

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER
ITA Nos. 1545 & 1653/Del/2017
Asstt. Year : 2012-13

SH. PRAVEEN SAWHNEY, VS. ACIT, CENTRAL CIRCLE-7
C/O M/S RRA TAXINDIA, NEW DELHI
D-28, SOUTH EXTENSION,
PART-I, NEW DELHI – 49
(PAN: ABOPS1461Q)
(Appellant) **(Respondent)**

Appellant by : S/Shri Rakesh Gupta, Adv. & Deepesh Garg, Adv.
Respondent by : Ms. Sarita Kumari, CIT-DR

Date of Hearing	20.06.2024
Date of Pronouncement	10.07.2024

ORDER

PER VIMAL KUMAR, JM

The assessee's appeals are against separate orders dated 29.12.2016 and 30.12.2016 of the Ld. Commissioner of Income Tax (Appeals-25) (hereinafter Ld. CIT(A)), New Delhi having arisen from order passed by ACIT, Central Circle-7, New Delhi dated 4.3.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the quantum addition and penalty order passed by the DCIT, Central Circle-7, New Delhi dated 21.9.2015 pertaining to assessment year 2012-13. Since the aforesaid appeals are relating to same assessment year, hence, the same were heard together and are being disposed of by this common order.

2. Brief facts of the case are that a search and seizure operation u/s. 132 of the Act was carried out on Shri Bhushan Lal Sawhney & others group of cases on 28.7.2011. Warrant of authorization u/s. 132 of the I.T. Act, 1961 was also issued in name of Sh. Praveen Sawhney. Notice u/s. 142(1) of the Act dated 16.5.2012 was issued to the assessee requiring him to file the return for the assessment year 2012-13. In response to notice u/s. 142(1), the return of income for the AY 2012-13 was filed

by the assessee on 28.6.2012 declaring an income of Rs. 95,85,510/-. A questionnaire alongwith notice u/s. 142(1) and 143(2) was issued to the assessee on 28.5.2012 and 15.10.2013 respectively requiring him to file necessary details. Further notice u/s. 142(1) dated 28.10.2014 was issued to the assessee for furnishing the details as asked for in earlier questionnaires. In response, the Ld. AR attended the proceedings and filed necessary details from time to time. During the year under consideration, the assessee is deriving rental income from house property, income from business and profession and interest income from saving bank accounts. The details filed by the assessee have been examined and placed on record. After considering the records, AO assessed the income of the assessee at Rs. 1,09,65,860/- vide order dated 4.3.2015 passed u/s. 143(3) of the Act. Aggrieved with the same, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 29.12.2016 has dismissed the appeal of the assessee with enhancement of Rs. 18,36,371/- vide para no. 8.45 of the impugned order. Now the assessee is in appeal before us.

3. At the time of filing of appeal, the Assessee has raised as many as 11 Grounds of Appeal. However, later vide application dated 11.8.2023 in Appeal No. 1545/Del/2017, assessee has raised a prayer for admission of Additional Grounds, which read as under:-

1. That having regard to the facts and circumstances of the case, the assumption of jurisdiction in initiating the proceedings and passing the impugned assessment order u/s. 143(3), is bad in law and nullity in the eyes of law as the notice u/s. 143(2) has not been issued within statutory allowable period as per law.
2. That in any case and in any view of the matter, action of AO in issuing notice u/s. 143(2) dated 15.10.2023, is barred by limitation and therefore assessment order needs to be quashed on this ground.
Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, it is prayed that the same may please be admitted in view of the following judgments:

- CIT vs. Singhad Technical Education Society, (2017) 97 ITR 03344 (SC).
- NTPC Ltd. vs. CIT (1998) 229 ITR 0383 (SC)
- VMT Spinning Co. Ltd. vs. CIT & Anr. (2016) 389 ITR 0326 (P&H)
- CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.)
- Siksha Vs. CIT (2011) 336 ITR 0112 (Orissa)
- Inventors Industrial Corporation Ltd. vs. CIT (1992) 194 ITR 0548 (Bom.)

4. We have carefully considered the prayer for admission of additional ground and heard both the counsels on the issue. In our considered opinion in the light of

the Hon'ble Apex Court decision in the case of NTPC cited above, we admit the additional grounds raised by the assessee as the same is a purely legal ground and goes to the root of the matter. We find that in the additional grounds, the assessee has agitated that the action of AO in issuing notice u/s. 143(2) dated 15.10.2013 is barred by limitation and therefore assessment order needs to be quashed on this ground. In this regard, Ld. Counsel for the assessee has relied upon the decision of the Hon'ble Apex Court in the case Hotel Blue Moon 321 ITR 362 and the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Consortium Nussli Comfort Net order dated 24.3.2022 in ITA 62/2022.

5. At the time of hearing, Learned Authorized Representative for the assessee submitted that Ld. CIT(A) erred in confirming the action of the AO of making addition of Rs. 5,53,469/- on account of alleged diary found during the course of search by treating it as alleged unexplained expenditure u/s. 69C and further erred in rejecting the books of account of assessee and that too by recording incorrect facts. He further submitted that Ld. CIT(A) erred in confirming the action of the AO in making addition of Rs. 8,26,879/- on account of alleged undisclosed interest income from foreign bank account. It was the further submission of the Ld. AR that Ld. CIT(A) erred in enhancing the income of the assessee by Rs. 18,36,371/- and that too by recording incorrect facts and rejecting the books of account of the assessee, by referring the various discrepancies in the balance sheet of the assessee. Ld. AR further submitted that Ld. CIT(A) erred in appreciating the fact that search was conducted on 28.7.2011 and notice u/s. 143(2) of the Act was issued after the expiry of limitation period i.e. on 15.10.2013, however, the return of income was filed on 28.9.2012 and as required the notice under section 143(2) of the Act should have been issued by 30.9.2013. In support of this contention, he relied upon the order dated 24.3.2022 of the Hon'ble Delhi High Court in the case of PCIT vs. CONSORTIUM NUSSLI COMFORT NET in ITA 62/2021, wherein, the Hon'ble High Court has held as under:-

“....8. Therefore, on the basis of admitted fact that notice under section 143(2) of the Act was not issued within the period of six months prescribed for the purpose, jurisdiction assumed by the Assessing Officer under section 143(3) of the Act was assumed erroneously.

9. Further, it is settled law that the issue of jurisdiction goes to the roots of the cause and such an issue can be raised at any belated stage of the proceeding including

appeal. (See: Kanwar Singh Saini vs. High Court of Delhi, (2012) 4 SCC 307 and M/s Mavany Brothers vs. CIT, 2015 SCC Online Mom 1686.

6. Learned Representative for the Department submitted that the assessee had filed ITR on 28.9.2012 and notice u/s. 143(2) was issued on 15.10.2013. The screenshot of the e-filing portal mentioned filing section 153A of the Act. Assessee failed to challenge the notice u/s. 143(2), after expiry of limitation before the AO and Ld. CIT(A) and she stopped from raising the arguments before the Bench. She submits that Section 292BB of the Act has dealt with the scope of the provision to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee.

7. From the perusal of the records and in light of the rival contentions, it is crystal clear that a search and seizure operation was carried out u/s. 132 of the Act on 28.7.2011. As per assessment order assessee filed the return of income on 28.6.2012. However as matter of fact according to copy of acknowledgment of return of income of appellant/assessee and copy of screenshot appellant/assessee filed return of income for AY 2012-13 on 28.9.2012. A questionnaire alongwith notice u/s. 142(1) and 143(2) was issued to the assessee on 28.5.2012 and 15.10.2013 respectively were issued. As per provisions of Section 143(2) of the Act, the notice u/s. 143(2) had to be issued within six months from the end of the assessment year i.e. by 30.9.2013. Admittedly, in this case, the notice was issued on 15.10.2013 i.e., beyond the time limit prescribed under the Act. Therefore, the initiation of proceedings and the jurisdiction invoked by the Assessing Officer suffers from infirmity. In such a situation, we have no option to hold the impugned assessment order as bad in law as the notice u/s. 143(2) of the Act was issued beyond the limit prescribed under the Act. Since we have decided the legal issue in favour of the assessee, the issue raised on merits have become academic and hence, do not require adjudication. We draw support from the decision of the Hon'ble Apex Court in the case Hotel Blue Moon 321 ITR 362 and the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Consortium Nussli Comfort Net order dated 24.3.2022 in ITA 62/2022.

8. In the result, the quantum Appeal No. 1545/Del/2017 of the assessee is allowed, in the aforesaid manner.

ITA No. 1653/Del/2017 (Penalty Appeal)

9. Since we have already held in the quantum appeal that the impugned assessment order is bad in law, as aforesaid, hence, the penalty, does not stand in the eyes of law, therefore, the same is deleted as such, by also allowing this appeal of the assessee.

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

Above decision was pronounced on 10.07.2024.

sd/-

sd/-

(G.S. PANNU)
VICE PRESIDENT

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 10.07.2024

SR BHATNAGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Asstt. Registrar, ITAT, New Delhi