

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2870/Del/2015  
Assessment Year: 2011-12

Purshottam Lal Gupta,  
B-271, Nehru Ground,  
Faridabad.

Vs DCIT,  
Central Circle-II,  
Faridabad.

PAN: AALPG3424H

(Appellant)

(Respondent)

Assessee by : Shri K.C. Singhal, Advocate  
Revenue by : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 02.05.2024  
Date of Pronouncement : .06.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 12.02.2015 of the Pr. Commissioner of Income Tax (OSD), Gurgaon (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.28F/CIT(A)(C)/GGN/13-14 arising out of the appeal before it against the order dated 28.03.2013 passed u/s 153B(1)(b) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Central Circle-II, Faridabad (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. Initially, the appeal relating to A.Y. 2011-12 was disposed of by this Tribunal along with other appeals i.e. relating to Assessment years 2007-08 & 2008-09 by common order dt. 14.10.2019. However, the Co-ordinate bench left the ground No 2, un-adjudicated. The assessee filed Misc. Application bearing No 56/del/2020 and by order dated 10.06.2022, the appeal was restored for disposal of the ground no. 12.

3. In the course of earlier hearing i.e. on 22.8.2023, it was submitted before this bench that the entire assessment was null & void in as much as the notice u/s 143(2) of I.T. Act 1961 dated 16.10. 2012 issued by the AO was beyond the prescribed limit i.e. 30.09.2023. In support of the same, the Ld. AR furnished the copy of the notice u/s 143(2) dt. 16.10.2012 and further relied following decisions for proposition of law that in the absence of notice u/s 143(2) of the Act, the assessment is void:-

- (i) ACIT-vs-Hotel Blue Moon 321ITR 362 SC
- (ii) CIT-vs- Laxman Das Khandelwal [2019] 108 taxmann.com 183 SC
- (iii) PCIT-vs-Consortium Nusli Comfort Net [2022] 139 taxmann.com 73 (Del)

4. On behalf of assessee the copy of the audit report dt. 14.09.2011 along with the acknowledgment of return dt.29.09.2011 is filed in these proceedings and that leaves no doubt that notice u/s 143(2) of the Act is served beyond the statutory period prescribed u/s 143(2) of the Act i.e. 30.09.2012.

5. The main defence the ld. DR was rescue to section 292BB of the Act. The ld. DR has also relied the comments of the AO wherein it is submitted that the PAN of the assessee has not been transferred to Central Circle-II, Faridabad even though as per the order u/s 127 of the Act. Act the case of the assessee falls in the above jurisdiction only. So at any point of time it was not possible to ascertain whether the assessee has filed e filed return or not. AO claims that notice u/s 142(1) was issued to the assessee on 24.01.2012 and in response to which the assessee did not file any information. As per AO, it was responsibility of the assessee to reply to the notice issued to him u/s 142(1) of the Act. Had the assessee replied promptly to the notice issued u/s 142(1) of the Act well within the stipulated time it would have enabled the AO to issue notice u/s 143(2) also before September, 2012. But the assessee conveniently opted to raise frivolous objections to the issuance of notice u/s 143(2) instead of complying to the earlier notices issued to him. AO further claims that moreover, since the PAN was not transferred to the present jurisdiction hence in any case it was not possible to ascertain the status of filing of return by the assessee.

6. Taking into consideration the judgement of the Hon'ble Delhi High Court in the case of *PCIT -vs- Consortium Nusli Comfort Net [2022] 139 taxmann.com 73 (Del)* and the judgement of the Hon'ble Supreme Court in the case *CIT -vs- Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC)*, we are of the considered view that section 292B of the Act should be

applied in a case where the notice u/s 143(2) as emanated from the Department under due course of law which certainly should be within the statutory period provided for issuance of notice u/s 143(2) of the Act. Thus, we are not inclined to accept the plea raised by the Revenue and decide the ground No.2 in favour of the assessee. Consequently, the impugned assessment order is void ab initio and, accordingly, the same is quashed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.07.2024.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 09<sup>th</sup> July, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi