

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 593/CHD/2022

निर्धारण वर्ष / Assessment Year : 2012-13

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|--|------|--------------------------------|
| Manjit Kaur,<br>W/o Shri Balbir Singh,<br>H.No.3604,<br>Mohhalla Gurunankpura,<br>Raikot -141109,<br>District Ludhiana | बनाम | The ITO,<br>Ward-1,<br>Jagraon |
| स्थायी लेखा सं./PAN NO: ICCPK3815B   |      |                                |
| अपीलार्थी/Appellant  |      | प्रत्यर्थी/Respondent          |

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate.

राजस्व की ओर से/ Revenue by : Shri M.P. Dwivedi, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22.03.2023

उदघोषणा की तारीख/Date of Pronouncement : 24.03.2023

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 15.06.2022 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'].

2. The Assessee has taken following grounds of appeal:-

1. a. *That the Worthy CIT(A) has erred in confirming the action of the Ld. Assessing Officer with regard to re-opening of the case u/s 148 of the Income Tax Act, 1961.*
- b. *That the CIT(A) has failed to appreciate that no valid notice u/s 148 has been served upon the assessee which is the mandatory requirement.*
- c. *That notwithstanding the above grounds of appeal, there was no reason to believe that the Income of the assessee has escaped assessment.*
2. *That the Worthy CIT(A) has erred in upholding the assessment order passed by the Assessing Officer without issuance of notice u/s 143(2) of the Income Tax Act, 1961 which was mandatory requirement.*
3. *Notwithstanding the above grounds of appeal, Worthy CIT(A) has erred in upholding the addition of Rs. 42,85,978/- out of the total addition of Rs.84,46,321 made by the Ld. Assessing Officer.*
4. *That the Worthy CIT(A) has erred in upholding the rejection of the rate of Rs. 39 per sq. yards adopted by the assessee on the basis of the valuation report of the Registered Valuer and has erred in adopting the ad-hoc rate of Rs. 27 per sq. yards without any basis.*
5. *That the Worthy CIT(A) has erred in not giving the benefit of exemption claimed u/s 54B of the Income Tax Act, 1961.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed-off.*

3. In this appeal the Assessee, inter alia, has contested the validity of the assessment framed u/s 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter called 'the Act') for want of issue of mandatory notice u/s 143(2) of the Act.

4. At the outset, the Ld. counsel for the assessee has invited our attention to page 81 of the paper book which is a copy of the information received under RTI Act from the Income-tax Department wherein, the Income Tax Officer, Ward-1, Cum-CPIO, Jagraon vide letter dated 2.9.2021 has informed that as per record, a return of income for assessment year 2012-13 was submitted manually by the Assessee on 17.12.2019 and that no notice u/s 143(2) of the Act was issued in this case. The Ld. counsel has also invited our attention to the paper book pages 1 to 21 which are copies of various notices issued for verification of the financial transactions, for requisition of information, notice u/s 148 of the Act etc. to submit that the address mentioned in the said notices was incomplete, such as:

*“Smt. Manjit Kaur,  
W/o Balvir Singh  
Raikot - 141109.”*

5. The Ld. Counsel in this respect has submitted that the address in the aforesaid notice was insufficient. He has further invited our attention to the copies of the postal / registered envelope, which were received back by the Department as un-served with the remarks “short address” or “incomplete Address”

6. The Ld. counsel thereafter has invited our attention to the paper book page 22 to submit that the only the notice received by the Assessee in this behalf was dated 12.12.2019 issued u/s 142(1) of the Act, whereby, the Assessee was called upon to prepare and file the true and correct return of income, in pursuance of which, the Assessee filed the return of income. The perusal of the assessment order reveals that the AO thereafter, proceeded to frame the assessment on the basis of the return filed by the Assessee along with the relevant documents without issuing any notice u/s 143(2) of the Income Tax Act. In this case no notices ever was issued u/s 143(2) of the Act by the AO to the Assessee.

7. It has now been settled position of law that issuance of notice u/s 143(2) of the Act is mandatory for the AO to proceed with the assessment u/s 143(3) of the Act, even in cases pertaining to the reopening of the assessment u/s 147 of the Income-tax Act. Reliance in this respect can be placed on the decision of the Hon'ble Supreme Court in 'Hotel Blue moon (2010) 3 SCC 259, wherein, the Hon'ble Supreme Court has held that the omission on the part of the AO to issue notice u/s 143(2) of the Act cannot be said to be a procedural irregularity and the same is not curable and, therefore, the requirement of notice u/s 143(2) of the Act cannot be dispensed with. Further, reliance can be placed on the decision of the Hon'ble Supreme Court in

the case of 'CIT Vs. Laxman Das Khandelwal' [2019] 108 taxmann.com  
183(SC) wherein it is held as under:-

*“7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.*

*On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.*

*8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Blue Moon's case (supra) . The issue that however needs*

*to be considered is the impact of Section 292BB of the Act.*

*9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.”*

8. Respectfully following the proposition of the law laid down in these orders stated above, we hold that the assessment order is bad in law for the reason that the assessing authority passed the order u/s 143(3) of the Act without issuing mandatory notice u/s 143(2) of the Act. Accordingly, the assessment order is, hereby, quashed.

In the result, the appeal is allowed.

Order pronounced on 24.03.2023

Sd/-  
**(VIKRAM SINGH YADAV)**  
Accountant Member  
Dated : 24. 03.2023  
“आर.के.”

Sd/-  
**(SANJAY GARG)**  
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar