

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No.4889/DEL/2011		
A.Y. : 2007-08		
ACIT, CC-9, NEW DELHI ROOM NO. 353, ARA CENTRE, E-2, JHANDEWALAN EXTN., NEW DELHI	VS.	M/S RAVNET SOLUTIONS PVT. LTD., 6, COMMUNITY CENTRE, BASEMENT, EAST OF KAILASH, NEW DELHI - 110 065 (PAN: AACCR6878G)
(ASSESSEE)		(RESPONDENT)

AND

C.O. NO. 6/DEL/2012 (IN ITA NO. 4889/DEL/2011)		
A.Y. : 2007-08		
M/S RAVNET SOLUTIONS PVT. LTD., 6, COMMUNITY CENTRE, BASEMENT, EAST OF KAILASH, NEW DELHI - 110 065 (PAN: AACCR6878G)	VS.	ACIT, CC-9, NEW DELHI ROOM NO. 353, ARA CENTRE, E-2, JHANDEWALAN EXTN., NEW DELHI
(ASSESSEE)		(RESPONDENT)

Revenue by : Sh. F.R. Meena, Sr. DR
Assessee by : Dr. Rakesh Gupta & Sh. Somil
Agrawal, Advocates

ORDER

PER H.S. SIDHU : JM

The Revenue has filed the Appeal and Assessee has filed the Cross Objection against the Order dated 13.7.2011 of the Ld. CIT(A)-XVIII, New Delhi relevant to assessment year 2007-08.

2. The grounds raised in the Revenue 's Appeal read as under:-

1. The order of the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 33,41,230/- made on account of salary and liaisioning expenses. is not correct in law and facts.
 2. That the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 4,40,000/- made on account of web designing.
 3. That the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 58,10,000/- made on account of share application money.
 4. That the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 5,87,607/- made on account f current liabilities.
 - 5(a). The order of the CIT(A) is erroneous and not tenable in law and on facts.
 - (b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.
3. The grounds raised in the Assessee's Cross Objection read as under:-
1. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in not

quashing the impugned assessment order on the ground that the same was passed without assuming jurisdiction as per law and without serving the mandatory notice u/s. 143(2) of the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Id. CIT(A) in confirming the action of AO in framing the assessment order that too without serving the mandatory notice u/s. 143(2) is bad in law and against the facts and circumstances of the case and Ld. CIT(A) ought to have quashed the assessment on this ground itself.
3. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.

4. The facts in brief are that Return in this case was filed on 30.10.2007 declaring income of Rs. 36,609/-. The same was processed u/s. 143(1) of the I.T. Act, 1961. The case was picked up for scrutiny and notice u/s. 143(2) of the I. T. Act was issued and sent through Speed Post on 17.9.2008 at the address as per the AST systems fixing the case for hearing on 23rd September, 2008. On 23.9.2008, neither anybody attended nor any reply was filed. A fresh notice u/s. 142(1) dated 29.1.2009 was issued. Again none attended nor any reply was filed. Again a notice u/s. 142(1) alongwith questionnaire was issued through Speed Post on 18.2.2009 but again none attended nor any reply was filed. Finally a notice u/s. 142(1) was sent on 18.3.2009 fixing the case for

30.3.2009. On 30.3.2009 Sh. Ramavtar Aggarwal, CFO of the assessee company attended and filed part details and case was adjourned for 8.4.2009. Thereafter, Sh. Ram Avtar Aggarwal, CFO of the company attended the proceedings from time to time and filed part details till 15.9.2009. On 3.11.2009, notice u/s. 142(1) was issued and fixed for hearing on 12.11.2009. The same was returned unserved with remarks "No such firm". On 6.11.2009, a notice u/s. 142(1) was issued and sent through speed post at the address of the assessee as well as the Director of the company fixing the case for hearing on 16.11.2009. One notice sent a office address was received back. Again a final opportunity notice alongwith proposed addition was sent through speed post at two of the address of the assessee company and one of the Directors of the Company. But none attended nor any rely was filed. Under such circumstances, the AO completed the assessment proceedings exparte on the basis of material information on the record and completed the assessment at Rs. 1,02,15,446/- vide order dated 11.12.2009 passed u/s. 143(3) of the I.T. Act, 1961, aftger making various additions.

5. Against the aforesaid assessment order dated 11.12.2009, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 13.7.2011 has partly allowed the appeal of the assessee.

