

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5415/Del./2019  
Assessment Year 2010-11

M/s Lucky Machines P. Ltd. Kawara Industrial Area, Kawara Road, Near Lingyas College, Faridabad. PAN No. AABCL7307H	vs.	DCIT Circle-1, Faridabad, Haryana.
(Appellant)		(Respondent)

For Assessee :	Shri K.C. Singhal, Advocate
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	04.01.2021
Date of Pronouncement :	08.01.2021

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-Faridabad dated 22.05.2019 for AY 2010-11.

2. I have heard Ld. Representatives of both the parties through Video Conferencing and perused the material on record.

3. Ld. Counsel for assessee did not press ground no. 1 & 2 of the appeal regarding initiation of reassessment proceedings. The same is dismissed as not pressed.

4. Briefly the facts of the case are that return of income declaring Rs. 500/- was e-filed by the assessee company on 12.09.2010. The return was processed u/s 143(1) of the IT Act, as such. The AO issued notice u/s 148 on 31.03.2017 after recording the reasons that the assessee company has received accommodation entry from Grace Exim Pvt. Ltd. in a sum of Rs. 4 lakhs. The assessee submitted before AO in its submission dated 19.04.2017, the return filed originally may be considered as return filed in response to notice u/s 148 of the IT Act. The assessee filed detailed reply before AO objecting to the proposed action u/s 148 of the Act as well as addition on merits. The AO, however, made addition of Rs. 4 lakhs u/s 68 of the Act in reassessment order dated 24.12.2017 u/s 143(3)/147 of the Act.

5. The assessee challenged the aforesaid addition before Ld. CIT(A) as well as challenged the legality of the assessment order by stating that AO has erred in law and facts by not issuing and serving the statutory notice prescribed u/s 143(2) of the Act, therefore, reassessment order is illegal, without jurisdiction and contrary to law and *void ab initio* and, as such, liable to be quashed. The Ld. CIT(A) called for the remand report from the AO in which the AO has stated that no notice u/s 143(2) was issued to the assessee because it was based on the belief that notice u/s 143(2) is not required in reassessment proceedings. The Ld. CIT(A) noted that since

assessee has participated in the reassessment proceedings on different dates and assessee has never raised objections regarding non issue of notice u/s 143(2) of the Act before AO, therefore, same is not fatal to the reassessment proceedings. The ground of appeal of the assessee was dismissed.

6. Ld. Counsel for assessee referring to ground no. 3 submitted that impugned assessment order is illegal being without jurisdiction, since mandatory notice u/s 143(2) was never issued. Ld. Counsel for assessee submitted that issue is covered by judgment of the Hon'ble Supreme Court in the case of CIT Vs. Laxman Das Khandelwal 108 Taxman.com 183 (SC) in which it was held that for Section 292BB to apply, Section 143(2) notice must have emanated from Department and it is only infirmities in manner of service of notice that section seeks to cure and it is not intended to cure complete absence of notice itself.

7. On the other hand, Ld. DR submitted that since the assessee participated in the reassessment proceedings and never raised the issue of non-issue of notice u/s 143(2) before AO, therefore, provisions of Section 292BB would apply against the assessee and reassessment order has been correctly passed by the AO even for non-issue of notice u/s 143(2) of the Act.

8. I have considered the rival submissions and perused the material on record. Proviso to section 143(2) provides,

“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”. It is an admitted fact that assessee in response to the notice u/s 148 of the Act dated 31.03.2017 filed a letter before AO dated 19.04.2017 stating therein that return filed u/s 139 on 12.09.2010 may be treated as returned filed in response to the notice u/s 148 of the Act. Thus, assessee made compliance to the notice u/s 148 of the Act. It is an admitted fact that the AO did not issue any notice u/s 143(2) at the reassessment proceedings. The Hon’ble Supreme Court in the case of CIT Vs. Laxman Das Khandelwal (supra) considering the issue of non-issue of notice u/s 143(2) in the light of provisions of section 292BB of the Act held as under:

*“A close 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 section 292BB, 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 section 292BB is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee and section does not save complete absence of notice and, thus, for section 292BB to apply, the notice must have*

*emanated from the Department and it is only the infirmities in the manner of service of notice that the section seeks to cure and it is not intended to cure complete absence of notice itself.*

*Since the facts on record are clear that no notice u/s 143(2) was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct. There is no reason to take a different view in the matter.”*

9. Considering the above, it is clear that issue is covered by the judgment of Supreme Court in the case of Laxman Das Khandelwal (supra) in favour of the assessee. Thus, all the objections of the Ld. DR are overruled. Since, no notice u/s 143(2) has been issued by the AO at reassessment proceedings which is mandatory for completion of assessment, therefore, reassessment order is bad in law, illegal and *void ab initio* and, as such, liable to be quashed. In view of the above discussion, I set aside the orders of the authorities below and quash the reassessment proceedings and delete the entire additions.

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

Order pronounced in the open Court on 08.01.2021.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated: 08.01.2021

\*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.