

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6793/DEL/2018
[Assessment Year: 2016-17]

Sajan Kumar Jain
C/o Kapil Goel, Adv
F-26/124, Sector 7,
Rohini, Delhi

Vs.

The Dy. C.I.T
Central Circle- 25
New Delhi

PAN: ACSPJ 6904 A

[Appellant]

[Respondent]

Date of Hearing : 15.03.2021
Date of Pronouncement : 16.03.2021

Assessee by : Shri Kapil Goel, Adv

Revenue by : Shri Amitabh Kumar Sinha, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the correctness of the order of the Commissioner of Income Tax [Appeals]-29, New Delhi dated 10.09.2018 pertaining to Assessment Year 2016-17.

2. Before us, the ld. counsel for the assessee challenged the jurisdiction of the Assessing Officer by raising the following additional ground of appeal:

"That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) without appreciating that as stated in opening portion of impugned assessment order regular return u/s 139(1) of the Act was submitted on 20.03.2017 and notice u/s 143(2) is admittedly issued on 16/10/2017 as noted at second page of assessment order, which is manifestly time barred as last date for issuance of notice u/s 143(2) as reckoned for period under consideration (which is search year) from 31.03.2017 would be 30.09.2017 and so notice u/s 143(2) issued on 16/10/2017 is time barred and accordingly assessment framed u/s 143(3) and order of CIT-A may please be quashed."

3. Admittedly, this issue was never raised before the lower authorities. But since the challenge to the jurisdiction of the Assessing Officer goes to the root of the matter, in light of the ratio laid down by the Hon'ble Supreme Court in the case of NTPC 229 ITR 383, the same deserves to be admitted and adjudicated. Accordingly, the additional plea raised for the first time is admitted, since it requires

no verification of facts and the facts are very much in the body of the assessment order in the first page itself.

4. The challenge is in respect of validity of notice issued u/s 143(2) of the Act, which according to the assessee, is barred by limitation.

5. Facts on record show that the original return of income u/s 139(1) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was filed on 20.03.2017 declaring income of Rs. 6.22 crores. The said return of income was processed u/s 143(1) of the Act on 20.05.2017. Subsequently, pursuant to search and seizure operation u/s 132 of the Act, which was carried out on 18.11.2015, the case of the appellant was centralised from Circle -1 Faridabad to Central Circle 25, New Delhi.

6. Consequently, the notice u/s 142(1) of the Act was issued on 22.09.2017 asking the assessee to file return within 15 days of receipt of notice. The said notice reads as under:

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE - 25, ROOM NO. 322, 3RD FLOOR, E-2,
ARA CENTER, JHANDEWALAN EXTENSION, NEW DELHI.

NOTICE UNDER SECTION 142(1) OF THE INCOME TAX ACT, 1961

Dated: 22-09-2017

FAN: ACSPJ6904A

Sit. Sajan Kumar Jain, H.No. 1443-1446, Sector-14,
Faridabad, Haryana

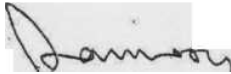
In connection with the assessment for the assessment year 2016-17 you are required to: -

(a) Prepare a true and correct return of your income/ the firm's income/ family's income/ the local authority's income/ the company's income/ income of the A.O.P./ income of the body of individuals/ income of **A.Y.** 2016-17 in respect of which you are assessable under the Income Tax Act, 1961, for the previous year relevant to the assessment year mentioned above. The return should be in the appropriate form as prescribed in rule 12 of the Income Tax Rules, 1962. It should be duly verified and signed in accordance with the provisions of section 140 of the Income Tax Act, 1961 and should be delivered at my office on or before 09-10-2017.

(b) Produce or cause to produce before me at my office at New Delhi on 09-10- 2017 at 11:00 AM, the accounts and or documents as specified in the letter annexed herewith.

(c) . Furnish in writing and verified in the prescribed manner, information called for as per combined questionnaire formay be filed which are relevant to the Assessment Year 2016-17 dated — and on the point or matters specified therein, before me at my office at New Delhi on 09-10-2017 at 11:00 AM.

Yours faithfully



(Ramesh Kumar) Deputy Commissioner of Income Tax
Central Circle-25, New Delhi

CERTIFIED TRUE COPY

RAMESH KUMAR

Dy. Commissioner of Income Tax
Central Circle-25, New Delhi"

7. A perusal of the aforementioned notice shows that the Assessing Officer required the assessee to furnish his return of income. As mentioned elsewhere, the assessee had already filed return of income on 20.03.2017 which was processed u/s 143(1) of the Act on 20.05.2017. These glaring facts are very much available on the face of the assessment order which have been totally ignored by the Assessing Officer while issuing notice u/s 142(1) of the Act dated 22.09.2017.

8. Subsequently, notice u/s 143(2) of the Act was issued on 16.10.2017. Once again, the Assessing Officer completely ignored the fact that notice u/s 143(2) of the Act was to be issued and served upon the assessee within six months from the end of the F.Y. in which the return of income was filed, i.e. 20.03.2017. This makes the notice issued u/s 143(2) of the Act barred by limitation.

9. In our considered opinion, once a valid return of income was available on record, which was already processed issuing notice u/s 142(1) of the Act asking the assessee to furnish fresh notice in itself is invalid making subsequently proceedings void ab initio.

10. Considering the facts of the case in totality in light of the relevant provisions of the Act discussed hereinabove, we are inclined to quash the assessment order dated 29.12.2017 framed u/s 143(3) of the Act for want of jurisdiction as notice issued u/s 143(2) of the Act is barred by limitation. Since we have quashed the assessment order on the validity of jurisdiction, we do not find it necessary to dwell into the merits of the case.

11. In the result, the appeal filed by the assessee in ITA No. 6793/DEL/2018 is allowed.

The order is pronounced in the open court on 16.03.2021.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 16th March, 2021.

VL/

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	