6. Aggrieved with the order of the Ld. CIT(A), Revenue is in appeal and assessee is in Cross Objection before the tribunal.

7. At the threshold, Ld. Counsel of the assessee has stated that the Cross Objection filed by the assessee has involved the legal issue and therefore, the same may be first decided. Hence, we first deal with the Assessee's Cross Objection and adjudicate upon the legal issue.

8. At the time of hearing Ld. Counsel of the assessee argued only on the issue involved in ground nos. 1 to 2 relating assuming jurisdiction as per law and without serving the mandatory notice u/s. 143(2) of the I.T. Act, 1961 and ex parte assessment order has been passed. He submitted that the assessee has filed his written submissions on this issue before the Ld. First Appellate Authority but he has also rejected the request of the assessee in routine manner. He filed the copy of small Paper Book before us containing pages 1 to 14 having the copy of acknowledgement on return alongwith statement of total income of assessee; copy of payment receipt for Form No. 18 dated 20.5.2008; Copy of Bill dated 20.5.2008 raised by M/s S. Chandak & Co. for consultation and ROC fees paid for Form No. 18; Copy of payment receipt for Form No. 32 dated 20.5.2008; Copy of Bill dated 20.5.2008 raised by M/s S. Chandak & Co. for consultation and ROC fees paid for Form No. 18; Copy of challan dated 25.2.2009 for Form No. 18; Copy of Form No. 18 showing change of address w.e.f. 2.2.2009; copies of the list of the documents requested from department's file after inspection along with fee paid for the same; copy of order sheet entries as supplied by the AO and the copy of PAN database supplied by the AO. He further stated that finding of the Ld. CIT(A) is contrary to the law and the facts and circumstances of the present case as well as the decision of the Hon'ble Supreme Court of India in the case of ACIT & Anr. Vs. Hotel Blue Moon [2010] 321 ITR 362 (SC) wherein the Hon'ble Supreme Court has held that the issue of notice u/s. 143(2) of the I.T. Act is mandatory and not procedural. If the notice is not served within the prescribed period, the assessment order is invalid. He further submitted that the Ld. CIT(A) has ignored the order of the Hon'ble Supreme Court of India (Supra) and passed the impugned order which is contrary to law and facts on file and deserve to be cancelled.

9. Ld. DR relied upon the order passed by the Ld. CIT(A) and stated that the Ld. First Appellate Authority has passed a well reasoned order on the basis of the records and as per the provisions of law, therefore, the impugned order may be upheld by dismissing the Appeal filed by the Assessee.

10. We have heard both the parties and perused the relevant records especially the order passed by the Revenue Authorities alongwith the documentary evidence filed by the assessee supporting the claim of the assessee as well as the decision rendered by the Hon'ble Supreme Court of India on the legal issue in dispute. We have also perused the Paper Book containing pages 1 to 14 having the copy of acknowledgement on return alongwith statement of total income of assessee; copy of payment receipt for Form No. 18 dated 20.5.2008; Copy of Bill dated 20.5.2008 raised by M/s S. Chandak & Co. for consultation and ROC fees paid for Form No. 18; Copy of payment receipt for Form No. 32 dated 20.5.2008; Copy of Bill dated 20.5.2008 raised by M/s S. Chandak & Co. for consultation and ROC fees paid for Form No. 18; Copy of challan dated 25.2.2009 for Form No. 18; Copy of Form No. 18 showing change of address w.e.f. 2.2.2009; copies of the list of the documents requested from department's file after inspection along with fee paid for the same; copy of order sheet entries as supplied by the AO and the copy of PAN database supplied by the AO. We find that these documents shows that assessee filed the return from the address i.e. 41, LIG flats, Pocket-3, Dwarka, New Delhi on 30.10.2007; letter dated 18.11.2010 relating to copies of list of the documents requested from Department's file after inspection alongwith fee paid for the same mentioning the address of the assessee at 305, Agarwal Arcade, Plot No. 6, Sector-12, Dwarka, New Delhi - 110 078 addressed to the ITO Ward 15(3), New Delhi; From the order sheet recorded during assessment proceedings filed at page no. 13 of the Paper Book shows that "15.9.2008 - Notice u/s.

