IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "D" DELHI]

BEFORE SHRI R. P. TOLANI, JM & SHRI K. D. RANJAN, AM

I. T. [SS] Appeal No. 26 (Del) of 2005.

Block Assessment period : 1996-97 to 2002-03 [upto 8/01/2002].

Dy. Commissioner of Income-tax,		M/s. Kaashni Sarees Pvt. Ltd.,
Central Circle : 9,	Vs.	2380, Ajmal Khan Road,
NEW DELHI.		NEW DELHI - 110 005.
		PAN / GIR No. K - 18.

AND

C. O. No. 126 (Del) of 2007.

[in I. T. [SS] Appeal No. 26 (Del) of 2005]

Block Assessment period : 1996-97 to 2002-03 [upto 8/01/2002].

M/s. Kaashni Sarees Pvt. Ltd.,		Dy. Commissioner of Income-tax,
2380, Ajmal Khan Road,	Vs.	Central Circle : 9,
NEW DELHI - 110 005.		NEW DELHI.
PAN / GIR No. K - 18		

AND

I. T. [SS] Appeal No. 27 (Del) of 2005.

Block Assessment period : 1996-97 to 2002-03 [upto 8/01/2002].

Dy. Commissioner of Income-tax,		M/s. Roshan Saree Palace Pvt. Ltd.,
Central Circle : 9,	Vs.	2380, Ajmal Khan Road, Karol Bagh
NEW DELHI.		NEW DELHI - 110 005.
		PAN/GIR No. AAACR4699D / R-12.

AND

C. O. No. 127 (Del) of 2007.

[in I. T. [SS] Appeal No. 26 (Del) of 2005]

Block Assessment period : 1996-97 to 2002-03 [upto 8/01/2002].

M/s. Roshan Saree Palace Pvt. Ltd.,
2380, Ajmal Khan Road, Karol Bagh,
N E W. D E L H I - 110 005.
PAN/GIR No. AAACR4699D / R-12.
(Appellants)

Vs.

Dy. Commissioner of Income-tax,
Central Circle : 9,
N E W D E L H I.
(Respondents)

Assessee by : Shri Ved Jain, C. A.; &
Ms. Rano Jain, C. A.;

Department by : Ms. Kavita Bhatnagar [CIT] - D.R.;

O R D E R.

PER K. D. RANJAN :

These appeals filed by the Revenue and the cross objections filed by the assessees in case of two different assessees for Block assessment period consisting assessment year 1996-97 to 2002-03 [upto 8/01/2002] arise out of separate orders of the ld. CIT (Appeals)-II, New Delhi. These were heard together and are being disposed of, for the sake of convenience, by this common order.

2. During the course of hearing the ld. AR of the assessee submitted that the cross objections filed by the assessees, which are common in both the appeals should be heard first. Accordingly, the cross objections filed by the assessees were heard. In the cross objections filed by the assessees in both the cases it has been submitted that the notice of hearing was received by the assessees on 18/01/2007 and the cross objections were filed on 23rd April, 2007. The cross objections should have been filed within the period of 30 days i.e. upto 17th

of February, 2007. Thus these are time barred by more than two months. The assessee made a request for condonation of delay, which was allowed after hearing the ld. [CIT] - DR.

3. The common ground raised in the cross objection states that the order passed by the assessing officer is bad in law and is liable to be quashed in view of the judgement of Hon'ble Gauhati High Court in the case of Smt. Vandana Gogai Vs. CIT & Another 289 ITR 28 (Gau.) as the statutory notice under section 143(3) of the Act was not issued to the assessee. Further, in pursuant to notices issued under section 158-BC of the Act returns of income for the block period were filed disclosing undisclosed income at NIL for the block period. Admittedly notices under section 143(2) have not been issued in both the cases. However, notices under section 142(1) and 143(2) of the Act have been issued in the cases of Directors of the companies. Since notices under section 143(2) have not been issued in the case of both the assessees, the assessments framed in both the cases are bad in law in view of the decision of Hon'ble Gauhati High Court in the case of Smt. Vandana Gogai (supra). It has been submitted that issue of notice under section 143(2) is mandatory. Therefore, assessment framed in case of block assessments, the same will be bad in law in the absence of notice issued under section 143(2) of the Act. It has also been submitted that provisions of section 143(2) were amended by insertion of proviso. Hon'ble Delhi High Court in the case of CIT Vs. Iqbal Singh Sindhana 304 ITR 177 (Del.) has held that where no notice under section 143(2) of the Act had been served upon the assessee within the prescribed period, the assessment framed will be bad in law. He also placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Shri Rajesh Kumar Sharma 214 CTR 257 (Del). The ld. AR of the assessee further placed reliance on various decisions of ITAT wherein a consistent view has been taken that in case of block assessment non-issuance of notice under section 143(2) of the Act would make the assessment bad in law. He also submitted that ITAT, Special Bench, Delhi in the case of Kuber Tobacco P. Ltd. Vs. DCIT in IT [SS] Appeal No. 261 (Del) of 2001 for block period 1/08/1988 to 25/01/1999 dated 14/01/2009 has held that provisions of section 292-BB could not be construed retrospectively.

4. On the other hand, the ld. [CIT] - DR submitted that notice in its legal sense may be defined as information concerning a fact actually communicated to a party by an authorised

person or actually derived by him from a proper source or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in legal consequence. She further submitted that merely recording of fact of completion of assessment in the order-sheet is irregular, but not invalid. Irregularity in assessment order can be cured by appellate authority. She placed reliance on the decision of Hon'ble Calcutta High Court in the case of Sewdutt Roy Rambullad & Sons Vs. CIT 204 ITR 580 (Cal.) for the proposition that in such cases the Tribunal will be justified in asking the assessing officer to pass fresh order. She further submitted that the assessee has not raised any objection before the assessing officer. She further submitted that notice under section 143(2) has been issued in the name of the Directors of the company, which is represented by its Director as principal officer in fiduciary capacity, company being artificial juridical person. Further section 282(2)(b) read with section282(2)(d) the Director who manages and control the affairs of the company should be read with the relevant provisions of the Companies Act. She further submitted that it is to be seen whether the assessee was prevented to give an explanation to substantiate his cause for which even the matter can be determined if the assessee has submitted such an explanation before the ld. CIT (Appeals) i.e. at the very stage after which grievance arose. In other words, technicalities cannot be reduced to thwart the Revenue. She further submitted that non-issue of notice under section 143(2) of the Act would not make the assessment null and void, but it is only irregularity to be cured. She placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Jai Prakash Singh 299 ITR 737 decision of Rajasthan High Court in the case of CIT Vs. Gyan Prakash Gupta 165 ITR 501. She also placed reliance on the decision of ITAT reported as 1 SOT 476. She has further submitted that the Directors of the company had participated in the assessment proceedings and were in the knowledge of such proceedings. Therefore, the purpose of issuance of notice has been served. In these circumstances it will be wrong to say that the principle of audi alteram partem is not satisfied. In these cases the assessing officer passed all the tests of procedural fairness by bringing all adverse findings in the notice of the assessee and by hearing him and the assessee got chance to say their version. In the land-mark case of State Bank of Patiala Vs. S. K. Sharma (1996) 3 SCC 364 the Hon'ble Supreme Court has reviewed the entire gambut of case law on the natural justice starting with the classic case of Ridge Vs. Valduria and culminating with the decision of Constitution Bench

in the case of Managing Director, ECIL Vs. V. Karnagar (1993) 4 SCC 727. The court observed "natural justice means justice between the parties. The interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principal of natural justice are the means to achieve the ends of justice. They cannot be permitted to achieve the very opposite end. Procedural provisions are generally met for affording a reasonable and adequate opportunity to the person proceeded against. They are generally speaking conceived in his interest violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Therefore, non-issuance / service of notice could not render the assessment invalid, but at the best it can be a case of irregularity, which can be removed. Reliance was placed on the decision of Hon'ble Madras High Court in the case of Areva T and D. India Ltd. Vs. ACIT 294 ITR 233. She, therefore, requested that the matter may be remanded back to the file of the assessing officer.

5. We have heard both the parties and gone through the material available on record. It is an admitted fact that notice under section 143(2) of the Act was not issued in the name of the assessee company. The notices were, however, issued in the name of Directors of respective companies. The contention of the ld. [CIT]-DR that notice issued to the Director of the company would amount to notice issued to the company. We are unable to subscribe this view. No doubt, a Director of a company manages and control the affairs of the company, but a notice issued in individual capacity of Director would not amount issue of notice to the company. If a notice has been issued to the company and served on the Director absolutely there should not be any problem, but however, where notice under section 143(2) of the Act have not been issued in the name of the assessee company, the assessment proceedings could not be proceed with.

5.1 The cross objections filed by both the assessee are squarely covered by the decision of Hon'ble Gauhati High Court in the case of Smt. Bandana Gogoi Vs. CIT & Another (supra). In this case it has been held that if the assessing officer accepts the return filed, he may straight-away pass an order of assessment and determine the tax payable under clause (c)

of section 158-BC of the Act. Instead, if he proceeds to make an enquiry as provided in section 142 of the Act, he has to follow the provisions of section 142 as well as provisions of sub-section (2) and (3) of section 143 of the Act. Both the clauses (i) and (ii) of sub-section (2) of section 143 postulates the 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 of sub-s. (ii). 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 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-section (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.

6. Various Benches of the ITAT, Delhi Benches, have been following the decision of Hon'ble Gauhati High Court and where notice under section 143(2) of the Act have not been issued, the assessments have been quashed. In the case of M/s. CPR Capital Services Ltd. Vs. DCIT in I.T.{ss} A. No. 319 (Del) of 2003 dated 31st January, 2008 following the decision of ITAT, Delhi Benches, in the cases of Naresh Kumar Arora Vs. ACIT,

Cent.Circle : 25, New Delhi in IT(SS) 46 (Del) of 2005; Tulika Mishra Vs. JCIT in IT (SS) A. No. 81 (Del) of 2003; & ACIT Vs. R. P. Singh in IT (SS) A. No. 70 (Del) of 2004, quashed the assessment proceedings. Since the issue is squarely covered by the decisions of ITAT, Delhi Benches, referred to above as well as the decision of Hon'ble Gauhati High Court in the case of Smt. Vandana Gogai (supra) we do not find any reason to differ from the view taken by the co-ordinate benches of this Tribunal. Respectfully following the precedent, it is held that the assessments framed without service of notice under section 143(2) of the Act are bad in law. We accordingly quash the assessments framed in both the cases.

7. Since we have quashed the assessment proceedings in both the cases, the appeals filed by the Revenue in both the cases against the order of the ld. CIT (Appeals) deleting certain additions, become infructuous and are dismissed as such.

8. In the result, the appeals filed by the Revenue are dismissed and the cross objections filed by both the assessees are allowed.

The order pronounced in the open court on : 27.02.2009.

[R. P. TOLANI]
JUDICIAL MEMBER

[K. D. RANJAN]
ACCOUNTANT MEMBER

Dated : 27/2/2009.

MEHTA

" Copy of the order forwarded to : -

1. Appellants.

2. Respondents. By Hand (D) M/s Keerthan Services. no

3. CIT,

4. CIT (Appeals),

5. DR, ITAT, NEW DELHI.

True Copy. By Order.

Assistant Registrar, ITAT. "

सहायक पंजीकार
Assistant Registrar
आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
New Delhi