

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

I.T.A. No. 1934/DEL/2015
Assessment Year 2011-12

Roshan Lal Verma, A-50, East Uttam Nagar, Near Indira Park, New Delhi.	v.	DCIT, Central Circle-II, Faridabad, Haryana.
TAN/PAN: ACAPV2833Q		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjeev Bajaj, CA Shri Shivir Bajaj, CA		
Respondent by:	Shri T. Kipgen, CIT-DR		
Date of hearing:	05	04	2022
Date of pronouncement:	23	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-III, Gurgaon ('CIT(A)' in short) dated 29.01.2015 arising from the assessment order dated 28.03.2013 passed by the Assessing Officer (AO) under Section 153B(1)(b) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. When the matter was called for hearing, ld. counsel for the assessee straightaway submitted that the assessment in the instant case has been passed on the basis of a time barred and *nonest* notice issued under Section 143(2) of the Act and therefore the entire assessment is required to be quashed at the threshold. It was pointed

out that search in the instant case was conducted on 21.06.2010 and as a consequence thereof, notice under Section 153A were issued in respect of last six previous assessment years immediately preceding relevant to the Financial Year 2010-11 in question. The assessment year A.Y. 2011-12 (F.Y. 2010-11), in the instant case, is the year of search and hence not covered by the Special provisions of Section 153A but is governed by normal mechanism available for assessment and thus normal procedure of assessment stipulated under Sections 139 to 151 would apply. The assessment however, in the instant case, has been carried out for which order was passed incorrectly under Section 153(B)(1)(b) r.w. Section 143(3) of the Act.

2.1 Adverting further, the ld. counsel pointed out that in the wake of the fact that normal procedure for assessment applies to the year of search, the notice under Section 143(2) is required to be issued within the limitation period specified in as per proviso to Section 143(2) of the Act. This would mean that the notice under Section 143(2) for assumption of jurisdiction to assess the income of assessee for AY 2011-12 cannot be served to the assessee after the expiry of six months from the end of the financial year, i.e., F.Y. 2010-11 in which the return has been furnished. The return for the Assessment Year 2011-12 was filed on 14.10.2011. Consequently, the notice was required to be issued by 30th September, 2012 as per the limitation period specified under Section 143(2) of the Act. The notice under Section 143(2), in the instant case, has however been issued on 14.11.2012 which is clearly beyond the time limit prescribed under Section 143(2) of the Act. As a consequence, the jurisdiction of the Assessing Officer to frame the assessment for Assessment Year 2011-12 is ousted at the threshold and the entire assessment framed in pursuance of a belated jurisdictional notice is null and void at the threshold.

2.2 It was thus contended on behalf of the assessee that the impugned assessment order is required to be quashed being clearly barred by limitation.

3. Ld. DR for the Revenue, on the other hand, relied upon the action of the lower authorities.

4. The validity of impugned assessment order resulting in present appeal is under challenge on the grounds of notice issued under Section 143(2) purportedly barred by limitation. It is the case of the assessee that, in the instant case, assessee has filed the return of income on 14.10.2011 and consequently in view of limitation period provided under Section 143(2) of the Act for framing assessment, the notice under Section 143(2) could not have been issued after 30th September, 2012. The notice under Section 143(2) in the instant case has been issued on 14.11.2012 which is beyond the time limit permissible under Section 143(2) of the Act. The second line of contention of behalf of the assessee is that the order in the instant case has been innocuously passed under Section 153B(1)(b) of the Act which is clearly bad in law owing to the fact that the Financial Year 2010-11 relevant to Assessment Year 2011-12 in question is the year of search which is not covered by the special provision of Section 153A of the Act. A reference was made to several judgments including the case of *ACIT vs. Hotel Blue Moon (2010) 321 ITR 0362 (SC)*; *PCIT vs. Consortium Nussli Comfort Net 2022 (3) TMI 1247-Delhi High Court*.

5. In view of the decision of Hon'ble Supreme Court in *Hotel Blue Moon (supra)*, the Assessing Officer in the instant case has no jurisdiction to make assessment on the basis of belated notice issued under Section 143(2) of the Act. The defect, being substantive, is not curable under Section 292B of the Act. Section 292BB also does

not apply as the notice issued under Section 143(2) itself has been issued after limitation period and merely served belatedly. The impugned assessment order culminated from a belated jurisdictional notice is thus *nonest* and deserves to be quashed.

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

Order pronounced in the open Court on 23/06/2022.

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

DATED: /06/2022

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER