

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT  
AND MS. RANO JAIN, ACCOUNTANT MEMBER

**ITA No.102/Chd/2016**  
(Assessment Year : 2011-12)

Sh.Sanjeev Aggarwal,  
Plot No.54, Industrial Area,  
Phase-II, Chandigarh.

Vs.

The D.C.I.T.,  
Circle-1(1),  
Chandigarh.

PAN: ABCPK9428K

**&**

**ITA No.169/Chd/2016**  
(Assessment Year : 2011-12)

The D.C.I.T.,  
Circle-1(1),  
Chandigarh.

Vs.

Sh.Sanjeev Aggarwal,  
Plot No.54, Industrial Area,  
Phase-II, Chandigarh.

PAN: ABCPK9428K

And

**ITA No.103/Chd/2016**  
(Assessment Year : 2011-12)

Sh.Vaishali Aggarwal,  
Plot No.54, Industrial Area,  
Phase-II, Chandigarh.

Vs.

The D.C.I.T.,  
Circle-1(1),  
Chandigarh.

PAN: ABCPK9428K

**&**

**ITA No.170/Chd/2016**  
(Assessment Year : 2011-12)

The D.C.I.T.,  
Circle-1(1),  
Chandigarh.

Vs.

Sh.Vaishali Aggarwal,  
Plot No.54, Industrial Area,  
Phase-II, Chandigarh.

PAN: ABCPK9428K

(Appellant)

(Respondent)

Assessee by : Shri Parikshit Aggarwal  
Department by : Shri S.K.Mittal, DR  
Date of hearing : 23.05.2016  
Date of Pronouncement : 25.05.2016

**O R D E R**

**PER RANO JAIN, A.M. :**

These cross appeals filed by two different assesses are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-I, Chandigarh dated 15.12.2015 for assessment year 2011-12, filed against the order under section 250(6) of the Income Tax Act, 1961 (in short 'the Act').

**ITA No.102/Chd/2016 (Assessee's Appeal) :**

2. The ground raised by the assessee read as under :

*"1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 47/14-15 dated 02.02.2015 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961, to the extent of not allowing some of the grounds raised by the appellant.*

*2. That on law, facts and circumstances of the case, Worthy CIT(A) was not justified in sustaining the action of Ld. AO wherein he was not justified in re-opening the impugned assessment u/s 147/148 of the Act.*

3. *That on law, facts and circumstances of the case, Worthy CIT(A) was not justified in sustaining the action of Ld. AO wherein he was not justified in framing the impugned assessment even without issuing and serving the statutory notice u/s 143(2) of the Act.*
4. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.”*

3. Briefly, the facts of the case as stated in the assessment order are that the original return in this case declaring total income of Rs.30,10,400/- was filed by the assessee as on 14.8.2011 and the case was processed under section 143(1) of the Act as on 12.10.2011. Thereafter, the case of the assessee was reopened after recording reasons and notice under section 148 of the Act dated 18.3.2014 was issued and duly served upon the assessee as on 25.3.2014 calling for the return of assessment year 2011-12 within 30 days. In response to this notice, the assessee vide its letter dated 25.6.2014 submitted that the original return filed on 14.8.2011 may be treated as return filed under section 148 of the Act and requested for reasons to believe for reopening of assessment, which were provided to the assessee vide letter dated 27.6.2014. Further, notice under section 142(1) dated 25.9.2014 was issued to the assessee alongwith detailed questionnaire. After a detailed discussion, the Assessing Officer passed an order under section 147 r.w.s. 143(3) of the Act dated 31.12.2014 making assessment at an income of Rs.1,42,64,299/-.

4. Before the learned CIT (Appeals), a legal ground as to non-issuance of notice under section 143(2) of the Act was raised. It was contended that the Assessing Officer has erred in framing assessment under section 147 r.w.s.143(3) of the Act even when no notice under section 143(2) of the Act was issued and served on the assessee and, hence the assessment deserves to be quashed and declared null and void. After considering the submissions of the assessee, the learned CIT (Appeals) observed that from the assessment order, it is gathered that the learned counsel for the assessee attended the re-assessment proceedings regularly and has never objected regarding issue and service of notice under section 143(2) of the Act. As per the provisions of section 292BB of the Act, where an assessee has appeared in any proceedings or cooperated in any inquiry relating to an assessment or re-assessment, it shall be deemed that any notice under any provisions of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act. In view of this, he held that notice under section 143(2) of the Act is duly issued and served upon the assessee and in this way, this ground raised by the assessee was dismissed.

5. Aggrieved by this, the assessee has come up in appeal before us. At the outset, the learned counsel for the assessee drew our attention to the order of the learned CIT (Appeals) and stated that the learned CIT (Appeals) himself has admitted the fact that notice under section 143(2) of

the Act was not issued to the assessee. However, he dismissed the said ground only on the basis of provisions of section 292BB of the Act. He further stated that section 292BB of the Act is relevant only for service of notice and not for non-issuance of statutory notice under section 143(2) of the Act. He placed reliance on the judgment of the Punjab & Haryana High Court in the case of CIT Vs. Cebon India Ltd. (2012) 347 ITR 583 (P&H) for the proposition that section 292BB of the Act is relevant only for non-service of a notice and not for non-issuance of notice. Further reliance was placed on the judgment of Delhi High Court in the case of Alpine Electronics Asia Pte Ltd. vs. DGIT & Ors. [2012] 341 ITR 247 (Del.) for the proposition that notice under section 143(2) of the Act is mandatory for proceedings to be completed under section 147 of the Act. Further reliance was placed on the judgment of Hon'ble Supreme Court in the case of ACIT & Anr. Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC).

6. The learned D.R. relied on the order of the learned CIT (Appeals) and further stated that section 147 r.w.s.148 of the Act is a code in itself and there is no need to go into the provisions of section 143(2) of the Act for this purpose. Notice under section 148 of the Act is a statutory notice and enough for making assessment or re-assessment under section 147 of the Act.

7. We have heard the learned representatives of both the parties, perused the findings of the authorities below

and considered the material available on record. From the order of the learned CIT (Appeals), we observe that there is no quarrel to the fact that in the present case notice under section 143(2) of the Act was not issued to the assessee. The fact of issuing notice under section 143(2) of the Act is also not coming out from the order of the Assessing Officer. This fact has not been controverted by the learned D.R. even before us. In view of this, since the learned CIT (Appeals) dismissed the ground of the assessee on the basis of provisions of section 292BB of the Act, the only issue remaining before us is to decide whether in the absence of issue of notice under section 143(2) of the Act, the assessment framed under section 147 r.w.s. 143(3) of the Act is valid in the background of provisions of section 292BB of the Act. The provisions of section 292BB read as under :

***[Notice deemed to be valid in certain circumstances.***

***292BB.*** *Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—*

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:*

***Provided** that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.]*

8. From the bare perusal of the above section, we see that a deeming fiction has been created by this section. In case, an assessee cooperates during the assessment even if no notice has been served on him, it is deemed to be served upon him in time as per the provisions of the Act. The provisions of this section clearly laid down the circumstances under which the deeming fiction has to come into force. These conditions have been stated to be as (a), (b) and (c), which talks about the situation where the notice was not served upon the assessee or not served upon him in time or served upon him in an improper manner respectively. Therefore, we see that section talks about only the situation where the assessee raises the issue of non-service of a notice and still cooperates with the Department. Otherwise also, we are of the opinion that issuance of statutory notice cannot be dispensed with by the cooperation of the assessee. Since this notice forms the basis for Assessing Officer to assume jurisdiction under respective sections. Reliance placed by the learned counsel for the assessee on the judgment of the Punjab & Haryana High Court in the case of Cebon India Ltd. (supra) is not out of place, whereby it has been very categorically held that absence of a statutory notice cannot be held to be curable under section 292BB of the Act.

9. As regards the arguments of the learned D.R. that section 147 r.w.s. 148 of the Act, are a complete code in itself and there is no need for the Assessing Officer to go into other sections to assess or re-assess income under the said section. We would like to observe the substantive part of provisions of section 148, which reads as under :

**[Issue of notice where income has escaped assessment.]**

*148. [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [\* \* \*] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.]*

10. From the perusal of the above provisions, it is quite clear that the Assessing Officer has to issue and serve a notice under section 148 of the Act to the assessee before making assessment under section 147 of the Act. The notice under section 148 of the Act requires the assessee to furnish his return of income within the time specified in the notice. This return has to be in the prescribed form and in the prescribed manner. It has been very categorically provided in the section that afterwards the provisions of this Act shall 'so far as may be, apply accordingly as if such return were a return required to be furnished under section 139' of the Act. Therefore, the provisions of section

itself negate the arguments taken by the learned D.R. that once issuing notice under section 148 of the Act, the Assessing Officer cannot go into the provisions of other sections. Once the assessee files return in pursuance of notice under section 148 of the Act, which is deemed to be filed under section 139 of the Act and in case the Assessing Officer wants to proceed with the return filed by the assessee, he has to issue a notice under section 143(2) of the Act. Any assessment framed without issue of notice under section 143(2) of the Act, suffers from Jurisdictional error. This position of law has also clarified by Delhi High Court in the case of Alpine Electronics Asia Pte Ltd. (supra). In view of the above, we hereby quash the order of the Assessing Officer, which was made without issue of notice under section 143(2) of the Act.

11. The ground No.3 raised by the assessee is allowed.

12. Since we have quashed the order of the Assessing Officer while adjudicating ground No.3, we do not find any need to adjudicate other grounds raised by the assessee.

13. The appeal of the assessee is allowed.

**ITA No.169/Chd/2016 (Revenue's Appeal) :**

14. Since we have already quashed the order of the Assessing Officer while adjudicating ITA No.102/Chd/2016, the appeal of the Department becomes infructuous and we do not find any need to adjudicate the same.

15. The appeal of the Revenue is dismissed.

**ITA No.103/Chd/2016 (Assessee's Appeal) :**

16. It is relevant to observe here that the facts and circumstances of this case are similar to the facts and circumstances in No.102/Chd/2016 and the findings given in ITA No.102/Chd/2016 shall apply to this case also with equal force. The order of the Assessing Officer is hereby quashed.

17. The appeal of the assessee is allowed.

**ITA No.170/Chd/2016 (Revenue's Appeal) :**

18. Since we have already quashed the order of the Assessing Officer while adjudicating ITA No.103/Chd/2016, the appeal of the Department becomes infructuous and we do not find any need to adjudicate the same.

19. The appeal of the Revenue is dismissed.

20. In the result, the appeals of the assessee in ITA Nos.102 & 103/Chd/2016 are allowed and the appeals of the Revenue in ITA Nos.169 & 170/Chd/2016 are dismissed.

Order pronounced in the open court on this 25<sup>th</sup> day of May, 2016.

Sd/-  
**(H.L.KARWA)**  
**VICE PRESIDENT**

Sd/-  
**(RANO JAIN)**  
**ACCOUNTANT MEMBER**

Dated : 25<sup>th</sup> May, 2016

\*Rati\*

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,  
ITAT, Chandigarh