

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1484/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2014-15

Smt. Meenakshi Dhananjai, Plot No.23, Meenakshi Apartments, Sundaram Colony, 1 <sup>st</sup> Main Road, Selaiyur, Chennai-600 073.	v.	International Taxation, Ward-1(1), Chennai.
[PAN: ALFPD 7554 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri P. Murali Mohana Rao, CA (By virtual)
प्रत्यर्थी की ओर से /Respondent by	:	Shri Krishnan Ramaswamy, JCIT
सुनवाईकीतारीख/Date of Hearing	:	30.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.06.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Chennai-16, dated 17.10.2023 for the Assessment Year (hereinafter in short "AY") 2014-15.



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**2.** At the outset, the Ld.AR of the assessee drew our attention to Ground No.6, wherein, assessee has raised a legal issue that even though, the AO has passed Assessment Order dated 31.12.2018 u/s.144 r.w.s.147 of the Income Tax Act, 1961 (hereinafter in short "the Act"), however, he has not issued notice u/s.143(2) of the Act, which vitiates the jurisdiction of the AO to have framed the Assessment Order after re-opening of assessment by issuing notice u/s.148 of the Act dated 28.03.2018.

**3.** The brief facts pertaining to the legal issue are that the assessee is a lady non-resident who had filed her return of income for AY 2014-15 on 20.06.2014 admitting total income of Rs.15,26,790/-. Later, the case of the assessee was re-opened u/s.147 of the Act by issuing notice u/s.148 of the Act on 28.03.2018. Pursuant thereto, the assessee filed a letter dated 10.04.2018 requesting the AO to treat the original return filed on 28.06.2014 as return filed in response to notice u/s.148 of the Act. Thereafter, the assessee also e-filed return of income on 15.10.2018 and thereafter, the assessment was completed by the AO u/s.144 of the Act (*best judgment assessment*) by determining tax liability of Rs.1,42,020/- and observed that "*since, the assessee has deposited a sum of Rs.1,85,03,999/- in the Capital Gain Scheme Account, the impugned difference arrived at Rs.68,17,629/- would be taxable in AY 2017-18*".



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Aggrieved by the aforesaid action of the AO, the assessee filed an appeal before the Ld.CIT(A) with a prayer to annul the assessment, since according to the assessee, it was an invalid assessment, because, the AO didn't issue mandatory notice to assessee u/s.143(2) of the Act before framing the assessment u/s.144 r.w.s.147 of the Act dated 31.12.2018. The Ld.CIT(A) called for the Remand Report from the AO regarding the legal issue of non-issuance of notice u/s.143(2) of the Act; and pursuant to that the AO filed Remand Report by stating that the assessee didn't e-verified the return of income submitted pursuant to notice u/s.148 of the Act, and therefore, the *ibid* return filed itself was non-est and invalid and consequently, the AO was not bound to issue notice u/s.143(2) of the Act. In this regard, it was brought to our notice that the assessee in this case pursuant to notice u/s.148 of the Act, firstly filed letter dated 10.04.2018, wherein, she requested the AO to treat the original return (filed on 28.06.2014) as return filed in response to notice u/s.148 of the Act as well as she *e-filed* a return of income on 15.10.2018. According to the Ld.AR, the assessee tried to *e-verify* the said return, however, the portal of the Income Tax Department showed that no further action is required and referred to Page No.6 of the Paper Book, wherein, the snap shot of the e-filing portal of the Income Tax Department shows that assessee had filed return pursuant to notice u/s.148 of the Act on 15.10.2018 and the portal states "**no further action is warranted**". In such a scenario,



