

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.339/Viz/2016
(निर्धारण वर्ष/Assessment Year:2013-14)**

Income Tax Officer
Ward-1(1)
Guntur

Vs. Sri Ashok Kumar Periwal
H.No.25 16-179/6
Opp.Old Mirchi Yard
Guntur
[PAN :AHOPP2643M]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.51/Viz/2016
Arising out of I.T.A.No.339/Viz/2016
(निर्धारण वर्ष/Assessment Year:2013-14)**

Sri Ashok Kumar Periwal
H.No.25-16-179/6
Opp.Old Mirchi Yard
Guntur
[PAN :AHOPP2643M]

Income Tax Officer
Ward-1(1)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से / Revenue by
निर्धारिती की ओर से/ Assessee by

: Shri Deba Kumar Sonowal, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 03.05.2018

घोषणा की तारीख/Date of Pronouncement

: 09.05.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue and Cross Objection by the assessee against the order of the Commissioner of Income-Tax (Appeals)[CIT(A)]-1, Guntur vide I.T.ANo.254/CIT(A)-1/GNT/2014-15 dated 30.03.2016 for the assessment year 2013-14.

2. The revenue has raised the following grounds of appeal :
 1. The order of the Ld.Commissioner of Income Tax (Appeals), Guntur is erroneous in law or facts or both.
 2. The Ld.CIT(A)-1, Guntur directions to reverify the issues after giving reasonable opportunity of being heard to the assessee are not acceptable in view of the sec.251 of the I.T.Act, which deals with powers of the Commissioner of Income Tax (Appeals). Section 251 of the I.T.Act, 1961, the powers of Commissioner of Income Tax (Appeals) are reproduced as under :
 - 2 251(1) - In disposing of an appeal, the Commissioner (Appeals) shall have the following powers : (a) In an appeal against the order of assessment, he may confirm, reduce, enhance or annul the assessment".
 3. Any other grounds that may be urged at the time of hearing.
3. The assessee has filed the return of income on 07.09.2013 declaring the total income of Rs.8,51,190/-. The case was selected for scrutiny and

the notice u/s 143(2) was issued by the ITO, Ward-1(1), Siliguri on 02.09.2014 which was served on the assessee on 08.09.2014. The assessee filed objection before the ITO, Siliguri challenging the jurisdiction hence the case was transferred to ITO, Ward-1 (1), Guntur who has issued notice u/s 143(2) on 14.11.2014 and the same was served on 20.11.2014. The assessment was completed u/s 144 r.w.s. 143(3) on total income of Rs.15,28,92,480/-.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) challenging the validity of assessment made u/s 143(3) stating that the assessment made u/s 143(3) is invalid since the notice issued by ITO Ward-1(1), Guntur on 14 11.2014 is barred by limitation. The assessee has also challenged the validity of notice issued u/s 143(2) by the ITO, Ward-1(1), Siliguri and the assessment made u/s 144, apart from the merits of the case. The Ld.CIT(A) held that the issue of notice and the assessment made u/s 144 is valid and on merits, the Ld.CIT(A) remitted the matter back to the file of the AO with a direction to verify the books of accounts and the profit and loss account and determine the income after giving the opportunity to the assessee.

5. Against the order of the Ld.CIT(A), the revenue filed appeal before this Tribunal challenging the powers of Ld.CIT(A) u/s 251 to remit the matter back to the file of the AO.

6. The assessee filed cross objection stating that the assessment order framed u/s 143(3) is barred by limitation. The cross objections raised by the assessee in this case reads as under :

1. The learned Commissioner of Income Tax (Appeals)1, Guntur ought to have held that the assessment based on the notice u/s 143(2) dt 14.11.2014 issued beyond the stipulated time period is barred by limitation.

2. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals)-1, Guntur erred *in* upholding the action of the assessing officer in making the assessment ex-parte u/s 144 of the Act.

3. The learned Commissioner of Income Tax (Appeals) -1, Guntur ought to have deleted the entire additions of Rs 15,20,36,691/- made by the assessing officer in the assessment made u/s 143(3) r w s 144 of the Act, Dt: 17-03-2015.

4. Any other ground of cross-objection that may be raised at the time of hearing.

7. The revenue's case is that the Ld.CIT(A) has set aside the issue to the file of the AO with a direction to the AO to verify the trading and profit and loss account and recompute the income. As per Section 251 of I.T.Act, the Ld.CIT(A) is not vested with such powers. The assessee's case is that the

assessee is filing the return of income regularly with ITO, Ward-1(2), Guntur. For the impugned assessment year also, the assessee had filed the return of income showing the jurisdiction of The ITO as Ward-1(2), Guntur. The assessee is carrying on the business in Guntur in Andhra Pradesh and the jurisdiction of the AO vests with ITO, Guntur. The Ld.AR argued that the ITO, Ward-1(1), Siliguri has issued notice u/s 143(2) which is without jurisdiction and invalid, hence to be treated as non-est. The ITO, Ward-1(1), Guntur has issued notice on 14.11.2014 which was served on the assessee on 20.11.2014 and barred by limitation period specified in proviso to section 143(2). Therefore argued that the notice issued by the AO is barred by limitation and the consequent assessment is invalid and required to be quashed. The Ld.AR submitted that the time limit for issue of notice u/s 143(2) was 30.09.2014. Since the technical issue raised by the assessee in cross objections is having bearing on the entire assessment and the goes to the root of assessment, we are of the view that the cross objection is to be addressed first. Accordingly, we take up the ground No. 1 of Cross Objection.

8. In this case, ITO, Ward-1(1), Siliguri has issued notice u/s 143(2) on 03.09.2014 which was served on the assessee on 08.09.2014. The assessee

submitted the reply to the ITO, Ward-1(1), Siliguri stating that the jurisdiction over the assessee vests with the ITO, Ward 1(2), Guntur, hence the notice issued u/s 143(2) by ITO Ward-1(1), Siliguri is void-ab-initio. The Ld.AR challenged the validity of notice issued by ITO, Ward-1(1), Siliguri. The Ld.DR submitted that ITO, Ward-1(1), Siliguri is empowered to issue the notice as PAN was attached with the ITO, Ward-1(1), Siliguri. The Ld.DR submitted that the notice was issued by the computer system of the department as per prevailing practice of attachment of PAN. The DR argued that there is no error in the notice issued u/s 143(2) of the Act and submitted that since the notice is issued within the time limit allowed u/s 143(2), the same should be held valid.

9. On the other hand, the Ld.AR argued that the notice has to be issued by the jurisdictional AO and the jurisdiction cannot be conferred on another officer without having passed the orders u/s 127 of the act. Therefore, argued that the notice issued u/s 143(2) by the ITO, Siliguri is invalid.

10. We have heard both the parties and perused the material placed on record. The assessee is regularly assessed with the ITO, Ward-1(2), Guntur.

He is residing and carrying on the business in Guntur and filed the returns of income showing the AO as ITO, Guntur. Therefore, territorial jurisdiction and the regular jurisdictions are vested with the ITO, Ward-1(2), Guntur. As per the provisions of the I.T.Act, notice u/s 143(2) is required to be issued by the AO having jurisdiction. For ready reference, we extract relevant part of the section u/s 143(2)

“(2) Where a return has been furnished under [section 139](#), or in response to a notice under sub-section (1) of [section 142](#), the Assessing Officer shall,—

(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:

¹⁷[Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]

(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient¹⁸ to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

¹⁹[Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]]”

10.1. From section 143(2), it is evident that the AO or the prescribed Income Tax authority, if he considers it is not necessary or expedient to ensure that the assessee has not understated the income, shall serve on the assessee a notice requiring him to produce or cause to produce the evidence before the AO. Therefore, notice u/s 143(2) required to be issued

by the AO or Income Tax authority. As per Rule 12E, the prescribed authority is defined as under :

“ [Prescribed authority under sub-section (2) of section 143.

12E. *The prescribed authority under sub-section (2) of section 143 shall be an income-tax authority not below the rank of an Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as income-tax authority for the purposes of sub-section (2) of section 143.]”*

10.2. The AO / Ld.DR did not show any authorization issued by the Central board of Direct Taxes (CBDT) to act as Income Tax Authority for the purpose of sub for issue of notice u/s 143(2) in favour of the ITO, Ward 1(1) Siliguri in the case of the assessee. Hence the ITO Ward-1(1), Siliguri is not a prescribed Income Tax Authority under 12E of I.T. Rules. The Assessing officer is defined the section 2, sub section 7A as under :

“(7A) "Assessing Office " means the Assistant Commissioner [or Deputy Commissioner] [or Assistant Director] [or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of [section 120](#) or any other provision of this Act, and the [Additional Commissioner or] [Additional Director or] [Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer.”

10.3. The AO is an authority who has been conferred with powers and functions to act as AO under the I.T. Act. The powers and functions and the AO's jurisdiction is notified by the CBDT/Pr.CCIT/Pr.CIT from time to time. In this case, the jurisdiction of the AO falls with the ITO, Ward-1(2), Guntur which was not disputed by the department. The ITO, Ward-1(1), Siliguri

was not conferred with any powers u/s 127 against the assessee. The AO in relation to assessee means, the AO who is entrusted with the relevant jurisdiction as per the notification issued in this regard. There is no denying fact that the jurisdiction of the assessee is vested with the ITO, Ward-1(2), Guntur and again there is no denying fact that the jurisdiction was not transferred to ITO, Ward-1(1), Siliguri. Hon'ble Kolkata High Court in the case of ITO and Others Vs. Santosh Kumar Dalmia [208 ITR 337] (Kol) held that if the income tax officer did not have any jurisdiction to issue the impugned notice, the writ court can always interfere irrespective of the fact whether the assessment pursuant to such notice has been made or not. If the notice issued u/s 148 of the Act, which is the condition precedent for making the reassessment is quashed then the reassessment cannot stand and that's why the Ld.judge after squashing the notice u/s 148 of the Act also directed if any assessment order has been passed pursuant to the notice, the same would also be set aside and quashed. In instant case, the revenue has not brought on record to show that notification u/s 127 passed by the Commissioner of Income Tax conferring the jurisdiction over the assessee with ITO-Ward1(1), Siliguri. It is the responsibility of the Income Tax department to migrate PAN to the correct AO, if there is a mismatch. Simply because the PAN is attached to ITO,

Ward-1(1), Siliguri he cannot assume the jurisdiction over the assessee and issue the notice without having powers vested in him. Therefore, the notice issued by the ITO, Ward-1(1), Siliguri is invalid, hence the same should be treated as non-est. This view is supported by the order of the ITAT Kolkata in ITA No.1621 &1301/Kol/2011 dated 20.07.2016 in ITO, Ward-56(4) Vs. M/s Nopany & Sons and the decision of ITAT, Delhi in the case of ACIT Vs. Smt. Harinder Sachdev in I.T.A.No.207/Del of 2010 and I.T.A.No.4776/Del of 2009.

11. Having held that the notice issued u/s 143(2) by the ITO, Ward-1(1), Siliguri is invalid we now examine the validity of notice issued by the ITO, Ward-1(1), Guntur. In this case the assessee is filing the returns with ITO, Ward-1(2), Guntur. ITO, Ward-1(1), Guntur has issued notice u/s 143(2) on receipt of assessment records from ITO, Ward-1(1), Siliguri on 14.11.2014. The assessment involved in this case is for the assessment year 2013-14. As per proviso to section 143(2), no notice u/s 143(2) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. In this case, the return was furnished on 07.09.2013 and the time limit allowed to serve notice u/s 143(2) gets barred by 30.09.2014. Hence, the notice issued u/s 143(2) by

the AO, Guntur on 14.11.2014 was barred by limitation. On the same facts, Hon'ble ITAT, Delhi in the case of ITO Vs. NVS Builders Pvt. Ltd. in ITA No.3729/Del/2012 dated 08.03.2013 for the assessment year 2006-07 held that the entire assessment proceedings are vitiated because of non service of jurisdictional notice u/s 143(2) within the period of limitation by the AO having jurisdiction over the case. For the sake of clarity, we extract the relevant paragraph of the order of the Tribunal which reads as under :

"5. We have considered, the rival submissions. It is not in dispute that return of income has been filed on 20th November, 2006 with ITO at New Delhi having jurisdiction over the case of the assessee. The La. DR. also brought on record same which support the claim of the assessee that assessee filed the original return of income at Delhi. The record also reveal that even for earlier and subsequent years, the assessee filed return of income at Delhi. The assessment in the present case has been framed by ITO, Ward-130, New Delhi, having jurisdiction over the case of the assessee, The ITO, Ward-1 (1), Faridabad issued notice under section 143(2) on 23rd October, 2007, who was having no jurisdiction over the case of the assessee. The ITO at Delhi issued notice under section 143(2) on 28th July, 2008 which was beyond the period prescribed under the Law. It is, therefore clear that the A.O. having jurisdiction over the case of the assessee did not issue notice under section 143(2) upon the assessee within the period of limitation provided under the Act. Therefore, the first notice issued by ITO, Ward-1(1), Faridabad, having no jurisdiction over the case of the assessee would not be valid and would not get any jurisdiction over the case of the assessee. The contention of the Ld. P.R. has no merit that ITO, Ward-1(1), Faridabad was empowered to issue notice as per PAN or it was issued as per Computerized System of the Department because it is against the provisions of Law. As such the issue would be in violation of the principles of law and as such the internal procedure provided by the department would not justify the illegality committed by the ITO, Ward-1 (1), Faridabad, The entire assessment proceedings are vitiated because of non-service of jurisdictional notice under section 143(2) within the period of limitation by the AD. having

jurisdiction over the case of the assessee. No infirmity have been pointed out in the order of the Ld. CIT(A) in holding the assessment order to be null and void. We confirm the finding of fact recorded by the Ld. CIT(A) and dismiss this ground of appeal of Revenue. Since the entire assessment order is declared as null and void, there is no need to decide the issue on merit which is left with academic discussion only. The departmental appeal fails and is dismissed.”

12. In the instant case, the first notice was issued by the ITO, Ward-1(1), Siliguri who is having no jurisdiction, hence it is invalid. The second notice issued by the ITO, Ward-1(1), Guntur was barred by limitation. The pre-requisite for making the assessment u/s 143(2) is service of valid notice. Non service of valid notice makes the assessment illegal and void-ab-initio. This view is supported by the decision of the Hon'ble ITAT Indore in ITA No. 139/ Ind/2007 in the case of Servite sisters Society Vs. ACIT dated 22.05.2009 Hon'ble Supreme Court in the case of Bluemoon Hotels also held that the service of valid notice is pre requisite for making the assessment u/s 143(3). Since the notice issued u/s 143(2) in this case by the jurisdictional ITO held to be barred by limitation and the notice issued by ITO, Ward-1(1), Siliguri is without jurisdiction, we hold that the assessment made u/s 143(3) consequent to the notice issued u/s 143(2) by ITO, Ward-1(1) dated 14.11.2014 required to be squashed. Accordingly, We hold that the notice issued u/s 143(2) by the ITO, ward (1) is invalid and the consequent assessment made u/s 143(3) is bad in law hence the

order of the Ld. CIT(A) is set aside and the assessment made u/s 143(3) of the Act is annulled. Accordingly, the appeal of the revenue is dismissed. The Cross Objection No.1 is sustained and we consider it is not necessary to adjudicate the remaining grounds of appeal of the Revenue and the cross objection of the assessee.

13. In the result, appeal of the revenue is dismissed and the cross objections are partly sustained.

The above order was pronounced in the open court on 9th May, 2018.

Sd/-
(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 09.05.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Sri Ashok Kumar Periwal, H.No.25-16-179/6
Opp.Old Mirchi Yard, Guntur
2. राजस्व/ The Revenue - Income Tax Officer, Ward-1(1),Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income-Tax(Appeals)-1, Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- .6गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM

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