

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA NO. 4945/DEL/2017

(A.Y. 2005-06)

CASTLETON CAPITAL LTD., 1004, CHIRANJIV TOWER, 43, NEHRU PLACE, NEW DELHI – 19 (PAN: AABCV5623Q)	VS.	ACIT, CIRCLE 17(1), NEW DELHI
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Assessee By	Sh. K.P. Garg, CA
Revenue By	Ms. Rakhi Vimal, Sr. DR.

ORDER

Assessee has filed this appeal against the impugned order dated 03.05.2017 passed by Ld. CIT(A)-33, New Delhi on the following grounds:-

1. That the initiation of the proceedings u/s.148 on the basis of search material found and seized from third party are contrary to law and procedure prescribed under the Act due to non-obstante provisions in S.153C for search cases and the Ld. CIT(A) has erred in confirming action u/s.148.
2. That notice dated 28-03-2012 issued u/s.148 in the old name V\ashulinga Synthetics Pvt. Ltd. by the ACIT Circle-17(1}, New Delhi is without jurisdiction, in view of the change in name of Castleton Capital Ltd. Before the issue of such notice.

3. That service of notice u/s.148 is barred by time since reasons recorded never supplied to the assessee before passing the order, accordingly the assessment so made is without jurisdiction and contrary to law.
4. That the issue of notice U/s.148 without recording reasons and without forming proper reasons of belief, without following the procedure laid down in the Act, without approval of the appropriate authority prescribed under section 151 is bad in law being without the authority of law.
5. The assessment made without service of any notice u/s.143(2) of the Act and the Ld. CITA has erred in stating that notice u/s.143(2) has duly been served, without confronting the assessee with the remand report and the evidence produced by the AO before the Ld. CIT(A).
6. The consequent reassessment u/s.147 is bad in law and void having been made without the authority of law and the Ld. CIT(A) has erred in confirming assessment u/s.147.
7. That the assessment having been so made without allowing proper opportunity to defend is against equity and in violation of principles of natural Justice and is therefore null and void.

WITHOUT PREJUDICE TO THE ABOVE LEGAL GROUNDS:

8. The appellant denies his liability to tax as upheld by the learned CIT(A) and determined and computed by the learned assessing officer and the manner in which it has been so determined or computed, as:

9. The learned CIT(Appeals) has erred in law and on facts in sustaining the following additions made by the assessing officer which are impugned in this appeal:

- a. Rs.20,00,000/- u/s.68 on account of alleged accommodation entries
- b. Rs. 70,000/- u/s.69C on account of alleged commission paid

2. The brief facts of the case are that the assessee originally filed its return on 29.10.2015 declaring income at Rs. 3,178/- for the AY 2005-06. Subsequently, the case of the assessee was reopened u/s. 147 of the Income Tax Act, 1961 (in short "Act") by issuing notice u/s. 148 of the Act dated 23.3.2012 along with copy of reasons for reopening and in response to the same notice, the AR of the assessee attended the proceedings and filed his reply. The AO has observed that assessee has failed to discharge its onus of proving the identity and creditworthiness of concerned party and genuineness of transactions in terms of provisions of Section 68 of the Act and observed that the amount of Rs. 20,00,000/- received from the entry operators represents the credit entry whose nature and source could not be satisfactorily proved by the assessee and

hence it is covered within the mischief of Section 68 of the I.T. Act., hence, the same was added to the income of the Assessee u/s. 68 of the Act and also commission @ 3.5% amounting to Rs. 70,000/- to carry out the said accommodation entry was also added to the income of the assessee and assessment was completed at Rs. 20,73,178/- vide his order dated 18.03.2013 passed u/s. 143(3)/147 of the Act. Aggrieved with the assessment order dated 18.3.2013, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 03.05.2017 dismissed the appeal of the assessee. Against the impugned order dated 3.5.2017, assessee is in appeal before the Tribunal.

3. No doubt that assessee has raised as many as 09 grounds of appeal, but at the time of hearing, he only argued the ground no. 5 i.e. *"The assessment made without service of any notice u/s. 143(2) of the Act and the Ld. CIT(A) has erred in stating that notice u/s. 143(2) has duly been served, without confronting the assessee with the remand report and the evidence produced by the AO before the Ld. CIT(A)."* He draw my attention towards the order of the Ld. CIT(A) and stated that assessee has taken this ground before the Ld. CIT(A) vide ground no. 3.1 which is at page no. 2 of the impugned order i.e. *"That the assessment u/s. 147 made without the service of statutory notice u/s. 143(2) before making the assessment is without jurisdiction and bad in law."* and stated that Ld. CIT(A) has wrongly observed that the notice u/s. 143(2) was in order and decided the same against the assessee vide para no. 4 to 4.2 of the impugned order at page no. 2. He further draw my attention

towards proceedings sheet dated 28.2.2013 before the AO wherein the AO has served the notice u/s. 143(2) of the Act dated 28.2.2013 on the same date i.e. 28.2.2013 when the Assessee's counsel appeared before the AO in the proceedings, which is totally illegal, without application of mind. He further stated that the issue in hand is squarely covered with the decision of the Hon'ble Delhi High Court decision in the case of Silver Line Reported at 383 ITR 455 and the decision of the ITAT, Delhi Bench in the case of Micron Enterprises Pvt. Ltd. Vs. ITO in ITA No. 901/Del/2016 (AY 2006-07) order dated 14.5.2018.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the order of the revenue authorities. I find that assessee's counsel has argued only ground no. 5 i.e. *"The assessment made without service of any notice u/s. 143(2) of the Act and the Ld. CIT(A) has erred in stating that notice u/s. 143(2) has duly been served, without confronting the assessee with the remand report and the evidence produced by the AO before the Ld. CIT(A)."* and the same ground was also taken before the Ld. CIT(A) vide ground no. 3.1 which is at page no. 2 of the impugned order i.e. *"That the assessment u/s. 147 made without the service of statutory notice u/s. 143(2) before making the assessment is without jurisdiction and bad in law."* I further find that Ld. CIT(A) vide para no. 4 to 4.2 of the impugned order which are at page no. 2 has held as under:-

"4. To examine the contention of the appellant that notice u/s. 143(2) was not issued at the assessment stages, the note sheet of the assessment proceedings was examined. The order sheet entry dated 28.02.2013 reads as under:-

"Present Shri A.K. Mishra, he was given notice u/s. 143(2) dated 28.2.2013 has been seen and found in order.

4.1 Further, from the assessment file the office copy of notice u/s. 143(2) dated 28.02.2013 has been found in order.

4.2 In view of above, the modified ground no. 2 is rejected."

5.1 After perusing the aforesaid records especially the impugned order, proceeding sheet dated 28.2.2013 written by the AO during assessment proceedings and the findings of the Ld. CIT(A) page no. 2, as aforesaid, I find considerable cogency in the contention of the Ld. Counsel for the Assessee that the assessment made without service of any notice u/s. 143(2) of the Act and the Ld. CIT(A) has erred in stating that notice u/s. 143(2) has duly been served, without confronting the assessee with the remand report and the evidence produced by the AO before the Ld. CIT(A). It is also noted that on 28.02.2013, when Ld. Counsel for the assessee appeared before the AO in the proceedings, the AO has served the notice u/s. 143(2) of the Act on him on the same date i.e. 28.2.2013 by hand, which shows that the notice was served in an improper

manner and also shows the non-application of mind on the part of the Assessing Officer and also against the spirit of the decision of the Hon'ble Delhi High Court in the case of Silver Line Reported at 383 ITR 455 wherein the Hon'ble High Court has observed as under:-

"...12. The Court first proposes to consider the question as to whether in terms of the proviso to Section 292BB of the Act, the Assessee was precluded, at the stage of the proceedings before the ITAT, from raising a contention regarding failure of the AO to issue a notice under section 143(2) of the Act. The legal position appears to be fairly well settled that Section 292BB of the Act talks of the drawing of a presumption of service of notice on an assessee and is basically a rule of evidence. In Commissioner of Income Tax vs. Parikalpana Estate Development (P) Ltd. (supra) in answering a similar question, the Court referred to its earlier decision in ITA No. 5789 of 2015 and connected matters page 10 of 15 of Income tax vs. Mukesh Kumar Agrawal (2012) 345 ITR 29 (All.) and pointed out that Section 292BB of the Act was a rule of evidence which validated service of notice in certain circumstances. It introduces a deeming fiction that once the Assessee appears in

any proceeding or has cooperated in any enquiry relating to assessment or reassessment it shall be deemed that any notice under any provision of the Act that is required to be served has been duly served upon him in accordance with the provisions of the Act and the Assessee in those circumstances would be precluded from objecting that a notice was required to be served upon him under the Act was not served upon him or not served in time or was served in an improper manner. It was held that Section 292BB of the Act is a rule of evidence and it has nothing to with the mandatory requirement of giving a notice and especially a notice under section 143(2) of the Act which is a notice giving jurisdiction to the AO to frame an assessment. The decision of the Allahabad High Court in Manish Prakash Gupta vs. Commissioner of Income Tax (Supra) is also to the same effect."

5.2 I further find that the ITAT, Delhi Bench in the case of Micron Enterprises Pvt. Ltd. Vs. ITO in ITA No. 901/Del/2016 (AY 2006-07) vide order dated 14.5.2018 has decided the similar and identical issue in favour of the assessee by relying on another decision of the Hon'ble High Court in the case of Society for Worldwide Inter Bank Financial,

Telecommunications decided in ITA No. 441/2010, reported at 323 ITR 249 by observing as under:-

"Learned Counsel for the Assessee submitted that assessee filed reply to the notice under section 148 of the I.T. Act on dated 26.11.2013 which is noted in the assessment order, copy of which, is filed at page-11 of the paper book, in which, assessee explained that the return already filed under section 139(1) may be treated as return filed inresponse to notice under section 148 of the I.T. Act. He has submitted that on the same day A.O. issued notice under section 143(2) i.e., on 26.11.2013, copy of which, is filed at page-12 of the paper book. He has, therefore, submitted that the A.O. has not validly assumed jurisdiction under section 147 and 143(3) of the I.T. Act to pass the assessment order against the assessee. He has submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) in which it was held as under : "Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice

itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice under s. 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23rd March, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it dear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is dear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2)."

5.1. And the conclusion is as under : "Assessment made in pursuance of a notice under section 143(2) issued on 23rd March, 2000 when the return was filed on 27th March, 2000 is invalid." 6. He has submitted that the same order have been followed by ITAT, Delhi Bench, in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi in ITA.No.1262 and 1263/Del./2017 dated 17.10.2017 in which the Tribunal held as under :

10. "It was further argued by the Id. counsel for the assessee Dr.Rakesh Gupta that notice u/s 143(2) of the Act, was issued on 17.09.2014 and which is the same date on which return was filed. This is apparent from the Assessing Officer's order in para 3 at page 1.

Therefore, the Assessing Officer has not applied his mind independently while issuing notice u/s 148 of the Act. On this count also, the assessment deserves to be quashed. Accordingly, under the facts and circumstances of the case, the legal grounds of the assessee are allowed."

7. On the other hand, Ld. D.R. submitted that assessee did not file return under section 148 within the specified period. Therefore, this ground of appeal of assessee may be dismissed.

8. After considering the rival submissions, I am of the view that the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (supra) and Order of ITAT, Delhi Bench in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi (supra). It is an admitted fact that assessee filed reply in response to the notice under section 148 of the I.T. Act on 26.11.2013 and submitted before A.O. that original return filed before him may be treated as return filed in response to the notice under section 148 of the I.T. Act. The A.O. on the same day served notice under section 143(2) upon assessee-company whose signature tally on the said notice. Therefore, notice issued under

section 143(2) is invalid and resultantly, the assessment is vitiated and is liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the re-assessment proceedings in the matter. Resultantly, all additions stands deleted. In view of the above, there is no need to decide other contentions raised by Learned Counsel for the Assessee.

9. In the result, appeal of assessee is allowed."

6. Keeping in view of the aforesaid discussions and respectfully following the precedents, as aforesaid, I quash the reassessment proceedings being invalid in the eyes of law and accordingly, allow the ground no. 5 raised by the Assessee. Since the reassessment has been quashed, there is no need to adjudicate the other grounds.

7. In the result, the Appeal of the Assessee is allowed.

Order pronounced on this 27th day of September, 2019.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated the 27th day of September, 2019
SRB

Copy forwarded to:-

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

AR, ITAT