142(1) issued.” However, the AO as well as Ld. CIT(A) in their respective orders mentioned that the Notice u/s. 143(2) was issued on 15.9.2008 which is contrary to the order sheet recorded by the AO. As per the order sheet, no notice u/s. 143(2) of the Act dated 15.9.2008 was never issued to the assessee and only notice u/s. 142(1) was issued. The copy of PAN database supplied by the AO attached at page no. 14 of the Paper Book shows that the Assessee residential address is “C/o SMS and Associates, 16/100 Vikram Vihar, Lajpat Nagar-IV, New Delhi and Official address is 42, J and K Block, Laxmi Nagar, Delhi, however, the assessment order dated 11.12.2009 and appellate order dated 13.7.2011 were served to the assessee on the address i.e. 6, Community Centre, Basement, East of Kailash, New Delhi. This shows that the notice u/s. 143(2) of the Act were never sent either on the address mentioned in the return of income i.e. 41, LIG Flats, Pocket-3, Dwarka, Phase-I, West Delhi and nor sent at the address mentioned on the assessment order i.e. 6, Community Centre, Basement, East of Kailash, New Delhi. This has established that there was non-service of notice u/s. 143(2) of the I.T. Act within the prescribed time. In our view, the AO has not issued notice u/s. 143(2) of the I.T. Act which is mandatory and it is a failure on the part of the AO for not complying with the procedure laid down in section 143(2) of the I.T. Act. If the notice is not issued to the assessee, then the assessment is not sustainable in the eyes of law and deserve to be cancelled. In view of above facts circumstances of the present case, the issue in dispute raised in ground no. 1 to 2 relating to non service of the mandatory notice u/s. 143(2) of the Act is decided in favor of the assessee by declaring the assessment order dated 11.12.2009 passed u/s. 143(3) of the I.T. Act as invalid. Our view is fully supported by the various judgment of the Hon’ble Supreme Court, Hon’ble Jurisdictional High Court, other High Courts

and Special Benches decision of the ITAT. The relevant portion of the various judgments of the Hon'ble Courts are reproduced as under:-

ACIT & Anr. vs. Hotel Blue Moon: [(2010) 321 ITR 362 (SC)]

HELD: "It is mandatory for the AO to issue notice u/s 143 (2). The issuance and service of notice u/s 143 (2) is mandatory and not procedural. If the notice is not served within the prescribed period, the assessment order is invalid Reassessment-----Notice-----Assessee intimating original return be treated as fresh return--- Reassessment proceedings completed despite assessee filing affidavit denying serviced of notice under section 143(2)---- Assessing Officer not representing before Commissioner (Appeals) that notice had been issued---- Reassessment order invalid due to want of notice under section 143(2)--- Income-tax Act, 1961, ss. 143, 147, 148(1), prov.----ITO v. R.K. GUPTA [308 ITR 49 (Delhi)Tribu.,"

DIT vs. SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATIONS in ITA 441 OF 2010 (Delhi High Court) [(2010) 323 ITR 249]

"The notice u/s 143(2) was issued on 23-03-2000 while the return was filed on 27-03-2000. Even if it was issued on 27-03-2000 without examining the return, it was invalid. The notice was invalid and so was the assessment."

DCIT vs. Indian Syntans Investments (P) Ltd. [(2007) 107 ITD 457 (Chennai)]

Validity of reassessment order - Non-service of notice under s.143(2) - "The amended Proviso to s.148 of the Income Tax Act 1961 was not applicable in case where the assessee was not served a notice under s.143(2) of the Act. The reassessment made in such a case was invalid S.143(2) and s.148 of the Income Tax Act 1961."

CIT vs. M/s Panorama Builders Pvt. Ltd. in Tax Appeal no. 435 of 2011 of Hon'ble Gujarat High Court

Issue Involved: "Whether non-issuance of the notice u/s 143(2) within the prescribed time, made the whole block assessment order null and void and bad in law, despite the assessee not having raised any objection before the passing of the assessment order and despite the provisions of section 292BB of the Act? "

Held: "In this case, Hon'ble High Court has held that section 292BB cures the defects in service of notice but section 292BB is 'confined to only service of notice under this Act and this section does not apply to 'Issuance of notice' under the provisions of Act. It does not lay down that if a mandatory notice is required to be issued by the assessing officer and it has not been issued within the period of limitation fixed under the law, then such notice shall be deemed to have been issued within time.

It has been further held that resort cannot be taken by the Revenue to section 292BH to give a go-bye to mandatory requirement of issuance of notice within the statutory fixed by the proviso to section 143(2) of the Act. "

CIT vs Rajeev Sharma 336 ITR 678, High court of Allahabad.

"In view of above submissions and case laws, it has been established that no notice u/s 143(2) was issued in the present case and therefore the impugned assessment is liable to be annulled. "

M/s Sapthagiri Finance and Investments vs. ITO: TC(A). No. 159 of 2006 dated 17.07.2012 (Mad HC) [(2013) 90 DTR (Mad) 289]

Relevant para reproduced here under:

"13. As far as the present case is concerned, the provisions of Section 148 also uses the expression "so far as may be apply

accordingly as if such return were a return required to be furnished under Section 139". Thus, understanding this provisions in the background of the decision of the Apex Court, on the facts available, we are of the view that in completing the assessment under Section 148 of the Act, compliance of the procedure laid down under Sections 142 and 143 (2) is mandatory. On the admitted fact that beyond notice under Section 142(1), there was no notice issued under Section 143(2), and in the light of the fact that the very basis of the reassessment was the failure on the part of the assessee in not disclosing the capital gains arising on the transfer of property for assessment and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to Section 148 of the Act, we hold that there was total failure on the part of the Revenue from complying with the procedure laid down under Section 143(2) of the Act, which is mandatory one as held by the Apex Court."

Alpine Electronics Asia Pte Ltd. vs. DGIT & Ors: [(2012) 341 ITR 247 (Del)

Held: "The service of notice u/s 143(2) within the statutory time limit is mandatory and is not an inconsequential procedural requirement. Omission to issue notice u/s 143 (2) is not curable and the requirement cannot be dispensed with. S. 143(2) is applicable to proceedings u/s 147 & 148."

JYOTI PAT RAM VS. ITO [(2005) 92 ITD 423 (Lucknow) - ShreeJai Shiv Shonhor Traders (P) Ltd. - A.Y. - 2008-09

"Reassessment order passed under section 143(3)/148 without issue of a valid notice under section 143(2) was illegal."

CIT vs. Pawan Gupta & Ors. [(2009) 318 ITR 322 (Del)

Hon'ble Delhi High Court held in Para 38 of the order observed as under:-

"Thus, we are of the clear view that where the assessing officer is not inclined to accept the return of undisclosed assessment filed by

the assessee issuance of a notice under section 143(2) is a prerequisite for framing the block assessment order under chapter XIV B of the Income Tax Act, 1961. We are also of the view that if an assessment order is passed in such a situation without complying with section 143(2), it would be invalid and not be merely irregular. ”

RAJ KUMAR CHA WLA AND ORS. VS. ITO - (2005) 94 ITD 1 (Del)(SB)

Limitation for re-assessment- Service of notice u/s143(2) in time - A.Y.1995-96. “It was presumed by legal fiction that a return filed u/s 148 of the Income Tax Act 1961 would be treated as a return filed u/s 139 of the Act. The assessee had filed its return in response to a notice issued u/s 148 of the Income Tax Act 1961. The service of notice u/s143(2) of the Act within 12 months of filing the return u/s 148 of the Act was mandatory, but the notice had been served beyond 12 months.

Therefore, as the re-assessment was barred by limitation, no re-assessment could be made u/s 143(3) r/w S.147 of the Act.- ITAT Delhi ‘F’ Special Bench.”

11. In the background of the aforesaid discussions and precedents relied upon, we are of the considered view that the AO has not issued any notice u/s 143(2) of the I.T. Act to the assessee. During the entire assessment proceedings, the assessment order in dispute is invalid, void abnatio and against the provisions of the law and the impugned order is not sustainable in the eyes of law and hence, we cancel the same by accepting the Cross Objection filed by the Assessee.

11.1 Since we have already allowed the Cross Objection filed by the Assessee on the legal issue i.e. without serving the mandatory notice u/s. 143(2) of the I.T. Act, 1961 and quash the assessment and cancel the appellate order, the Revenue’s Appeal has become infructuous and dismissed as such.

12. In the result, the Cross Objection of the Assessee is allowed and Appeal of the Revenue stand dismissed.

Order pronounced in the Open Court on 13/04/2017.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 13/04/2017

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches