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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI D.R. SINGH, JM & SHRI RAJENDRA SINGH, AM

IT(S.S.) No. 319/D/2003
Assessment Year : Block Asstt. 1-4-89 to 25-5-2000

M/s. CPR Capital V/s DCIT,
Services Ltd.,
66, Guru Nanak Pura,
Laxmi Nagar,
New Delhi.
(Appellant)

Central Circle 17,
Mayur Bhawan,
New Delhi.
(Respondent)

Appellant by : Ms. Rano Jain, CA & Sh.
Venketesh Mohan, CA
Respondent by : Shri Durga Chaman Dass, CIT
DR

ORDER

PER D.R. SINGH, JM

This appeal has been filed by the assessee against the order of CIT (A) passed in appeal no. DEL/CIT A2/02-03/161 dated 7-3-2003 on as many as 16 grounds.



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2. Ground no. 1 and 17 are general in nature hence no adjudication is required from our side.

3. Ground nos. 2 to 6 relating to various legal issues as stated in the ground of appeal filed by the assessee were not pressed by the ld. AR for the assessee before us accordingly, the same are rejected as not pressed.

4. Ground no. 10 relates to confirmation of addition of Rs. 93546/- on account of commission earned by the assessee and ground no. 11 relates to confirmation of addition of Rs. 2545575/- by the CIT (A) out of the total addition of Rs. 2828902/- made by the AO as undisclosed income u/s 68 of the Income Tax Act, 1961. Ground no. 12 relates to upholding of the addition of Rs. 975000/- by the CIT (A) relating to share application money and ground no. 13 pertains to confirmation of addition of Rs. 1014372/- on account of alleged negative cash balance in the books of accounts of assessee. Ground no. 14 pertains to telescoping and

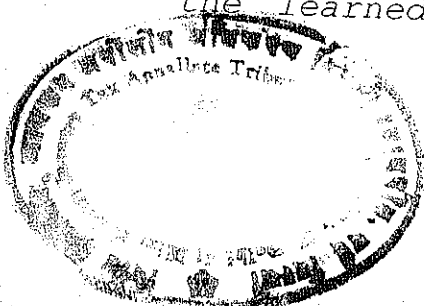
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ground no. 15 pertains to levy of surcharge and ground no. 16 pertains to levy of interest u/s 158BFA.

5. Before us the ld. AR for the assessee contended that assessee's appeal may be disposed off merely on the legal issue i.e. since the Statutory notice u/s 143(2) has not been issued against the assessee within the Statutory allowable period, the assessment proceedings are liable to be quashed being null & void as involved in ground no. 7 of the appeal of the assessee and in case this issue is decided in favour of the assessee the other grounds nos. from 8 to 16 may not be disposed off by the Tribunal.

6. In view of this submission of ld. AR for the assessee, now we propose to dispose off this appeal of the assessee on this very legal issue as involved in ground no. 7 of the appeal of the assessee which is stated as under :-

*"On the facts and circumstances of the case,
the learned CIT (A) has erred in rejecting the*



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contention of the appellant that in the absence of statutory notice under Section 143(2), much less within the statutory allowable period, the assessment proceedings are null and void and liable to be quashed."

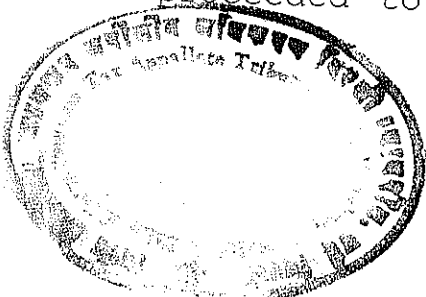
7. Ld. AR for the assessee has submitted before us that in the instant case the Department has not issued any statutory notice u/s 143(2) of the Income Tax Act, 1961 against the assessee within a statutory allowable period and so the assessment proceedings framed u/s 158BC are liable to be quashed.

8. In support of her contention she has relied upon the decisions :-

(A) Smt. Bandana Gogoi v/s. CIT & Anr. 289 ITR 28 (Gau) wherein it was held that if the AO accepts the return filed, he may straightaway pass an order of assessment and determine the tax payable under cl. (c) of s. 158BC. Instead, if he proceeds to make an inquiry as provided in s. 142, he has to follow the provisions of

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s. 142 as well as the provisions of sub-ss(2) and (3) of sec. 143. Both the cls. (i) and (identical issue on identical facts) of sub-s. (2) of s. 143 postulate scrutiny to ensure the correctness of the return. Under Chapter XIV, the powers of assessment under sub-s. (3) of s. 143 in determining the total income or loss could be invoked only after service of notices as contemplated under cls. (i) and (identical issue on identical facts) of sub-s. (2). In the case of block assessment under Chapter XIV-B, where the AO does not proceed to make an assessment and determine the tax payable on the basis of the return filed in response to a notice under s. 158BC(a), he has to follow the provisions of sub-s. (2) of s. 143. The requirement of a notice under sub-s. (2) of s. 143 cannot be dispensed with in a case where the AO proceeds to make an inquiry for the purpose of assessment, and determination of taxes payable after issuing notice under s. 142(1) as well. In the instant case, the AO did not act upon the return filed in response to the notice issued under s. 158BC(a). He had issued a notice under s. 142(1). He had proceeded to make an inquiry. This could not be



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done without a notice under sub-s. (2) of s. 143. The provisions of sub-s. (3) of s. 143 clearly show that the powers under this sub-section could be invoked only after service of notice under sub-s. (2). The words "so far as may be", will thus become mandatory where the AO proceeds to make an inquiry in repudiation of the return filed in response to a notice issued under s. 158BC. Similarly, application of the provisions of s. 142 and sub-search and seizure. (2) and (3) of s. 143 will become directory where the AO does not embark upon an inquiry to determine the loss or profit reflected in the return filed. The defects crept in cannot be cured at this stage in view of the limitation provided in s. 143(2). The assessment order in the instant case thus suffers from both procedural and jurisdictional error. The option left with the AO is to compute the income and levy taxes on the basis on the basis of the return filed by the assessee;

(B) In the case of Sh. Naresh Kumar Arora v/s. ACIT, CC-25, New Delhi, IT(S.S.) No. 46/Del/2005 wherein the Tribunal held that in view of the above categorical

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pronouncement of Hon'ble Gauhati High Court and in the light of the admitted factual position in the present case that no notice u/s 143(2) was issued to the assessee before framing the block assessment, we have no other option but to hold the block assessment framed is not valid in the eye of law. The same is accordingly quashed. The decision relied upon by the ld. DR in the case of Jai Prakash Singh (Supra) was a case where some of the legal heirs were not served with a notice u/s 143(2). In such circumstances the Hon'ble Supreme Court held that it was a case of argumental and not nullity. The facts of the present case stand on a different footing. The Special Bench decision in the case of Naval Kishore and Sons Jewellers (supra) which is contrary to the decision of the Hon'ble Gauhati High Court in the case of Bandana Gogoi (supra) cannot be followed in view of the decision of Hon'ble Gauhati High Court. We therefore quash the order of assessment. In view of the decision on this preliminary issue the other issues raised by the assessee and the Revenue in their appeals does not call for any adjudication. In the result the appeal by the



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assessee is allowed while the appeal by Revenue is dismissed;

(C) in the case of Tulika Mishra v/s. JCIT, IT (S.S.) A. No. 81/Del/2003, the ITAT held that since in the instant case it is virtually admitted by the Revenue that no notice u/s 143(2) has been issued and served upon the assessee, the block assessment made u/s 158-BC cannot be upheld and the same is to be declared null and void. We order accordingly;

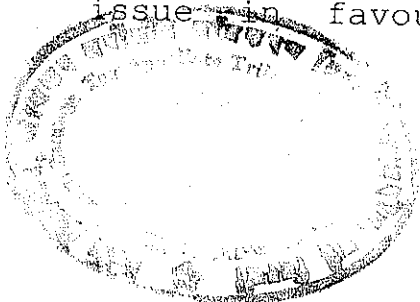
(D) In the case of ACIT v/s. R.P. Singh, IT (S.S.) A. No. 70/Del/2004 wherein the Tribunal in para no. 20 held that in view of the above authority, the Tribunal Delhi Bench in the case of Smt. Tulika Mishra (supra) (to which both of us were parties), has quashed the assessment order on the ground that the notice under s. 143(2) was not served upon the assessee within the prescribed period. On this ground we have held the assessment order to be null and void in that case also because notice under s. 143(2) was not served upon the assessee within the prescribed period. Hence on this

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ground also the assessment order is liable to be quashed. The same is accordingly quashed.

9. Before us the ld. DR for the Revenue after examining the assessment records brought by him submitted that there is no copy of the notice issued to the assessee u/s 143(2). He further submitted that neither there is any proof of issuance of notice u/s 143(2) nor there is any proof of service of the same upon the assessee.

10. From the above submissions of ld. DR for the Revenue, in the instant case, it stands admitted by the Revenue that no notice u/s 143(2) has been issued and served upon the assessee within 12 months from the end of the month in which the return has been filed by the assessee as provided under proviso to Section 143 (2) of the Act. Hence, respectfully following the ratio of decisions (Supra), the block assessment framed by the AO is invalid in the eye of law and the same is accordingly quashed. Since we have decided this legal issue in favour of the assessee and against the



Revenue, we do not consider it necessary to decide the remaining grounds, as raised by the assessee, on merits. The order of CIT (A) is set aside.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 31st January, 2008.

[RAJENDRA SINGH]
ACCOUNTANT MEMBER

[D.R. SINGH]
JUDICIAL MEMBER

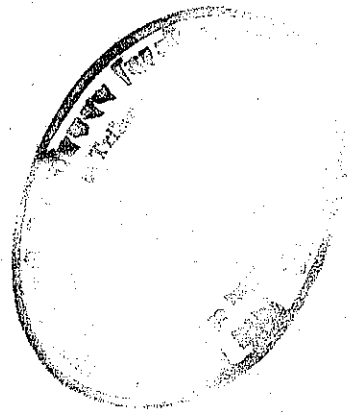
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- 1. Appellant *M/s. CPR Capital Services Pvt. Ltd.*
- 2. Respondent
- 3. CIT
- 4. CIT (A)
- 5. DR, ITAT

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By Order,

Deputy Registrar,
ITAT, DELHI BENCHES
Income Tax Tribunal
Delhi Bench, New Delhi