IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकरअपीलसं/ I.T.A. No.4352/Mum/2018

(**निर्धारणवर्ष** / Assessment Year: 2014-15)

Divya Raghavan Vijayan Shop No.7, Goalawli, Kalyan Shill Road, Opp Manpada Police Station, Dombivli East- 421201	**बनाम**/ Vs.	ACIT Circle-3, Kalyan 2nd Floor, Rani Mansion, Murbad Road, Kalyan-421301
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AHUPV7112M		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Shashikant Goyal
Revenue by:	Shri Mahender Ahuja

सुनवाईकीतारीख / Date of Hearing: 22/11/2022

घोषणाकीतारीख /Date of Pronouncement: 22/12/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against order of the Ld.CIT(A)-3 Nasik, dated 01-05-2018 for A.Y. 2014-15.

2. The main grievance of the assessee is against the addition/disallowance of the expenditure to the tune of Rs.16,80,000/-. The assessee has filed before this Tribunal an additional ground challenging the jurisdiction of the AO to have made the disallowance on the ground of. The additional grounds [revised/amended ground of appeal] has been filed before this Tribunal a copy of which was given to the department also vide letter dated 25th July, 2022 which reads as under:-

> 1) The Ld. AO had failed to issue any notice under sec. 129 though required to be issued on grounds of change in incumbency. The fact of issue of a notice as stated in the assessment order at paragraph 2 of the

order passed under sec. 143(3) dated 14.12.2016 by the Ld. AO though factually correct was not delivered to the appellant due to wrong mention of the address.

2) The Ld. AO has erred in assuming jurisdiction over the assessee's case without there being any order passed by the Pr.CCIT/CCIT/PT.CIT/CIT as the initial notice dated 03/09/2015 issued to the assessee of her case being selected for scrutiny was issued by the ITO Wd. 3(3), Thane and the impugned order is passed by the ACIT-Circle 3, Kalyan.

3) The order of assessment passed under section 143(3) dated 14.12.2016 hasn't been delivered to the assessee prior to the date of limitation on 31.12.2016, but was rather hand delivered only on 13.01.2017.

4) The Ld. CIT(A) has erred in confirming the disallowance of the expenditure of Rs. 1,68,000/- by applying section 40A (3) of the Income tax Act, 1961 by placing sole and undue emphasis on the technicalities of the law in a mechanical manner which is unjustified, arbitrary and against natural justice ignoring the fact that the AO had issued a notice under sec. 133(6) dated 14.09.2016 for verification of transactions made with the appellant to Mr. K Presannan [PAN BIGPK5473A] agent and relative of the appellant through whom the expenses were incurred.

5) The Ld. CIT(A) erred in indirect confirmation of the action of the Ld. AO by not adjudicating on the specific Ground of Appeal taken up by the Appellant at S. No. 13 of Form 35 as regards the levy of interest under sec. 234A for belated filing of return of income on the assessed income under sec. 143(3), by ignoring the Order(s) and Circulars issued by the CBDT which were of binding nature on all officers of the Department.

3. At the outset the Ld.AR of the assessee has requested for adjudication of ground No.2 which ground assessee has raised challenging the assumption of jurisdiction by ACIT Circle-3, Kalyan as well as he challenges the action of the

ACIT Circle-3, Kalyan not to have issued the mandatory notice u/s 143(2)of the Income Tax Act, 1961(hereinafter "the Act") within the time limit as prescribed by the Act for AY. 2014-15 i.e. 30th Sep, 2015. According to the Ld.AR, the case of the assessee was transferred by the Chief Commissioner from the jurisdictional (territorial) ITO ward 33 only on 2nd Dec, 2015 Therefore, according to the Ld.AR, the ACIT Circle-3, Kalyan could not have issued the mandatory notice u/s 143(2) of the Act before the cut-off date that is falling on 30th Sep, 2015 and therefore the assessment made u/s 143(3) of the Act by ACIT-Circle 3 Kalyan is without jurisdiction.

4. For ascertaining the facts, I have gone through the file of the department [assessment records] and finds that even though in the order sheet it is written by the ACIT Circle-3 Kalyan that he had issued the 143(2) notice on Aug 30th 2015, but in the same file, I find that the Chief Commissioner has transferred the jurisdiction of assessee's case from ITO ward-33, Thane to ACIT-Circle-3, Kalyan only on 2nd Dec, 2015. Therefore, on the short legal point, I find that the ACIT-Circle-3, Kalyan who has framed the assessment of assessee for AY. 2014-15 u/s 143(3) of the Act has not issued the mandatory notice u/s 143(2) of the Act (refer decision in the case of Hotel Blue Moon by the Hon'ble Supreme Court and CIT Vs. Laxman Das Khandelwal 417 ITR 325), before the cut-off date that is falling on 30th Sep, 2015. Consequently, the ACIT Circle-3, Kalyan could not have framed the assessment u/s 143(3) of the Act dated 14.12.2016. (even though it is noted that ITO ward 33, Thane had issued notice u/s 143(2) of the Act on 03.09.2015, however, the AO who frames the assessment u/s 143(3) of the Act needs to issue notice u/s 143(2) of the Act before 30th Sep, 2015 for the relevant AY.). Therefore, I find that the assessee succeeds on the short point that since, the

ACIT Circle-3, Kalyan had not issued/served the notice u/s 143(2) of the Act before cutoff date for AY. 2014-15 i.e. 30th Sep, 2015, he could not have framed the assessment order under 143(3) of the Act. Therefore, it is held that in the present facts of the case, the ACIT-3, Kalyan did not had jurisdiction to frame the assessment order u/s 143(3) of the Act. Consequently, the addition/disallowance made by him is non-est in the eyes of law and therefore is directed to be deleted.

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

Order pronounced in the open court on this 22/12/2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/12/2022.
Vijay Pal Singh, (Sr. PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)- None
4. आयकरआयुक्त/ CIT None
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai