

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**‘A’ BENCH : BANGALORE**  
**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER**  
**AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 01/Bang/2020</b>
<b>Assessment Year : 2014-15</b>

Smt. Arwa Hararwala, Flat B-502, Wilson Apartments, 13 <sup>th</sup> Cross, Wilson Garden, Bangalore – 560 027. PAN: ABVPA7712K	<b>Vs.</b>	The Income tax Officer, Ward – 7 (2)(2), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravishankar S.V, Advocate
Revenue by	:	Shri Sumer Singh Meena, CIT-OSD(DR)

Date of Hearing	:	22-10-2021
Date of Pronouncement	:	20-12-2021

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 28.10.2019 passed by Ld.CIT(A)-10, Bangalore on following grounds of appeal.

*“1. The order of the learned CIT(A) in so far as it is against the Appellant is opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*

2. *The Appellant denies herself to be liable to be assessed to total income of Rs. 6,93,69,474/- against the returned income of Rs. 16,79,980/- under the facts and circumstances of the case.*

3. *Limitation*

a) *The learned CIT(A) was not justified in stating that the delay was due to the holidays and hence served on 06/01/2017, when the order ought to have been served latest by 02/01/2017, which was a Monday, and consequently the order served with an inordinate delay, ought to be construed as an order passed beyond limitation, on the facts and circumstances of the case.*

4. *Additional grounds before the CIT(A):*

a) *The notice issued under section 143(2) is bad in law, on the facts and circumstances of the case.*

b) *The learned CIT(A) failed to appreciate, that the officer having jurisdiction, has not issued a notice under section 143(2) of the Act, and thus there is no assumption of jurisdiction to pass the order under section 143(3) and the order passed under section 143(3) of the Act, was required to be set aside as bad in law, on the facts and circumstances of the case.*

c) *The authorities below failed to appreciate that it is settled position of law that 'consent does not confer jurisdiction' on the facts and circumstances of the case.*

d) *The learned CIT(A) was not justified in appreciating that the scrutiny was restricted to the verification of sundry creditors and there having been no order for conversion to a complete scrutiny, no verification or additions ought to have been made in respect of unsecured loans, on the facts and circumstances of the case.*

e) *The learned CIT(A) failed to appreciate that the additional ground raised was a pure legal ground and the same ought to have adjudicated, by calling for records and refusing to adjudicate the additional ground was patently erroneous, on the facts and circumstances of the case.*

5. *Grounds regarding additions of Advances of Rs 1,40,08,810/-*

a) *The learned CIT(A) was not justified in confirming the additions of the Trade advances to the tune of Rs. 1,40,08,810/- (i.e. 1,06,51,800 + 33,57,010) under the facts and circumstances of the case.*

b) *The learned CIT(A) was not justified in appreciating that the appellant has furnished the proof for having performed the work in respect of ' the advances received in the subsequent years and bills have been verified by the AO and the entire additions of advances ought to have been deleted, on the facts and circumstances of the case.*

c) *The learned CIT(A) was not justified in appreciating that the differences were due to reconciliation of balances and the same were all squared off in the subsequent years and also affirmed by the AO in the remand report and hence no additions were required to be sustained, on the facts and circumstances of the case.*

d) *Without prejudice, the authorities below failed to appreciate that most of the balances are opening balance and cannot be treated as cash credit liable for tax in the impugned assessment year on the facts and circumstance of the case.*

6. *Grounds on the addition of Sundry creditors of Rs 4,05,82,272/-*

a) *The learned CIT(A) was not justified in confirming the additions of the creditors, by failing to appreciate that the appellant has filed the entire details of the purchases to substantiate that the creditors were genuine, on the facts and circumstances of the case.*

b) *The authorities below failed to appreciate that apart from the opening balance all the other entries during the year are duly supported by invoices and payments proof and hence the question of making any addition on such count does not arise on the facts and circumstance of the case.*

c) *The authorities below failed to appreciate that the addition of the opening credit balance is not in accordance with law and such opening balance cannot be added during the impugned assessment year on the facts and circumstance of the case.*

*d) Without prejudice, the order for AY 2013-14 U/s 143(3) was passed and no additions of the opening balances could have been added as income of the appellant for the AY 2014-15, on the facts and circumstances of the case.*

*7. Grounds regarding addition on account of unsecured loans :*

*a) The learned CIT(A) was not justified in law and on facts in confirming a sum of Rs. 1,30,98,413/- i.e. M/s Fatemi Qardan Hasana Trust of Rs. 33,73,685/- and M/s Hakimi Qardan Hasana Scheme Rs. 97,24,728/- and adding these unsecured loans received by the appellant from the above two entities, to the total income of the appellant is not in accordance with law and also on facts.*

*b) The learned CIT(A) was not justified in appreciating that the loans of the family members were also considered in the appellants books and the difference was due to obtaining the confirmation in the appellant's hands alone, on the facts and circumstances of the case.*

*c) The learned CIT(A) was not justified in stating that the appellant has filed additional evidence, which is contrary to fact, when the appellant has merely filed ledger account of the subsequent years, which is available before the AO, supported by bank accounts to demonstrate the repayment of loans, on the facts and circumstances of the case.*

*d) The learned CIT(A) failed to appreciate that the appellant has not filed an application for admitting additional evidence and the said documents were mere ledgers corresponding to the bank statement and financials filed before the lower authorities during the course of remand proceedings, on the facts and circumstances of the case.*

*8. Grounds on levy of interest :*

*a) Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies herself liable to be charged to interest under section 234 A and B of the Income Tax Act under the facts and circumstances of the case.*

*b) The levy of Rs 76,26,201 under section 234 B is contrary to law and is only on account of unsustainable*

*addition made and requires to be deleted on the facts of the case.*

*c) The appellant contends that the levy of interest under section 234A , 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.*

*9. The Appellant craves leave to add, alter, delete, substitute or modify any of the grounds urged above.*

*10. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equality.”*

**2.** The Ld.AR submitted that ground no. 4 goes to the root cause of the present appeal. He submitted that assessee is challenging that no notice u/s. 143(2) was issued by the officer having jurisdiction over assessee. He submitted that this issue was raised as additional ground before Ld.CIT(A). However, the same was not adjudicated. He thus submitted that ground no. 4 may be considered before going into the merits of the case.

**3. Brief facts of the case are as under.**

The assessee is an individual and is proprietrix of M/s.Hydromatic Engineering Company, dealing in pipe fitting, valves and automation products. She filed return of income for AY 2014-15 on 01.10.2014, declaring total income of Rs.16,79,980/-. The case was taken up for a scrutiny. It is submitted that, assessee was regularly filing her return of income and was assessed with its Income Tax Officer, Ward – 7(2)(2), Bangalore.

**3.1** For year under consideration, notice u/s. 143(2) was issued by ITO, Ward-2(3)(2) dated 28.08.2015. The said notice is placed at page 1089 of paper book. As per the said notice, the date for hearing was fixed on 08.09.2015. It is submitted that assessee sought adjournment on the event date whereby the Ld.AO transferred the file stating that the jurisdiction was with ITO, Ward-7(2)(2) by making an order sheet noting. The copy of the said order sheet notings is placed at pg 1224 of the paper book. The Ld.AR submitted that subsequently ITO, Ward – 7(2)(2) proceeded to issue notices seeking details of sundry creditors and the assessment order was passed by ITO, Ward-7(2)(2) on 30.12.2016. Against the assessment order, assessee filed appeal before Ld.CIT(A).

**4.** Before Ld.CIT(A), validity of passing the assessment order without issuing the notices u/s. 143(2) by the Ld.AO was raised by way of additional ground by application dated 21.10.2019. The Ld.CIT(A) while noting the additional grounds did not adjudicate the ground regarding non-issuance of notice u/s. 143(2) of the Act by ITO, Ward-7(2)(2) and decided the issues on merits.

**5.** Aggrieved by the order of Ld.CIT(A), the assessee has raised issues on merits as well as legal ground before this *Tribunal*.

**6.** On perusal of the records, we note that the legal issue raised in Ground no. 4 goes to the root of the case and therefore, we are first adjudicating Ground no. 4 as under.

**7. Ground no. 4:** The Ld.AR submitted that assessment proceedings for year under consideration was completed without issuing notice u/s. 143(2) by the jurisdictional Assessing Officer.

He thus submitted that, such assessment order is bad in law and is liable to be annulled.

**7.1** On the contrary, the Ld.CIT.DR submitted that assessee participated in the assessment proceedings and that no prejudice is caused. He took support of provisions of section 292BB of the Act and submitted that the procedural defect gets cured.

**7.3** In the rejoinder, the Ld.AR submitted that provisions of section 292BB will not be applicable in case of assessee even though assessee participated in the assessment proceedings. He submitted that section 292BB of the Act did not contemplate a situation wherein no notice u/s. 143(2) of the Act has been issued. It can only cure procedural defects when a notice u/s. 143(2) is issued in accordance with law. He placed reliance on the decision of *Hon'ble Supreme Court* in the case of *CIT vs. Laxman Das Khandelwal* reported in 108 taxmann.com 183, decision of *Hon'ble Delhi Tribunal* in case of *Sunworld Infrastructure vs. ITO* reported in (2015) 64 taxmann.com 471 and *Rajeev Goel vs. ACIT* reported in (2019) 76 ITR (Trib.) 107 (Delhi) and *Manoj Kumar vs. ACIT* reported in (2020) 79 ITR (Trib) 158.

**7.4** Ld.AR submitted that the notice u/s. 143(2) of the Act was issued by the officer who did not have jurisdiction over assessee and that Assessing Officer having jurisdiction over assessee who has to pass the assessment order was required to issue fresh notice u/s. 143(2) to assume jurisdiction after transfer of assessment. Merely because assessee participated in assessment proceedings cannot be construed to be a waiver of objecting the non-issuance of notice u/s. 143(2) of the Act.

**8.** We have perused the submissions advanced by both sides in the light of records placed before us.

**8.1** It is necessary to cull out relevant dates required for adjudicating the legal ground raised by assessee.

- 01.10.2014 – the assessee filed her return of income in the capacity of proprietrix of M/s.Hydromatic Engineering Company with ITO, Ward 5(2).
- 28.08.2015 – the case was selected for scrutiny, notice u/s. 143(2) issued by ITO, Ward – 2 (3)(2) fixing the date of hearing on 08.09.2015.
- 08.09.2015 – assessee files an application for adjournment and the ITO, Ward – 2(3)(2) transfers the file stating the jurisdiction to be with ITO, Ward – 7(2)(2) by making order sheet entry.
- 30.12.2016 – ITO, Ward – 7 (2)(2) passes assessment order

**8.2** In the paper book, assessee placed RTI application dated 12.10.2021, wherein assessee sought copies of notice issued by ITO, Ward-7(2)(2). The said RTI application is placed at page 1291-1292 of paper book. Subsequently on 15.07.2021, ITO, Ward-5(2)(1) issues certified copies of the following:

- Certified copy of notice u/s 143(2) issued by the ITO, Ward-2(3)(2) for the A.Y 2014-15
- Certified copy of notice u/s 142(1) issued by ITO, Ward-7(2)(2) for the A,Y 2014-15 , already issued by ACT-C-5(2)(1) on 10.03.2020



- Certified copy of the order sheet noting by the ITO, Ward 7(2)(2) for the A.Y 2014-15, already issued by ACT-C-5(2)(1) on 10.03.2020
- Certified copy of proof of delivery for servicing the order u/s 143(3) dated 30/13/2016 for the A.Y 2014-15 by ITO, Ward 7(2)(2) , already issued by ACT-C-5(2)(1) on 10.03.2020.

The said letter is placed at page 1293 of paperbook.

**8.3** It is pertinent to note that assessee filed additional evidence before Ld.CIT(A) which was forwarded for the remand report to the file of AO, Ward-7(2)(2) for comments. However, the remand report has been provided by the DCIT, Circle – 5 (2)(1). On query being raised by the bench, the Ld.AR submitted that ITO, Ward – 5 and ITO, Ward – 7 were possessing jurisdiction over assessee since assessee was running her business at pincode – 560002 and residing at pincode – 560027 respectively. We note that neither of the two jurisdictional Assessing Officer have issued notices u/s. 143(2) of the Act for year under consideration.

**8.4** It is the case of the revenue that as per section 127 of the Act, once the case is transferred, sub-section (4) provides that there is no necessity to reissue of any statutory notices already issued by the then Assessing Officer from whom the case is transferred. In our view, this argument cannot stand the test of law due to ratio laid down by *Hon'ble Supreme Court* in the case of *CIT vs. Hotel Blue Moon* reported in (2010) 321 ITR 362. *Hon'ble Supreme Court* held that once the case is transferred by the Assessing Officer, who issued notice becomes functus officio and the jurisdictional AO is to issue notice u/s. 143(2). *Hon'ble Supreme Court* held that issuance of notice u/s. 143(2) by the

Assessing Officer having jurisdiction over an assessee is mandatory for assuming jurisdiction to pass scrutiny assessment u/s. 143(3) of the Act, and that absence of valid notice u/s. 143(2) is not a curable defect. The same proposition was reiterated by *Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal (supra)*. *Hon'ble Supreme Court* observed as under.

*“5. At the outset, it must be stated that out of two questions of law that arose for consideration in Hotel Blue Moon’s case<sup>2</sup> the first question was whether notice under Section 143(2) would be mandatory for the purpose of making the assessment under Section 143(3) of the Act. It was observed:-*

*“3. The Appellate Tribunal held, while affirming the decision of CIT (A) that non-issue of notice under Section 143(2) is only a procedural irregularity and the same is curable. In the appeal filed by the assessee before the Gauhati High Court, the following two questions of law were raised for consideration and decision of the High Court, they were:*

*“(1) Whether on the facts and in circumstances of the case the issuance of notice under Section 143(3) of the Income Tax Act, 1961 within the prescribed time- limit for the purpose of making the assessment under Section 143(3) of the Income Tax Act, 1961 is mandatory? And*

*(2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under Section 68 of the Income Tax Act, 1961 should be deleted or set aside?”*

*4. The High Court, disagreeing with the Tribunal, held, that the provisions of Section 142 and sub-sections (2) and (3) of Section 143 will have mandatory application in a case where the assessing officer in repudiation of return filed in response to a notice issued under Section 158-BC(a) proceeds to make an inquiry. Accordingly, the High Court answered the question of law framed in affirmative and in favour of the appellant and against the Revenue. The Revenue thereafter applied to this Court for special leave under Article 136, and the same was granted, and hence this appeal.*

... ..

*13. The only question that arises for our consideration in this batch of appeals is: whether service of notice on the assessee under Section 143(2) within the prescribed period of time is a prerequisite for framing the block assessment under Chapter XIV-B of the Income Tax Act, 1961?*

... ..

27. The case of the Revenue is that the expression “so far as may be, apply” indicates that it is not expected to follow the provisions of [Section 142](#), sub-sections (2) and (3) of [Section 143](#) strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue, since we do not see any reason to restrict the scope and meaning of the expression “so far as may be, apply”. In our view, where the assessing officer in repudiation of the return filed under Section 158- BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of [Section 142](#), sub-sections (2) and (3) of [Section 143](#).”

6. The question, however, remains whether [Section 292BB](#) which came into effect on and from 01.04.2008 has effected any change. Said [Section 292BB](#) is to the following effect:-

“292BB. Notice deemed to be valid in certain circumstances. – Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act 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:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.”

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<sup>2</sup>. 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.*

10. *Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct. We, therefore, see no reason to take a different view in the matter."*

**9.** In the present case, admittedly, no notice u/s. 143(2) was issued by the AO having jurisdiction over assessee either prior to the assessment proceedings or during the assessment proceedings. We place reliance on the decision of *Hon'ble Karnataka High Court in the case of Nittu Vasanth Kumar Mahes vs. ACIT reported in (2019) Taxman 277 (Karnataka)* wherein *Hon'ble Court* took similar view. *Hon'ble Court* also held that provisions of section 292BB of the Act cannot cure such defect.

**10.** Based on the above discussions, we allow Ground no. 4 raised by the assessee and the order passed by the Assessing Officer u/s. 143(3) for year under consideration is held to be not legally sustainable. The assessment order dated 30.12.2016 is held to be Null in the eyes of law due to non-issuance of notice

u/s. 143(2) by the Ld.AO who had jurisdiction over present assessee.

**10.1** As we have quashed the assessment order, the issues raised by assessee on merits becomes academic in nature and hence does not require any adjudication at this juncture.

**In the result, the appeal filed by the assessee stands allowed on the legal issue raised.**

Order pronounced in the open court on 20<sup>th</sup> December, 2021.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 20<sup>th</sup> December, 2021.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore