

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA.No.3729/Del./2012
Assessment Year 2006-2007

The Income Tax Officer, Ward-13(1), Room No.219, C.R. Building, New Delhi.	vs	M/s. NVS Builders Pvt. Ltd., 436-SFS, Sheikh Sarai, Pocket-C, Phase-1, New Delhi. PAN AACCN0661P
(Appellant)		(Respondent)

For Revenue :	Shri S.R. Senapati, Sr.DR
For Assessee :	Shri Somil Aggarwal and Shri Deepesh Garg, Advocates

Date of Hearing :	08.03.2018
Date of Pronouncement :	08.03.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the order of the Ld. CIT(A)-XVI, New Delhi, Dated 16th March, 2012, for the A.Y. 2006-2007.

2. Briefly, the facts of the case are that return of income in this case was filed by the assessee-company on 20.11.2006 declaring income at Rs.-NIL-. Thereafter, the case of the assessee was selected for scrutiny and notice under section 143(2) was issued on 23rd October, 2007. Assessment was completed under section 143(3) at an income of Rs.63 lakhs by ITO, Ward-13(1), New Delhi, on 30th December, 2008, wherein addition of Rs.63 lakhs was made under section 68 of the I.T. Act, on account of amount received by assessee from one Shri Jagmohan Sharma which was considered by the A.O. as unexplained. The assessee filed appeal before the Ld. CIT(A) which were dismissed. Thereafter, assessee filed appeal before ITAT and the Tribunal restored the matter to the file of Ld. CIT(A).

2.1. In view of these facts, the matter was taken-up for hearing. The assessee challenged the addition of Rs.63 lakhs as well as service of notice under section 143(2) beyond the period of limitation and claimed that entire assessment order is null

and void. The assessee filed written submissions before the Ld. CIT(A) in which it was claimed that A.O. passed the order without serving mandatory first notice under section 143(2) of the I.T. Act, by the A.O. having jurisdiction over the case of the assessee. It was submitted that no notice under section 143(2) was issued and served by jurisdictional A.O. who was having jurisdiction over the case of the assessee. Therefore, assessment order is null and void.

2.2. The assessee filed return of income on 20th November, 2006 declaring NIL income with ITO, Ward-10(1), New Delhi. The assessee is regularly assessed at Delhi. The return for earlier years as well as succeeding years have been filed at Delhi with the A.O. having jurisdiction over the case of the assessee. The notice under section 143(2) could be issued by jurisdictional A.O. only within the time prescribed under the law i.e., ITO at New Delhi.

2.3. In this case, the first notice under section 143(2) dated 23rd October, 2007 was issued by ITO, Ward-1(1),

Faridabad, who was not the A.O. of the assessee-company and have no jurisdiction over the case of the assessee. Copy of the said notice was filed. The assessee on receipt of this notice from ITO, Ward-1-(1), Faridabad, informed him that assessee-company filed return of income at Delhi. Then the ITO, Ward-1(1), Faridabad, transferred the file to ITO, Ward-10(1), New Delhi, who was having jurisdiction over the case of the assessee. The impugned assessment order has been passed by ITO, Ward-13(1), New Delhi, who issued the notice under section 143(2) on 28th July, 2008, which was beyond the statutory period. Therefore, he did not get any valid jurisdiction to frame the assessment against the assessee because it was issued after more than 19 months after the expiry of the statutory period. The assessee relied upon several decisions in support of its contention that when notice under section 143(2) have not been issued by the jurisdictional A.O. within the statutory period, the assessment order would be null and void. In this case, notice under section 143(2) have been issued by jurisdictional A.O.

after the statutory period. Therefore, the entire assessment order is null and void.

2.4. The Ld. CIT(A) considering the explanation of assessee, decided the issue in favour of the assessee by holding that assessment order is null and void. His findings in para 3.2 of the order are reproduced as under :

3.2. I have considered the submissions of the appellant and have also perused the record. The first and only notice u/s 143 (2) which was issued within one year of filing the return, was issued on 23/10/2007 by the 1TO, Ward 1(1), Faridabad, who was not having jurisdiction over the case of the appellant.

As per the provisions of section 143(2) applicable for the A.Y. under appeal:-

Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, –

- (i) Where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying

particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim :

[Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]

- (ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

[Provided that no notice under clause (ii) shall be served on the assessee after the expiry of twelve months from the end of the financial year in which the return is furnished.]

Thus, from the above provisions of law it is clear that statutory notice u/s 143(2) was to be issued by the Assessing Officer who had jurisdiction over the case of the

appellant, and by issuance of notice u/s 143(2) within the statutory period as provided in the section, the Assessing officer having jurisdiction over the case of an assessee assumes jurisdiction to assess the income of the assessee under his / her jurisdiction.

In the case of the appellant company, the first notice u/s 143(2) was issued by ITO Ward 1(1), Faridabad, on 23.10.2007 to attend on 28th November, 2007. No return of income was filed by the appellant with ITO, Ward 1(1), Faridabad. Since the appellant company was being assessed to tax at Delhi, and had filed its returns of income in Delhi, as such vide reply submitted dated 29.11.2007, AR of the appellant informed the ITO, Ward 1(1), Faridabad, that they had filed the return for AY 2006-07 vide receipt No. 90099599 dated 20th November, 2006 at Company Ward 10(1), New Delhi, and enclosed a copy of acknowledgement of the same with the reply submitted. Appellant has submitted before me a copy of order sheet entry which shows that first notice by the Assessing Officer having jurisdiction over the case of the appellant was issued only on 28.7.2008 i.e. much after the statutory period provided by the statute. Thus, the notice issued on 28.7.2008, did not empower the AO Ward 13(1), New Delhi to assume jurisdiction to frame any

assessment u/s 143(3) of the Act, since the statutory notice was issued by him much after the limitation provided as per statute and the first notice dated 23.10.2007 was issued by an AO who was not having any jurisdiction over the case of the appellant company.

I accordingly hold that the assessment made by the I.T.O., Ward - 13 (1), New Delhi, on the basis of notice issued by ITO, Ward 1(1), Faridabad is void because it is settled law that assumption of jurisdiction as per law is sine qua non. In view of the aforesaid discussion, jurisdiction to make assessment and to make variation in the return filed by the appellant has not been assumed by the AO as per law. As a result, the consequent assessment framed u/s 143(3) is also bad in law and deserves to be quashed. To arrive at the above conclusion, I have no reason to disagree with the views expressed by the Hon'ble Jurisdictional High Court, and various other Courts and Hon'ble Tribunal, as relied upon by the AR in the written submissions placed before me.

In view of my above observations, Ground No.2 is decided in favour of the appellant and the assessment framed is held to be void.”

2.5. The Ld. CIT(A) also deleted the addition of Rs.63 lakhs on merit.

3. The Ld. D.R. on the other hand, contended that the A.O, Ward-1(1), Faridabad has correctly issued notice under section 143(2) which were based on PAN issued in this case. He has submitted that case was selected through Computer of the Department as per the practice. Therefore, there is no error in the notice issued under section 143(2) of the I.T. Act, on 23rd October, 2007.

4. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below.

5. We have considered the rival submissions. It is not in dispute that return of income has been filed on 20th November, 2006 with ITO at New Delhi having jurisdiction over the case of the assessee. The Ld. D.R. also brought on record same which support the claim of the assessee that assessee filed the original return of income at Delhi. The record also reveal that even for earlier and subsequent years, the assessee filed

return of income at Delhi. The assessment in the present case has been framed by ITO, Ward-13(1), New Delhi, having jurisdiction over the case of the assessee. The ITO, Ward-1(1), Faridabad issued notice under section 143(2) on 23rd October, 2007, who was having no jurisdiction over the case of the assessee. The ITO at Delhi issued notice under section 143(2) on 28th July, 2008 which was beyond the period prescribed under the Law. It is, therefore, clear that the A.O. having jurisdiction over the case of the assessee did not issue notice under section 143(2) upon the assessee within the period of limitation provided under the Act. Therefore, the first notice issued by ITO, Ward-1(1), Faridabad, having no jurisdiction over the case of the assessee would not be valid and would not get any jurisdiction over the case of the assessee. The contention of the Ld. D.R. has no merit that ITO, Ward-1(1), Faridabad was empowered to issue notice as per PAN or it was issued as per Computerized System of the Department because it is against the provisions of Law. As such the issue would be in violation of the principles of law and as such the internal

procedure provided by the department would not justify the illegality committed by the ITO, Ward-1(1), Faridabad. The entire assessment proceedings are vitiated because of non-service of jurisdictional notice under section 143(2) within the period of limitation by the A.O. having jurisdiction over the case of the assessee. No infirmity have been pointed out in the order of the Ld. CIT(A) in holding the assessment order to be null and void. We confirm the finding of fact recorded by the Ld. CIT(A) and dismiss this ground of appeal of Revenue. Since the entire assessment order is declared as null and void, there is no need to decide the issue on merit which is left with academic discussion only. The departmental appeal fails and is dismissed.

6. In the result, appeal of the Department is dismissed.

Order pronounced in the open Court.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Delhi, Dated 08th March, 2018
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.