

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 412/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

Gonuguntla Nirmala Devi, Vs. The Asst. Commissioner of
Anantapur Income Tax,
[PAN No. AIBPD2345Q] Circle-1,
Anantapur

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri R. Venkataraman, AR
राजस्व द्वारा / Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 07/08/2023
घोषणा की तारीख/Pronouncement on: 17/08/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 01/07/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Gonuguntla Nirmala Devi ("the assessee") for the assessment year 2012-13, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual and filed her return for the assessment year 2012-13 on 30/03/2014 declaring an income of Rs. 13,72,980/- and the same was processed under section 143(1) of the Act. Subsequently, basing on certain information, the case was sought to be reopened under section 147 of the Act by issuing a notice under section 148 of the Act. Learned Assessing Officer recorded that in

spite of issuance of notice on 28/03/2019 which was served on the assessee, the assessee did not respond to the same. Another notice dated 12/04/2019 calling for details was issued and it was served on the assessee on 13/06/2019. But still the assessee did not respond. Date of hearing was fixed on 06/11/2019 and such notice was served on the assessee on 25/10/2019, but still the assessee does not appear. Finally, assessee responded to the notice dated 29/11/2019 fixing the date of hearing on 05/12/2019. Learned Assessing Officer completed the assessment and by order dated 24/12/2019 passed under section 143(3) read with section 147 of the Act, determined the income of the assessee at Rs. 44,24,737/-.

3. Aggrieved thereby, assessee preferred an appeal and contended before the learned CIT(A) that assessment proceedings are invalid and bad in law since the statutory notice under section 143(2) of the Act was not issued, reasons for reopening were not furnished and no independent recording of satisfaction of the learned Assessing Officer took place with the prior approval of learned PCIT.

4. Learned CIT(A) held that the assessee never sought the reasons to be furnished, and therefore, the assessee cannot take such a plea. Insofar as the non-issuance of statutory notice under section 143(2) of the Act is concerned, learned CIT(A) also recorded that no return was filed in response to notice under section 148 of the Act and therefore, no separate notice under section 143(2) of the Act is required. Learned CIT(A) further recorded that notice under section 148 of the Act is by itself a notice of assessment and it does not require a separate notice under section 143(2) of the Act, which according to the learned CIT(A) has to be necessarily issued in case of a return filed under section 139 of the Act or in response to notice under section 142(1) of the Act, calling for a return. On this premise, learned CIT(A) held that non-issuance of a separate notice under section 143(2) of the Act in this case does not vitiate the proceedings under section 148 of the Act.

5. Learned AR submitted that issuance of notice under section 143(2) of the Act is necessary when the assessee filed response to the notice issued under section 148 of the Act, stating that the original return may be treated as a return filed in response to the notice under section 148 of the Act. He further submitted that the learned Assessing Officer himself recorded that such a response was filed by the assessee vide letter received on 12/12/2019. He drew our attention to paragraph No. 3.2 of

the assessment order, wherein it is stated that the assessee filed the return of income online on 11/12/2019, and by way of letter dated 12/12/2019 requested the learned Assessing Officer to treat such return of income filed online on 11/12/2019 as the return of income filed in response to the notice under section 148 of the Act. According to him, the assessee filed the return of income in response to the notice under section 148 of the Act and, therefore, for want of issuance of notice under section 143(2) of the Act, the assessment is bad under law.

6. He submitted that the decision of the Hon'ble Apex Court in the case of ACIT vs. Hotel Blue Moon (2010) 188 Taxman 113 (SC) and the decisions of the various Hon'ble High Courts in the cases of CIT vs. Sukhini P. Modi (2014) 367 ITR 682 (Gujarat), PCIT vs. Oberoi Hotels (P.) Ltd (2018) 409 ITR 132 (Calcutta), Pr.CIT vs. Shri Jai Shiv Shankar Traders (P.) Ltd. (2016) 383 ITR 448 (Del) and Travancore Diagnostics (P.) Ltd vs. ACIT (2017) 390 ITR 167 (Kerala) apart from other decisions, is to the effect that in case of proceedings initiated in section 143(3) read with section 147 of the Act, requirement to issue notice under section 143(2) of the Act is mandatory and such a defect cannot be cured by section 292BB of the Act.

7. Per contra, learned DR submitted that the assessment pursuant to the notice under section 148 of the Act is different from the assessment pursuant to the return filed under section 139(1) of the Act and the Act does not contemplate the notice under section 143(2) of the Act in such situation. She further submitted that the assessee did not file any return of income or any request to treat the original return of income as the return filed in response to the notice under section 148 of the Act, but it was only at a later point of time, namely, on 11/12/2019, assessee filed online the return of income and submitted a letter on 12/12/2019 to treat the return of income filed on the earlier day as the return of income submitted pursuant to the notice under section 148 of the Act. She further submitted that having not responded to the notices to file the return of income and to participate in the hearing before 05/12/2019, the assessee cannot now take the plea that the notice under section 143(2) was not issued. She submitted that all the decisions relied upon by the assessee are the cases where the assessee filed the return of income or requested to treat the original income as return filed in response to notice under section 148 of the Act. In such cases, want of notice under section 143(2) of the Act was held to be fatal to the assessment. She also placed reliance on the decision

of the Hon'ble Apex Court in the case of ACIT vs. Hotel Blue Moon (2010) 188 Taxman 113 (SC) and PCIT vs. Oberoi Hotels (P.) Ltd (2018) 409 ITR 132 (Calcutta).

8. We have gone through the record in the light of the submissions made on either side. We shall look at the allegation as to filing of return of income in the light of the facts available on record. It could be seen from the assessment order that notice under section 148 of the Act was issued on 28/03/2019 and the same was served on the assessee, but there was no response from the assessee. Likewise, when the case was posted for hearing on 24/06/2019, notice dated 12/04/2019 calling for the details was issued, it was served on the assessee on 13/06/2019, but again there was no response from the assessee. Notice granting another opportunity was issued on 24/10/2019 fixing the date of hearing on 06/11/2019 and served on the assessee on 25/10/2019. Still there was no response from the assessee. Lastly, there are appearing for the assessee before the learned Assessing Officer after 29/11/2019.

9. Subsequent to this 29/11/2019 during the course of hearing when certain issues were put before the assessee, then the assessee claimed to have uploaded the return of income on 11/12/2019, and by letter dated 12/12/2019 the assessee requested to treat such return of income that was filed online on 11/12/2019 as the return submitted in response to notice under section 148 of the Act. Further from paragraph No. 3.3 it could be noticed that to the letters dated 05/12/2019 and 12/12/2019 the assessee made certain submissions touching the merits of the case, apart from mentioning in the letter dated 12/12/2019 about the fact of the assessee filing online the return of income on 11/12/2019 and to treat it as the return filed in response to the notice under section 148 of the Act.

10. It's not the case of the assessee that subsequent to several notices issued under section 148 of the Act, the assessee sought for extension of time to file the return of income or that the learned Assessing Officer granted time. Assessee is expected to file the return of income within such period, as may be specified in the notice under section 148 of the Act or the assessee is expected to seek the extension of such time on the basis of an application made in this regard. Neither of the things are done by the assessee. It's not the option of the assessee to file the return of income pursuant to the notice under section 148 of the Act whenever she pleases. For want of compliance with the letter of law, there is no proper filing of

return of income. We agree with the submissions of the learned DR that what the learned Assessing Officer accepted was to consider the written submissions of the assessee in the letter dated 12/12/2019 on the merits of the case, but it does not amount to the extension of time for filing the return of income pursuant to the notice under section 148 of the Act.

11. We agree with the observations of both the authorities that there is no return of income filed pursuant to the notice issued under section 148 of the Act. In the case of Hotel Blue Moon(supra) the Hon'ble Apex Court held that section 143(2) of the Act itself becomes necessary when it becomes necessary to check the return. In the case of Oberoi Hotels (P.) Ltd (supra) the Hon'ble Calcutta High Court held that the dictum of the Hon'ble Supreme Court in the case of Hotel Blue Moon(supra) is that a notice under section 143(2) of the Act is mandatory if the return as filed, is not accepted and an assessment order is to be made at variance with the return filed by the assessee. It, therefore, goes without saying that non-issuance of notice under section 143(2) of the Act vitiates the proceedings if the assessee filed the return of income, such a return as filed was not acceptable to the learned Assessing Officer and the assessment has to be made at variance with the return filed by the assessee. If no return of income is filed by the assessee, such allegation does not arise.

12. We have gone through the various decisions relied upon by the assessee and in all the cases invariably within the time stipulated in the notice issued under section 148 of the Act, either the assessee or the authorized representative either filed the return of income or submitted that the original return of income may be treated as the return of income filed pursuant to the notice under section 148 of the Act. Here in this case no return of income was filed within the time, and no return of income was filed till the commencement of hearing. It was only when the proceedings are going on, that too without obtaining the permission of the learned Assessing Officer the return was filed online and on the next day the learned Assessing Officer was informed of such online filing.

13. For these reasons, we brush aside the contention of the assessee that for want of issuance of notice under section 143(2) of the Act, the assessment is bad under law. Next contention of the assessee is that assessment is bad for want of sanction of the learned PCIT before issuance of notice under section 148 of the Act.

14. In this case, it's not the case of the assessee that there was any assessment under section 143(3) or section 147 of the Act earlier. Then the case of the assessee falls not under section 151(1), but it falls under section 151(2) of the Act, in which case the satisfaction of the Joint Commissioner is sufficient. Assessee has no good case on this point.

15. So far as the merits of the case are concerned, no material is produced before us to substantiate the case of the assessee and the main plank of argument of the learned AR was that the assessment is bad for want of issuance of notice under section 143(2) of the Act and also prior sanction of the learned PCIT. Both the contentions were rejected. Consequently, appeal of the assessee fails, and we dismiss the grounds of appeal.

16. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this the 17th day of August, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 17/08/2023

TNMM

Copy forwarded to:

1. Smt. Gonuguntla Nirmala Devi, 12-640-C15-D-69, Vidyuth Nagar, New Town, Anantapur.
2. The Asst. Commissioner of Income Tax, Circle-1, Anantapur.
3. Pr.CIT
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD