

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 6100/Mum/2019 (A.Y. 2007-08)

Arun Kanhaiya Gupta Flat No. 709 7 th Floor, C-Wing Lake Side Raheja Vihar Powai, Mumbai-400 076. PAN : AEPPG4066F (Appellant)	Vs.	ITO-26(1)(2) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
---	-----	--

Assessee by	Shri Dhaval Shah
Department by	Ms. Naina Krishnakumar
Date of Hearing	18.07.2022
Date of Pronouncement	18.07.2022

ORDER

The assessee has filed this appeal challenging the order dated 24.4.2019 passed by learned CIT(A)-38, Mumbai and it relates to assessment year 2007-08. The assessee is aggrieved by the decision of learned CIT(A) in confirming the addition of Rs. 3,49,600/- being alleged on-money payment on purchase of a flat.

2. The appeal is barred by limitation by 94 days. The assessee has filed a petition requesting the Bench to condone the delay. It is stated that the assessee got injured in a bike accident resulting in fractures in neck, hand and spine and the same has resulted in delay in filing the appeal. The assessee has also furnished copies of medical report in support of same.

3. I have heard the parties on this preliminary issue. Having regard to the submissions made in the petition, I am of the view that there was reasonable cause for the delay in filing the appeal before the Tribunal. Accordingly, I condone the delay and admit the appeal for hearing.

4. The Ld A.R submitted that the assessee has raised a legal ground on earlier occasions contending that he has not been served with the notice under section 143(2) of the Act. The Learned AR submitted that the assessee has sent queries to the Assessing Officer several times asking for the proof for service of the notice under section 143(2) of the Act. Since there was no response from the AO, the Bench had directed the Ld. DR to produce assessment record and report on service of above stated notice.

5. The Learned DR submitted that the assessment record has reached her and on examination of the same, she does not find any proof for service of the notice under section 143(2) of the Act.

6. I have heard the parties on this legal issue. I am informed that the assessment record does not contain any proof regarding service of notice under section 143(2) of the Act to the assessee. There should not be any dispute that the Assessing Officer would get jurisdiction over the return of income filed by the assessee only upon service of notice under section 143(2) of the Act, meaning thereby, the AO could not scrutinize the return of income without issuing notice u/s 143(2) of the Act in accordance with law. I find support for this legal proposition from the decision rendered by Hon'ble Supreme Court in the case of ACIT Vs. Hotel Blue Moon (321 ITR 362). Accordingly, in the present case, the impugned assessment order framed by the Assessing Officer is liable to be quashed for want of jurisdiction. In view of the above, I set aside the order passed by learned CIT(A) as well as Assessing Officer.

7. However, I give liberty to the Revenue to seek recall of this order in accordance with law, if it is found subsequently that there was proper service of notice u/s 143(2) of the Act.

8. Since I have quashed the orders of lower authorities on this legal issue, all other issues urged before the Tribunal do not require adjudication.

9. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 18.07.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS