

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A': NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

IT(SS)A No. 6178/Del /1996  
Block Period: 1.4.1985 to 17.10.95

Shri Ashok Kumar Aggarwal, (Proprietor of M/s N. Aggarwal & Co., 810, Ansal Bhavan, K.G. Marg, New Delhi. (Appellant)	vs	ACIT, Central Circle 11, New Delhi. (Respondent)
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Appellant by : Shri C.S. Aggarwal, Sr. Advocate  
Respondent by : Smt. Aparna Karan, CIT DR

**Date of Hearing : 30.11.2017**  
**Date of Pronouncement: 28.02.2018**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.**

This appeal, filed by the assessee, challenges the assessment made u/s 158BC of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the block period relating to assessment years 1986-87 to 1996-97. The assessee's appeal was earlier heard and disposed of by the Delhi Bench of the ITAT but as there was a difference of opinion between the two Hon'ble Members of the Bench on interpretation of Section 158BC of the Act, the matter was referred to the Third Member. Thereafter, aggrieved by the order of the Hon'ble Third Member, the Revenue approached the Hon'ble Delhi High Court. The Hon'ble Delhi High Court in ITA No. 167/2001, vide order dated 24.07.2014, on a concession by the assessee's counsel remitted the matter for a fresh adjudication by the ITAT. Now, the appeal has been fixed before this Bench after remit from the Hon'ble High Court.

2. Brief facts of the case are that the assessee is an individual and during the relevant period was engaged in the business of purchase and sale of shares on its own behalf as well as on behalf of its customers. The assessee has been an income tax payee from assessment year 1988-89 and the return of income for assessment year 1994-95 had been filed before the search which took place on 17<sup>th</sup> October, 1993. The returns for assessment years 1995-96 and 1996-97 were filed after the search. The assessments for assessment years 1988-89 to 1994-95 were completed before the search. Consequent to the search and seizure operation, a notice u/s 158BC of the Act was issued on 31.05.1996 and served upon the assessee on 21.06.1996. In response to the notice, the assessee did not offer any income as undisclosed income but furnished details of income, returned and assessed, falling within the block period. The Assessing Officer, however, vide order dated 31.10.1996, completed the assessment u/s 158BC(c) of the Act after computing the undisclosed income of the assessee at Rs. 13,13,49,778/-.

3. The assessee has raised as many as 25 grounds of appeal before the ITAT. Ld. Sr. Advocate Shri C.S. Agarwal submits that ground no. 2 is germane to the entire case and this is a legal ground being raised by the assessee. It was further submitted that if the assessee succeeds on this ground, then there will be no requirement for arguments on other grounds/merits of the appeal.

3.1 The Ld. CIT DR agreed to the submission of the Ld. Senior Advocate and submitted that ground no. 2 should be taken first. Accordingly, we proceed to hear both the parties on ground no. 2 which reads as under:-

"2. That the initiation of proceeding and completion thereof by the aforesaid order is without satisfying the mandatory requirements of the aforesaid chapter and without fulfilling the pre-condition for making the order of assessment."

4. The Ld. Senior Advocate submitted that in ground no.2, the assessee has challenged the validity of assessment on the ground that while framing assessment u/s 158BC, the mandatory requirement of Chapter XJVB of the Act had not been fulfilled as the Assessing Officer had failed to issue the statutory notice u/s 143(2) of the Act. The Ld. Sr. Advocate submitted that the Act casts a statutory obligation on the Assessing Officer to issue notice u/s 143(2) before proceeding to make an assessment. The Ld. Sr. Advocate drew our attention to the impugned assessment order and submitted that in the assessment order, the Assessing Officer has merely stated that notice

u/s 158BC had been issued and that the assessee had appeared on a few dates and the case was discussed. The Ld. Senior Advocate further submitted that the assessee had appeared in compliance to notice u/s 158BC of the Act and, thereafter, the Assessing Officer was duty bound in law to have issued a notice u/s 143(2). The Ld. Sr. Advocate vehemently argued that in absence of any notice being issued u/s 143(2), the Assessing Officer could not have made any addition in the hands of the assessee. It was submitted that the impugned assessment was bad in law and void ab initio.

5. The Ld. CIT DR strongly supported the impugned order in this regard and vehemently argued that the assessee should argue on merits also and should not take shelter behind a technical ground of the statutory notice not having been issued.

6. We have heard the rival submissions and perused the material available on record. A perusal of the assessment order shows that the Assessing Officer has only mentioned issuance of notice u/s 158BC of the Act but the issuance and service of notice u/s 143(2) has nowhere been mentioned. On a query from the Bench, the Ld. CIT DR expressed her inability to produce the assessment records at this stage. Accordingly, in absence of any proof that notice u/s 143(2) was issued prior to the assessment proceedings having been taken up and the inability of the department to counter the claim of the assessee, that the statutory notice u/s 143(2) of the Act was not served on the assessee with cogent evidence to the contrary, we are constrained to hold that the statutory notice u/s 143(2) was not issued/served upon the assessee prior to the assessment proceedings having been taken up. Under similar circumstances, the Hon'ble Apex Court in the case of ACIT & Another vs. Hotel Blue Moon reported in 321 ITR 362 (SC) held as under:-

"Section 158 BC (b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)142 and complete the assessment under Section 143(3). This Section does not provide for accepting the return as provided under Section 1 43(i)(a). The assessing officer

has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2) & 142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of sub-sections which are to be followed by the assessing officer. Had the intention of the legislature was to exclude the provisions of Chapter XIV of the Act, the legislature would have or could have indicated that also. A reading of the provision would clearly indicate, in our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158 BC (a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act. Where the legislature intended to exclude certain provisions from the ambit of Section 158 BC(b) it has done so specifically. Thus, when Section 158 BC(b) specifically refers to applicability of the proviso thereto cannot be excluded. We may also notice here itself that the clarification given by CBDT in its circular No.717 dated 14th August, 1995, has a binding effect on the department, but not on the Court. This circular clarifies the requirement of law in respect of service of notice under sub-section (2) of Section 143 of the Act. Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of

Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act."

6.1 Thus, the Hon'ble Apex Court has held that where the AO repudiates the return filed u/s 158BC (a) of the Act and proceeds to make an enquiry, he has to necessarily follow the provisions of section 142, 143(2) and 143(3) of the Act. In the case before us, the Department has not been able to negate the assertion of the assessee that no notice u/s 143(2) of the Act was issued by the AO prior to the framing of assessment u/s 158BC of the Act. Thus, the impugned assessment was framed without assumption of jurisdiction. Accordingly, respectfully following the ratio of the judgment of the Hon'ble Apex Court in the case of Hotel Blue Moon (supra), we quash the impugned assessment as being void ab initio having been framed without jurisdiction.

6.2 Since the impugned assessment itself stands nullified and nothing survives to be heard on merits, the other grounds become academic in nature and are not being dealt with.

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

The order is pronounced in the open court on 28<sup>th</sup> Feb. 2018.

**Sd/-**

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> February, 2018

'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

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By Order

ASSISTANT REGISTRAR