying on the statement recorded in the search proceedings initiated u/s 132 of the Act in the case of DRA Group of Ahmedabad on 21/10/2016. Accordingly, several

notices u/s 142(1) were issued to the assessee along with questionnaire asking for information. In response, the assessee submitted that the assessee is doing business of supply of stone blast, Bajri, Crusher and allied products, the income of the assessee was declared u/s 44AD of the Act. After considering the submissions of the assessee, the Assessing Officer rejected the same and proceeded to make the addition of Rs.34,42,772/-.

**4.** Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and after considering the submissions of the assessee, the ld. CIT(A) sustained the additions made by the Assessing Officer.

**5.** Aggrieved, the assessee is in appeal before us raising following grounds of appeal:-

*"1. That having regard to the facts and circumstances of the case and in law, the impugned assessment order passed u/s. 143(3)/148 of the Income Tax Act 1961 dated 24.12.2019 for A. Y. 2013-14 by the Ld. Assessing Officer (manually dispatched) neither contain any Document Identification Number (DIN) nor any reason for non-issuance of DIN in the body of the impugned assessment order, which is in violation of the CBDT Circular No. 19/2019 dated 14.08.2019, and, hence, as per para 4 of the CBDT circular, the impugned assessment order without a DIN is 'invalid and deemed to have never been issued'.*

*2. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the impugned assessment order u/s. 143(3)/148 of Income Tax Act 1961 (the Act) passed by Ld. Assessing officer, without issuing mandatory notice u/s. 143(2) of the Act being prerequisite condition for assuming jurisdiction*

to make reassessment and, therefore, the impugned assessment order is void-ab-initio and deserves to be quashed.

3. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the assumption of jurisdiction by the Ld. Assessing Officer under section 147 of the Income Tax Act 1961, which is bad in law as much as provisions of section 153C are applicable in this case and not provisions of section 147 of the Act.

4. That having regard to the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the assumption of jurisdiction by the Ld. Assessing Officer under section 147 of the Income Tax Act 1961 which is contrary to the provisions of section 147 to section 151 of the Income Tax Act 1961.

5. That having regard to the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 34,42,772/- made by the Ld. Assessing Officer on account of alleged accommodation entries of sale to M/s Dineshchandra R. Aggarwal Infracon Pvt. Ltd. without properly appreciating facts of the case.

5.1 That having regard to the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 34,42,772/- made by the Ld. Assessing Officer based on the alleged statement of a director of M/s Dineshchandra R. Aggarwal Infracon Pvt. Ltd. without giving proper opportunity to the assessee to rebut the contention of the director of M/s Dineshchandra R Aggarwal Infracon Pvt. Ltd. and an opportunity of cross examination of the party.

5.2 Without prejudice to the above and without accepting, even for arguments sake, if it is assumed that the assessee had not made actual sales to M/s Dineshchandra R. Aggarwal Infracon Pvt. Ltd. but provided accommodation entries only, then in such case also, the prevailing commission @ 1% to 2% of such entry amount would only be income liable to be charged to tax and, therefore, Ld. Assessing Officer and Ld. Commissioner of Income-tax (A) erred in making/confirming the addition of total amount of sales of Rs. 34,42,772/-

6. That the appellant craves the leave to add, modify, amend, and delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

**6.** At the time of hearing, the Ld. AR submitted that the Assessing Officer no doubt issued notice u/s 148 of the Act and

collected the return of income from the assessee. In response to notice issued u/s 148 of the Act, he submitted that the Assessing Officer has issued several notices under Sec.142, however, failed to issue notice u/s 143(2) within the prescribed time. In this regard, he submitted the chart of critical dates. For the sake of clarity, it is reproduced below:-

<b>Sr. No.</b>	<b>Date</b>	<b>Particulars</b>
1.	10.03.2014	Return of income for A.Y. 2013-14 filed declaring total income at Rs. 1,71,310/- and agriculture income of Rs. 3,70,000/-, which was processed u/s 143(1) at the returned income.
2.	26.03.2019	Reasons u/s 148(2) were recorded by ITO, Ward-2, Bhiwani for <b>A.Y. 2013-14 (PB Pages 1 &amp; 2)</b> <b>**[However, notice u/s 148 dated 30.03.2019 was issued for A.Y. 2012-13 (PB Page 4)]</b>
3.	06.11.2019	Notice u/s 148 of the Act issued by ITO, Ward-1, Bhiwani for <b>A.Y. 2013-14 (PB Pages 10 &amp; 11)</b>
4.	13.11.2019	The assessee filed Return of income for A.Y. 2013-14 in response to notice u/s 148 declaring total income at Rs. 1,71,310/-. <b>(PB Page 12)</b>
5.	02.12.2019	Notice u/s 142(1) for A.Y. 2013-14 was issued. <b>(PB Pages 13 &amp; 14)</b>
6.	24.12.2019	Assessment order u/s 143(3)/148 of the Act along with Computation was passed and issued notice of demand u/s 156 of the Act. <b>(PB Pages 17 to 23)</b>
7.	24.12.2019	Penalty notice u/s 274 r.w.s. 271(1)(c) of the Act for A.Y. 2013-14 issued, digitally signed at <b>02:24 PM</b> on 24.12.2019. <b>(PB Page 24)</b>
8.	24.12.2019	As informed in RTI order dated 06.07.2021 of ITO, Ward-1, Bhiwani cum CPIO in response to RTI Application <b>(PB Pages 25 to 27)</b> , notice u/s 143(2) of the Act for the A.Y. 2013-14 issued, digitally signed at <b>03:43 PM</b> on 24.12.2019 <b>(PB Page 26)</b> .

**7.** From the above chart, he submitted that the assessee has collected information through RTI order dated 06/07/2021 of Income Tax Officer, Ward-1, Bhiwani and the same is placed on record. In this regard, he submitted that notice u/s 143(2) of the Act was issued at 3.43 P.M. on 24/12/2019 i.e., the date on which the Assessment Order was also passed, therefore, non issue of notice u/s 143(2) is a condition in order to assume jurisdiction to make the assessment u/s 143(3) or 148 of the Income Tax Act. Since, the present order was passed by the AO without jurisdiction the same is void ab-initio.

**8.** On the other hand, the Ld. AR relied on the orders of the lower authorities.

**9.** Considered the rival submissions and material placed on record, we observed that the Assessing Officer completed the assessment u/s 143(3)/148 of the Act on 24/12/2019 and also issued notice u/s 143(2) on 24/12/2019. The information relating to issue of notice u/s 143(2) was obtained by the assessee through RTI application. The RTI order dated 06/07/2021 is placed on record and the relevant order sheet also placed on record. As per

the order sheet dated 24/12/2019, the intimation letter was issued to the assessee, it clearly shows that the notice u/s 143(2) was issued only on 24/12/2019 on the date on which the assessment order u/s147 was passed. Therefore, the Assessing Officer initiated the assessment proceedings without proper jurisdiction. With the above facts on record, we are inclined to treat the assessment order passed u/s 143(3)/148 of the Act as void ab-initio. Accordingly, the same is set aside.

**10.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on 26<sup>th</sup> June, 2024.

Sd/-

**(SUDHIR PAREEK)  
JUDICIAL MEMBER**

Dated: 26/06/2024

*Pk/sps*

Copy forwarded to:

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

Sd/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI