

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 672/Del/2019
Assessment Year : 2008-09

DURGA FERROUS P. LTD.,
AN-2, SHALIMAR BAGH,
NEW DELHI – 110 088
(PAN: AABCD6942Q)
(Appellant)

Vs. ITO, WARD-7(4),
NEW DELHI

(Respondent)

Assessee by : Sh. Suresh Kumar Gupta, CA
Department by : Ms. Parul Singh, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-34, New Delhi on 21.12.2018 in relation to the assessment year 2008-09.

2. Brief facts of the case are that the assessee is a private limited company engaged in the business of trading of non ferrous metal such as SS Flats and SS Patties. Assessee has filed the return declaring an income of Rs. (-) 2,66,052/- on 17.9.2008. The AO has issued notice u/s. 148 of the I.T. Act, 1961 for AY 2008-09 on the basis of the information received from the Investigation Wing that the assessee had taken accommodation entries of Rs. 15,00,000/- from the entities managed by two individuals namely Sh. Surender Kumar Jain and Sh. Virender Kumar Jain who had been engaged in providing accommodation etnry in various firms such as unsecured loan, share capital and share premium. The AO has completed the assessment u/s. 147/143(3) of the Act after making addition of Rs. 15,00,000/- to the returned loss vide order dated 07.3.2016 passed u/s. 147/143(3) of the I.T.

Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 21.12.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 21.12.2018, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee stated that assessee has filed additional ground of appeal stating that impugned reassessment order passed by the Assessing Officer u/s. 147/143(3) of the I.T. Act, 1961 is invalid, void-ab-initio for want of valid notice u/s. 143(2) of the Act, as per law, as evident from the fact that the return of income has been filed in response to notice u/s. 148 of the Act on 05.10.2015. The notice u/s. 143(2) of the Act was issued on the same very date i.e. on 05.10.2015 which shows that the AO has not applied his mind before issuance of notice u/s. 143(2) of the Act. Therefore, assuming jurisdiction to frame reassessment on this basis, the notice is not tenable in the eyes of law and therefore, he requested that the impugned assessment proceedings may be quashed. For the sake of convenience, the additional ground taken by the assessee is reproduced as under:-

"On the facts and circumstances of the case and also in law, the impugned reassessment order passed by the Ld. AO u/s. 147/143(3) of the Act is invalid and void-ab-initio for want of valid notice u/s. 143(2) as per law as evident from fact that when return in response to notice u/s. 148 was admittedly filed on 05.10.2015, the notice u/s. 143(2) is issued on very same day i.e. 05.10.2015 which shows non application of mind in issuing notice u/s. 143(2) and thereafter assuming jurisdiction to frame assessment on the basis of such a notice is not tenable in law and therefore impugned proceedings need to be quashed."

3.1 Ld. Counsel for the assessee further stated that the aforesaid additional ground is pure legal ground and its adjudication does not require any fresh investigation into facts apart from looking into the material already on record and the same may be admitted in view of the Hon'ble Supreme Court of India in the case of NTPC vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC) and the issue in dispute may be decided in favour of the assessee. To support his contention, he draw my attention towards the order sheet dated 05.10.2015 of the proceedings of the Assessing Officer which is placed at page no. 107 of the Paper Book.

4. On the contrary, Ld. DR stated that Ld. CIT(A) has passed a well reasoned order on the basis of the documentary evidences filed by the assessee, as per law. Therefore, the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the records especially the orders passed by the revenue authorities and the Paper Book filed by the assessee. I am agree with the contention made by the Ld. Counsel for the assessee that the aforesaid additional ground may be admitted in view of the Hon'ble Supreme Court of India decision in the case of NTPC vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC), being legal ground and its adjudication does not require any fresh investigation into facts apart from looking into the material already on record. Therefore, the additional ground as reproduced in para 3 of this order, as aforesaid, is admitted and is being adjudicated.

5.1 I have perused the page no. 106-107 of the Paper Book and after perusing the order sheet dated 05.10.2015, I am of the considered view that the impugned reassessment order passed by the Assessing Officer u/s. 147/143(3) of the Act is invalid and void-ab-initio for want of valid notice

u/s. 143(2) as per law as evident from fact that when return in response to notice u/s. 148 of the Act was admittedly filed on 05.10.2015, the notice u/s. 143(2) of the Act was issued on very same date i.e. on 05.10.2015 which shows non application of mind on the part of the Assessing Officer in issuing notice u/s. 143(2) of the Act and thereafter assuming jurisdiction to frame assessment on this basis, the notice is not tenable in law and therefore impugned proceedings need to be quashed. I hold and directly accordingly. My aforesaid view is supported by the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Silver Line reported in (2016) 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 do 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 Since I have quashed the reassessment, as aforesaid, hence, other grounds have become academic and therefore, are not being adjudicated.

6. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 13-02-2020.

Sd/-

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

Dated: 13-02-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.