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according to the assessee, it does not lie in the mouth of the AO to say that return of income filed by the assessee is invalid. Moreover, according to the Ld.AR, in this case, it can be seen that the AO had accepted the return filed by the assessee, pursuant to notice u/s.148 of the Act and framed the assessment by making an addition of Rs.1,42,020/-. Therefore, according to the Ld.AR, the AO is estopped from contending in the remand-report that the return e-filed pursuant to notice u/s.148 of the Act, was invalid and for such a proposition, cited the decision of the Hon'ble Supreme Court in the case of Mangalam Publications v. CIT reported in 158 taxmann.com 564 (SC)/[2024] 461 ITR 159 (SC), wherein, the Hon'ble Supreme Court observed as under:

".....43. There is one more aspect which we may mention. Admittedly, the returns for the three assessment years under consideration were not accompanied by the regular books of account. Though under sub-section (9)(f) of Section 139, such returns could have been treated as defective returns by the assessing officer and the assessee intimated to remove the defect failing which the returns would have been invalid, however, the materials on record do not indicate that the assessing officer had issued any notice to the assessee bringing to its notice such defect and calling upon the assessee to rectify the defect within the period as provided under the aforesaid provision. In other words, the assessing officer had accepted the returns submitted by the assessee for the three assessment years under question. At this stage, we may also mention that it is the case of the assessee that though it could not maintain and file regular books of account with the returns in the assessment proceedings for the three assessment years under consideration, nonetheless it had prepared and filed the details of accounts as well as incomings and outgoings of the assessee etc. for each of the three assessment years which were duly verified and enquired into by the assessing officer in the course of the assessment proceedings which culminated in the orders of assessment under sub-section (3) of Section 143. Suffice it to say that a return filed without the regular balance sheet and profit and loss account may be a defective one but certainly not invalid. A defective return cannot be regarded as an invalid return. The assessing officer has the discretion to intimate the assessee about the defect(s) and it is only when the defect(s) are not rectified within the specified period that the assessing officer may treat the return as an invalid return. Ascertaining the defects and intimating the same to the assessee for rectification, are within the realm of discretion of the assessing officer. It is for him to exercise the discretion. The burden is on the assessing officer. If he does not exercise the discretion, the return of income cannot be construed as a defective return. As a matter of fact, in none of the three assessment years, the assessing officer had issued any declaration that the returns were defective.....".



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**4.** In the present case, we find that the AO has accepted the return filed by assessee, and thereafter, framed assessment u/s.144/147 of the Act and didn't issue any defective notice to the assessee. In such a scenario, the AO cannot now turn around and say that the return filed by the assessee was invalid return. In this factual back drop, therefore, the AO's assertion in the Remand Report that the return of income is a non-est is erroneous and the Ld.CIT(A) erred in endorsing such a view of the AO. Having found in the facts and circumstances of the case that assessee's return was valid, we are of the view that AO was bound by law to issue mandatory notice u/s.143(2) of the Act before framing assessment u/s.143(3)/144/147 of the Act and for such proposition, we rely on the decision of the Hon'ble Supreme Court in the case of CIT v. Hotel Blue Moon, reported in [2010] 321 ITR 362 (SC), and also the decision of the Hon'ble Supreme Court in the case of CIT v. Laxman Das Khandelwal reported in [2019] 417 ITR 325, wherein, the Hon'ble Supreme Court also held that notice u/s.143(2) of the Act is a jurisdictional notice and sec.292BB would not come to the rescue of the Department, if the AO fails to issue such a notice before framing assessment u/s.143(3)/144/147 of the Act, because the issue of notice u/s.143(2) of the Act, is mandatory, to frame a scrutiny/best judgment assessment and since the AO failed to issue such a notice, therefore, assessee succeeds on the legal issue and we hold that framing of



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assessment u/s.144 r.w.s.147 of the Act dated 31.12.2018 for AY 2014-15 is null in the eyes of law for omission on the part of AO not issuing notice u/s.143(2) of the Act.

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

Order pronounced on the 25<sup>th</sup> day of June, 2024, in Chennai.

**Sd/-**  
(एस. आर. रघुनाथा)  
**(S.R.RAGHUNATHA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 25<sup>th</sup> June, 2024.  
**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF