

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 773/DEL/2024
A.YR. 2010-11

ACIT, CIRCLE 61(1), NEW DELHI CIVIC CENTRE, MINTO ROAD, NEW DELHI – 110 002	Vs.	MADHU BALA RANA, GH-6, CELEBRITY HOMES, PALAM VIHAR, GURGAON, HARYANA-122017 (PAN: AAHPR8587L)
(Appellant)		(Respondent)

Department by	Shri Amit Katoch, Sr. D.R.
Assessee by	None

Date of hearing : 04.02.2025
Date of pronouncement : 04.02.2025

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the Revenue is directed against the order dated 20.12.2023 passed by the Ld. CIT(A)/NFAC, New Delhi in relation to assessment year 2010-11 on the following grounds:-

“1. Whether the Ld. CIT (A) has erred in holding that the notice u/s 143(2) of the Act was issued to the assessee in this case in the wake of following facts & findings available on record:

(a) *In this case, no notice u/s 143(2) has been issued as per records and*

inadvertently , while passing order instead of mentioning section 147/144 owing to a typographical error 147/143(3) has been mentioned.

(b) Most importantly, assessee has also admitted so as evident by submission of assessee as reproduced in page 9(line.13& 14) of CIT(A)'s order

" 1. That the appellant did not file any return for the assessment year in question

2. 143(2) was neither issued nor legally could he issued." Thus, assumption of first appellate authority, of issuance of notice u/s 143(2) is also not In conformity with stand of assessee.

(c) There is no mention of issuance of any notice u/s 143(2) even in the order sheet of assessment records.

(d) Notably, as per order sheet assessment order passed u/s 147/144 albeit making correction.

(e) It is remained to be appreciated that if for assumption sake , notice u/s 143(2) is issued in a case without tiling of any ITR , then the said notice u/s 143(2) will be treated as infructuous or non-est one without having any adverse effect on validity of an assessment. No such case law cited by CIT(A) to disprove so.

2, It is remained to be appreciated that reliance placed by CH(A) on case law of PCIT vs Marek Biosciences Ltd (2019) 106 taxmann.com and A.CIT& Am vs M/s Hotel Blue Moon in civil appeal no 1198 of 2010{SC} is completely misplaced and inappropriate. It is to be noted that facts of ease under hands are completely different and accordingly perversity' has crept into the appellate order.

(a) It is so as in former one. notice u/s 143(2) was issued before filing of ITR and no notice u/s 143(2) issued after filing of ITR.

(b) In the latter case, notice u/s 143(2) remained to be issued during the proceedings.

3. It is relevant, to mention for kind consideration of Hon'ble Tribunal that in this case a remand report was moved by AO through proper channel to the CIT(A) -38, Delhi and apparently latter on transfer of this appeal to faceless regime, said remand report remained to be linked during appellate e-proceedings.

4. The Ld. CIT(A) has erred in holding the assessment proceedings invalid

as a result additions made on the ground of undisclosed income u/s 68 of Rs. 50,00,000/- and Capital Gain on sale of Property of Rs. 2,52,00,000/- remains un-adjudicated.

5. *It is prayed that to the least for adjudication of additions made in the case , matter be restored to first appellate authority.*

6. *The appellant craves leave of your Honor to add, alter, modify or delete any of the above grounds of appeal.”*

2. Brief facts of the case are that the assessee is an individual and a lawyer by profession. The assessee did not file its return of income. Information was received by the AO from the O/o ITO (Inv.) Unit-4, New Delhi that the assessee has received 3 Crores from the sale of property but sale deed only made for Rs. 2.52 crores. Therefore, the case was reopened and notice u/s. 148 was served on 30.03.2017. In response to the notice, representative of the assessee has attended the hearing. Further, notice u/s. 142(1) was issued to the assessee but the assessee did not respond. Based on the materials available, the AO made the following additions:

- i) Addition of Rs. 50,00,000/- as undisclosed income u/s. 68 of the Act.
- ii) Addition of Rs. 2,52,00,000/- on account of capital Gain on sale of property.

Thus, the assessment was completed u/s. 144 r.w.s. 147 of the Act by assessing the total income at Rs. 3,02,00,000/-. Assumed

3. Upon assessee's appeal, Ld. CIT(A) allowed the assessee's appeal by holding that valid jurisdiction was not assessed by the AO and Ld. CIT(A) held as under:-

5.3.1. *In this case, the appellant raised the following issues: (a) notice being served on wrong address and thus, there is no valid service of reopening notice (b) with ROI has not been filed and therefore, 143(2) notice is invalid (c) without 143(2) valid notice, the assessment passed u/s. 143(3) is not valid (d) as there is no valid service of notices, no opportunity was provided to the appellant.*

5.3.2. *In this context, regards reopening of assessment validity, due to notice being sent to wrong address, it is seen that the PAN data base contains residential address J-1/162, Rajouri Garden, New Delhi, Delhi 110 027 which is also the address in the last filed ROI at the time of the issue of reopening notice of AY 2008-09. In this context, the AO cannot be faulted with serving the said notice of reopening at that address.*

Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Mumbai vs. I-Ven Interactive Limited, 2019 SCC Online SC 1369, decided on 18.10.2019 held that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed is not enough and sufficient. The Court said that merely filing of return of income with the new address, it shall not be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned.

The Apex Court held that "in absence of any specific intimation to the Assessing Officer with respect to change in address and / or change in the name of the assessee. the Assessing officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under E Module scheme."

The Court further explained that "the notices under section 143(2) of the Act, 1961 are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessed is also required to make an application for change of address in the departmental database of PAN.

In this case, the appellant did not file ROI for the year and the last filed ROI has the old address itself. Further, as the appellant did not change the address in pan database till date, no fault can be found with the AO.

5.3.3. In respect of there being no ROI filed and hence 143(2) issued is invalid, these not being e-proceedings, the notices u/s 143(2); and 142(1) are not available on the e-filing portal, nor any could be seen in the ITBA system too. However, AO does mention issue of 143(2) notice in page 2 of the assessment order and has passed the order u/s 143(3) rws 147. It is seen that after the ROI filed in A.Y. 2008-09, the appellant has only filed the ROI in A.Y. 2011-12 (as verified from the e-filing portal). Thus, for the current year under appeal, there has not been any ROI filed u/s 139 or in response to 148 notice or 142(1) notices. In such a scenario, the notice u/s 143(2) given is invalid. This position of law is upheld by the HC of Gujarat in case of PCIT vs. March Biosciences Ltd. (2019) 103 taxmann.com notice.

The SC in case of AC IT & Anr vs M/s Hotel Blue Moon in Civil Appeal No. 1198 of 2010 (321 ITR 362) also held that the 143(3) order needs a valid 143(2) notice. This view was also upheld by the Hon'ble Apex Court in case of CIT vs. Laxman Das Khandelwal (103 taxmann.com) 183 and since the notice u/s 143(2) is invalid in this case, the assessment order u/s 143(3) too remains invalid.

5.3.4 As the order is held to be invalid, other issues require no consideration. Whatever be the merits of the AO's addition or the appellant's arguments, once the order is invalid, the income determined in the said order becomes redundant. AO is accordingly, directed to delete the additions to income. The rectification order on such invalid assessment order is also rendered invalid. Thus, both the appeals are Fully Allowed."

4. Against the aforesaid order of the Ld. CIT(A), Revenue is in appeal before us.

5. None appeared on behalf of the assessee, despite issue of notices on several times, hence, we are deciding the appeal of the Revenue exparte qua the assessee, after hearing the Ld. DR and perusing the records. Ld. DR has brought the assessment records and he fairly agreed that 143(2) notice was not in the records. In this view of the matter, we hold that there is no infirmity in the

order of the Ld. CIT(A), hence, we uphold the same and reject the jurisdictional issue raised by the Revenue. As regards other grounds are concerned, since we have already upheld the findings of the Ld. CIT(A) on the jurisdictional issue, the other grounds have become academic and need not be adjudicated.

6. In the result, Revenue's appeal stands dismissed.

Order pronounced on 04/02/2025.

SD/-

SD/-

(VIMAL KUMAR)
JUDICIAL MEMBER

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

“SRBHATNAGAR”

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi