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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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ITA 696/2015

CIT

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing Counsel and Mr Sanjay Kumar, Junior Standing Counsel.

Versus

DELHI KALYAN SAMITI

..... Respondent

Through: Mr Gautam Jain and Mr Piyush Kumar Kamal, Advocates.

AND

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ITA 697/2015

CIT

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing Counsel and Mr Sanjay Kumar, Junior Standing Counsel.

Versus

DELHI KALYAN SAMITI

..... Respondent

Through: Mr Gautam Jain and Mr Piyush Kumar Kamal, Advocates

AND

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ITA 699/2015

CIT

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing Counsel and Mr Sanjay Kumar, Junior Standing Counsel.

versus

DELHI KALYAN SAMITI

..... Respondent

Through: Mr Gautam Jain and Mr Piyush
Kumar Kamal, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

22.03.2016

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1. These appeals have been filed by the Revenue under Section 260A of the Income Tax Act against a common order dated 4th March, 2015 ('the impugned order') passed by the Income Tax Appellate Tribunal ('ITAT') for the Assessment Years ('AYs') 2000-01, 2001-02 & 2002-03.
2. By the impugned order, the ITAT has disposed of six appeals – three appeals filed by the Assessee and three appeals filed by the Revenue – assailing a common order dated 29th January, 2010 passed by the Commissioner of Income Tax [CIT(A)] which in turn disposed of the Assessee's appeals against separate assessment orders passed by the Assessing Officer ('AO') under Section 144/148 of the Act.
3. The Revenue has limited its challenge to the ITAT's finding that the assessment orders in question are as having been passed without issuing any notice under Section 143(2) of the Act. It is contended on behalf of the Revenue that in the facts of the case are that no such notice was necessary before passing assessment orders under Section 144 of the Act. The above conclusion is disputed and it is further contended on behalf of the Assessee

that the issue stands fully covered by the decision of this Court in *Principal Commissioner of Income Tax v. Silver Line (2016) 283 CTR 148 (Del)*.

4. The relevant facts necessary to consider the aforesaid controversy are as under:

4.1. The Assessee is a society promoted by the Government of National Capital Territory of Delhi and was registered under the Societies Registration Act on 31st March, 1995. The Assessee applied for registration under Section 12A of the Income Tax Act and the same was granted with effect from 1st April, 2005 by an order dated 12th January, 2006 passed by the Director of Income Tax (Exemption).

4.2 The Assessee was established pursuant to a Cabinet decision no.125 dated 16th March, 1995 whereby an amount of Rs.38.74crores from the erstwhile lottery fund, which was lying in a fixed deposit, was transferred to the Welfare Fund of the Assessee. The balance sheet of the Assessee for the year ended 31st March, 2002, 31st March, 2003 and 31st March, 2004 (relevant to AY 2002-03, 2003-04 and 2004-05) reflected an amount of Rs.53.26 crores as “Deposit transferred from Delhi Lotteries”. The AO believed that the income of the Assessee had escaped assessment for the relevant AYs since the registration of the Assessee under Section 12A of the Act was effective only from AY 2006-07 onwards. Accordingly, he issued a notice under Section 148 of the Act on 29th March, 2007 for the relevant AYs.

4.3 The Assessee objected to the reopening of the assessments, however, the

its objections were rejected by the AO.

4.4 It is relevant to note that the notices issued under Section 148 of the Act called upon the Assessee to file its returns for the respective AYs within a period of 30 days from the date of the notices. Concededly, the Assessee failed to file the same within the specific period.

4.5 Thereafter, the AO issued notices (all dated 12th September, 2007) under Section 142(1) of the Act, which were followed by similar notices on 15th November, 2007 and 30th November, 2007. All the aforesaid notices were in standard form and apart from calling upon the Assessee to file correct return of income also called upon the Assessee to furnish details as per questionnaire enclosed with the said notices.

4.6 The Assessee filed its returns of income on 19th December, 2007, however, the same was not taken note of by the AO who proceeded to pass assessment orders (all dated 24th December, 2007) under Section 144 read with Section 147 of the Act.

4.7 Admittedly, no notice under Section 143(2) of the Act was issued or served on the Assessee and the assessment orders indicate that the AO did not take note of the returns filed by the Assessee while passing the assessment orders.

4.8 Mr Dileep Shivpuri, learned Senior Standing counsel submitted that since the Assessee had failed to file its returns for the relevant AYs within the time prescribed in the notices issued under Section 148 of the Act, the

said returns were invalid and were rightly ignored by the AO. He submitted that in the circumstances no notice under Section 143(2) of the Act was required to be issued to the Assessee. He further submitted that the present assessments were framed under Section 144(1)(b) of the Act - on account of failure on the part of an Assessee to comply with all terms of a notice issued under Section 142(1) of the Act or failure to comply with directions issued under Section 142(A) of the Act - and issuance of notice under Section 143(2) of the Act is not a necessary precondition for the same. He contended that the position would be no different even if the returns were filed in the regular course. Mr Dileep Shivpuri relied on the decision of this Court in *Ashok Chaddha v. ITO: (2011) 337 ITR 399 (Delhi)* in support of its contention that no notice under Section 143(2) was required to be issued.

5. Mr Gautam Jain, learned counsel appearing for the Assessee countered the submissions made by Mr Shivpuri and urged that the returns filed by the Assessee could not be ignored as being invalid. He submitted that a delay in filing a return pursuant to a notice under Section 148 of the Act did not render the return invalid and the only consequences visited upon the assessee would be levy of interest under Section 234A of the Act.

6. Mr Gautam Jain further referred to the order sheet and pointed out that on 10th December, 2007, the Assessee's representative had informed the AO that it was in the process of filing its returns and had sought adjournment, which was granted. He contended that having granted the adjournment for filing the return it would not be open for the AO to then ignore the said returns. He submitted that in any event, the returns were filed within a

reasonable time of the last notice issued under Section 142 of the Act - 30th November, 2007.

7. We have heard the learned counsel for the parties.

8. At the outset, we are unable to accept Mr Shivpuri's contention that even in cases where valid returns have been filed the AO could proceed to frame an assessment under Section 144 of the Act without issuance of any notice under Section 143(2) of the Act.

9. It is now well established that if the AO does not accept the return filed by the Assessee on its face and he is required to issue a notice under Section 143(2) of the Act and provide an opportunity to the Assessee to produce the necessary material in support of his return. Mr Shivpuri had argued that a notice under Section 143(2) was required to be issued only in cases where the AO considers it necessary or expedient to do so and in cases where the Assessee had not filed its response to the notice under Section 142(1) it was not necessary for the AO to issue such notice under Section 143(2). In our view, this contention is bereft of any merits and completely ignores the scheme of the machinery provisions for assessment under the Act. It is now well settled by a number of decisions (See: *Pr. CIT v. Silver Line and Anr.: 283 CTR 148 (Del)*, *ACIT v. Hotel Blue Moon: 321 ITR 362 (SC)* and *CIT v. Pawan Gupta: 318 ITR 322 (Del)*) that whenever the return filed by an Assessee is not accepted at its face, it is mandatory for the AO has to issue a notice under Section 143(2) of the Act for proceeding further. It is thus not open for the AO to not issue a notice under Section 143(2) of the Act and proceed directly under Section 144 of the Act by rejecting the return filed by

the Assessee.

10. The decision of this Court in *Ashok Chaddha* (*supra*) was rendered in the context of Section 153A of the Act and in our view, the same is not applicable in the present case. This Court in several cases pertaining to proceedings under Section 147 has held that a notice under Section 143(2) is mandatory. [See: *Alpine Electronics Asia (P.) Ltd. v. DGIT: 341 ITR 247 (Del)*, *DIT v. Society for Worldwide Interbank Financial Telecommunication: 323 ITR 249 (Del)*, *Pr. CIT v Shri Jai Shiv Shankar Traders Pvt. Ltd.: 282 CTR 435 (Del)* and *CIT v. Rajeev Verma: 336 ITR (All)*]. It is also relevant to note that clause (b) of the proviso to Section 148(1) of the Act also specifically extends the period for issuance of notice under Section 143(2) of the Act.

11. Mr Jain's contention that a belated return filed by the Assessee prior to the assessment cannot be ignored as an invalid return, *prima facie*, appears to be merited. However, in the facts of the present case, the said question does not arise as the AO had issued a notice under Section 142(1) of the Act on 30th November, 2011, *inter alia*, calling upon the Assessee to file its return. Further, on 10th December 2007, the AO was informed that the Assessee was in the process of filing its return and an adjournment was requested. The AO had acceded to his request, which would be wholly unnecessary if the AO was of the view that a belated return would be invalid. Thus, in the facts of the present case, the returns filed by the Assessee could not be ignored by the AO.

12. We find no infirmity with the impugned order passed by the ITAT. No

substantial question of law arises in the present appeals. The same are, accordingly, dismissed. However, in the circumstances, the parties are left to bear their own costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 22, 2016/MK/RK