

\$~26 & 27

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

% Judgment delivered on: 28.11.2017

+ ITA 1062/2017 & CM 43174/2017

PR COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

versus

M/S RAVNET SOLUTIONS PVT. LTD.

..... Respondent

+ ITA 1063/2017 & CM 43175-76/2017

PR COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

versus

M/S RAVNET SOLUTIONS PVT. LTD.

..... Respondent

Advocates who appeared in this case:

For the Appellant(s) : Mr. Zoheb Hossain, Sr. Standing Counsel

For the Respondent(s) : Ms. Monika Ghai and Mr. Shyamalima
Burah, Advs.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The Revenue is aggrieved by the findings of the ITAT for AY 2007-08 which upheld the CIT(A)'s decision.

2. The facts of the case are that the assessee had filed its returns on 30.03.2007 declaring an income of Rs. 36,609/-. It was initially processed under Section 143(1) of the Income Tax Act, 1961. The assessment, however, was completed on 11.12.2009 after the case was put up for scrutiny.

3. The assessment order recorded, inter-alia, that the notice under Section 143(2) was issued on 15.09.2008 and also sent through speed post subsequently at the address provided by the assessee, on 23.09.2008. The assessee was not represented and notice under Section 142(1) was issued – dated 20.01.2009. Apparently, a notice was again issued under the said provisions along with questionnaire through speed post on 18.02.2009, this too did not receive any response. A final notice on 18.03.2009 was issued. On the returnable day, the assessee's representation contended and filed some details regarding the case, which was adjourned to 08.04.2009.

4. Subsequently, according to the assessment order, subsequent notice was issued and the matter was fixed for hearing on 12.11.2009. As the assessee was not represented on the date of hearing, the AO completed the assessment making certain additions – based upon disallowance in respect of salaries paid, web designing expenses, share application money and current liabilities. The total income was assessed was Rs. 1,02,15,446/-.

5. The assessee appealed to the CIT(A). Its contentions with respect to issuance of notice under Section 143(2), were rejected. However, the disallowance and other additions made by the AO were set aside. Upon appeal and cross appeal by the rival parties, the ITAT accepted the assessee's contentions, after considering the record and also taking note of the remand report and comments received thereon.

6. The Revenue contends that the ITAT erroneously found that notice was not issued. It is highlighted that notice was, in fact, issued under Section 143(2) at the notified address. All attempts were made subsequently to secure the presence of the assessee. The record also revealed that the assessee did participate – at a later stage after its representations were obtained in the proceedings. In these circumstances, the deletion directed by the ITAT as was urged; is untenable.

7. The findings of the lower authorities especially ITAT, in the opinion of the Court, does not call for any interference. So far as the findings with respect to notice under Section 143(2) is concerned, the ITAT has considered the entire record afresh and clearly rendered a finding that on 15.09.2008, the assessment framed in this case, nowhere reflected that notice under Section 143(2) was issued. Para 10 of the impugned order, pointed out with respect to this aspect and having regard to all the factual material in these circumstances – compelled the ITAT to follow the reasoning of the Supreme Court in

“Additional Commissioner of Income Tax Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)”. In this case, the impugned order does not call any interference. So far as the question with respect to deletion on merits is concerned, the findings are concurrent.

8. In view of the above, no substantial question of law arises. The appeals are, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

NOVEMBER 28, 2017
‘rs’

