

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 318/Del/2017

(Assessment Year: 2013-14)

M/s. Flair Exports Pvt. Ltd,	Vs. DCIT,
227, Okhla Indl. Estate,	Central Circle-8,
Phase-III, New Delhi	New Delhi
(Appellant)	(Respondent)
PAN:AAAC1183A	

Assessee by :	Shri Shivam Malik, Adv
Revenue by:	Shri Surender Pal, CIT DR

Date of Hearing	07/01/2025
Date of pronouncement	13/03/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.318/Del/2017 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 25.11.2016 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2015 by the Assessing Officer, ACIT, Central Circle-08, New Delhi (hereinafter referred to as 'Id. AO').

2. At the outset, we find that the revenue had not complied with the order sheet noting dated 23-04-2024. The learned DR had sought time to obtain a factual report on the additional grounds raised by the assessee on 13-11-2023 that section 143(2) notice was issued beyond the prescribed time limit. Accordingly, time was granted to the learned DR to obtain a factual report. But from 23-04-2024, the assessing officer had not cooperated to furnish the factual report to the learned DR. There is no point in waiting for the factual report from the assessing officer in

this regard. Hence, we proceed to dispose of this appeal after hearing both the parties and based on materials available on record.

3. The only issue contested in the appeal by the assessee is disallowance made under section 14A of the Act. The additional ground raised by the assessee goes to the root of the matter and hence the same is hereby admitted and taken up for adjudication.

4. We have heard the rival submissions and perused the materials available on record. A search and seizure action under section 132 of the Act and survey operation under section 133A of the Act was conducted on SPAN India group of cases on 16-01-2013. The case of the assessee was also covered under section 133A of the Act. During the course of search and survey operation, certain documents / papers belonging to M/s Flair Exports Private Limited (assessee) were found and seized / impounded. The case of the assessee company was selected for scrutiny under section 153C of the Act. The case of the assessee was centralized vide order under section 127 of the Act dated 05-05-2014. The assessee for the assessment year 2013-14 had submitted its return of income on 28-09-2013 declaring total income of Rs 2,12,92,650/-.

5. The learned AO observed that assessee had made investments in equity shares from where dividend income could be earned. Accordingly, he proceeded to disallow expenses under section 14A of the Act read with rule 8D(2) of the Rules in the sum of Rs 4,26,018/-. The assessee had made suo moto disallowance of expenses of Rs 1,83,483/- in the return of income and after reducing the same, the disallowance of Rs 4,26,018/- was worked out by the learned AO. The learned CITA observed that the disallowance made in terms of rule 8D(2)(iii) of the Rules is correct and accordingly upheld the disallowance made by the learned AO. Aggrieved, the assessee is in appeal before us.

6. At the outset, we find that the assessing officer in his assessment order vide para 1 specifically stated that the notice under section 143(2) of the Act for the assessment year 2013-14 was issued on 15-10-2014. Admittedly, the return of

income was filed by the assessee on 28-09-2013. The due date for issuance of notice under section 143(2) expired on 30-9-2014. In the instant case, notice under section 143(2) of the Act stood issued to the assessee only on 15-10-2014 as per the admission of the assessing officer in Para 1, page 1 of his assessment order. Hence, it could be safely concluded that the entire assessment becomes void ab initio as the jurisdictional notice under section 143(2) of the Act was issued beyond the prescribed time limit provided in the statute. Reliance in this regard was rightly placed by the learned AR on the decision of the Hon'ble Supreme Court in the case of ACIT Vs Hotel Blue Moon reported in 321 ITR 362 (SC). Respectfully following the same, we allow the additional grounds raised by the assessee and quash the assessment as void ab initio. Since the assessment is quashed as void ab initio, there is no requirement to give any independent finding on the disallowance of expenses under section 14A of the Act.

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

Order pronounced in the open court on 13/03/2025.

-Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/03/2025
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi