

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.5569/Del/2014
Assessment Year : 2001-02

Diamond Builders Pvt. Ltd., Vs. ITO,
157, Chander Puri, Ward-10(3),
Ghaziabad. New Delhi.

PAN: AAACD6491R

(Appellant)

(Respondent)

Assessee By : Shri Chander Shekhar, CA
Department By : Shri Deepak Garg, Sr. DR

Date of Hearing : 22.06.2016
Date of Pronouncement : 22 .06.2016

ORDER

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 22.8.2014 in relation to the assessment year 2001-02. It is a recalled matter inasmuch as the earlier ex parte order passed by the Tribunal was subsequently recalled vide its later order dated 6.5.2016.

2. The first issue raised in this appeal is against non issue/service of notice u/s 143(2) of the Act, thereby leading to nullity of the assessment.

3. The Id. counsel for the assessee submitted that the AO did not issue any notice u/s 143(2) before finalizing the assessment u/s 143(3) read with section 147. It was submitted that this issue was taken up before the Id. CIT(A) in the first round of proceedings, but, the appeal of the assessee was dismissed by means of a non-speaking order. When the assessee approached the Tribunal, the original order passed by the Id. CIT(A) was set aside with the direction to the first appellate authority to provide the assessee a reasonable opportunity of being heard and, thereafter: “pass a speaking order on merits.” When the matter again came up before the Id. CIT(A), the Id. AR pointed out, the assessee again raised the objection about the non issue/service of notice u/s 143(2) which the Id. CIT(A) refused to dispose of by holding that the Tribunal has restored the matter to the CIT(A) for passing the speaking order `on merits`. That is how the Id. CIT(A) dealt with additions made on merits. The Id. AR contended that, thus, the legal grounds about non-

issue/service of notice u/s 143(2) remained undisposed of. The Id. DR candidly agreed with the contention advanced on behalf of the assessee.

4. I have heard the rival submissions and perused the relevant material available on record. It is observed that the Tribunal in the first round remitted the matter to the file of the Id. CIT(A) for disposing of the appeal `on merits' which means that all the grounds, including the legal grounds were required to be disposed of by the Id. CIT(A) on merits by a speaking order rather than disposing the appeal in summary manner. The question of service of notice u/s 143 (2) is a necessary legal issue which leads to the acquisition of jurisdiction for framing the assessment. Since the Id. CIT(A) has not disposed of this legal ground raised before him, I am of the considered opinion that the ends of justice would meet adequately if the impugned order is set aside and the matter is restored to the file of Id. CIT(A). I order accordingly and direct him to dispose of all the grounds taken before him including the legal grounds, on merits, after allowing a reasonable opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

The order pronounced in the open court on 22.06.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 22nd June, 2016.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.