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

\+ **W.P.(C) 4014/2016 & CM No. 16938/2016**

S K INDUSTRIES ..... Petitioner

Through: Mr. Mukesh Gupta & Mr. Keshav Rai, Advocates

versus

ACIT CIRCLE 50(1), NEW DELHI & ANR. ..... Respondents

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

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **31.05.2017**

1. This writ petition filed by S.K. Industries, through its partner, questions the assessment order dated 31st March, 2016 passed by the Income Tax Department under Sections144/143(3) of the Income Tax Act, 1961 ('Act').

2. There is a short ground on which the challenge is laid i.e., the assessment was completed without the Assessing Officer ('AO') i.e., Respondent No. 1, being the Assistant Commissioner of Income Tax, Circle 50(1) ('ACIT'), issuing notice to the Assessee under Section 143(2) of the Act.

3. The background facts are that way back on 28th March, 2010, the Commissioner of Income Tax (Central), New Delhi transferred the jurisdiction of the case under Section 127 of the Act concerning the

Petitioner from the AO of Circle VIII to the AO of Circle 8(1), New Delhi. On 29th September 2013, the Assessee filed its returns of income in the office of the AO of Circle 8(1) declaring a loss. On 3rd September, 2014, Respondent No.2, who happens to be ACIT, Circle 31(1), issued notice to the Petitioner under Section 143(2) of the Act to scrutinise the returns. The said AO of Circle 31 (1) had no jurisdiction over the Assessee. On 21st July, 2015, Respondent No. 1, who is the AO of the Petitioner, issued notice under Section 142(1) for furnishing the details of the Assessee for the AY 2013-14.

4. On 27th July, 2015, the Petitioner wrote a letter to Respondent No. 1 to ignore the proceedings initiated vide notice dated 21st July, 2015 sent bb Respondent No. 1 since the Petitioner had not received any notice from Respondent No. 1 under Section 143(2) of the Act within the time limit prescribed under the Act. This time limit was up to 30th September, 2014. Another notice was issued by Respondent No. 2 on 8th September, 2015, which was responded to by the Petitioner on 23rd March, 2016 again pointing out that these notices were beyond the prescribed limit i.e., 30th September, 2014. Accordingly, the Petitioner requested that the assessment proceedings be dropped considering the decision of this Court on identical facts for AY 2012-13. The Petitioner in the said letter also mentioned that it had requested to ignore the assessment proceedings for AY 2013-14, where the facts were identical. By an order dated 5th May, 2015 in WP(C) No. 664/2015, this Court quashed the assessment order on the same ground, namely, that the concerned AO of the Petitioner had not issued notice within the time limit under Section 143(2) of the Act.

5. Nevertheless, in the present case, Respondent No. 1 persisted with the assessment proceedings and passed an *ex parte* assessment order on 31st March, 2016, which has been challenged by the Petitioner in the present petition.

6. Mr. Dileep Shivpuri, Senior Standing Counsel for the Revenue referred to reply filed in the present case and submitted that the case of the Petitioner was chosen by the departmental software, Computer Aided Scrutiny Selection, and that there was no human intervention involved in the selection. It is further stated that the Permanent Account Number (PAN) of the Petitioner fell within the jurisdiction of Respondent No. 2 and hence notice was sent by the Office of Respondent No. 2. He further referred to Section 124(3)(a) of the Act and contended that the Petitioner ought to have questioned the jurisdiction of Respondent No. 2 immediately after receiving the notice under Section 143(2) of the Act.

7. As far as the last submission is concerned, learned counsel for the Petitioner submits that it is only if the Petitioner had filed a return under Section 139(1) of the Act with Respondent No. 2 would the question of drawing the attention of Respondent No. 2 for delay in issuing a notice have arisen. Since the Petitioner is not obliged to file any return, the question of availing Section 124(3)(a) of the Act did not arise.

8. Be that as it may, in the considered view of the Court, the AO having jurisdiction i.e. Respondent No.1 ought to have issue a notice under Section 143(2)(a) of the Act within the prescribed time limit i.e., 30th September, 2014 in order to proceed with the assessment. Considering that a similar

mistake of an AO not having jurisdiction over the Assessee issuing a notice to it had been committed earlier, there was no occasion for the Revenue to continue to repeat the same mistake and expect that it will be condoned.

9. The impugned assessment order dated 31st March, 2016 is unsustainable in law since it has been passed without the AO having jurisdiction over the Assessee issuing notice to it under Section 143(2)(a) within the prescribed time limit i.e. on or before 30th September, 2014. The impugned assessment order dated 31st March, 2016 is hereby set aside.

10. The writ petition is accordingly allowed, but in the circumstances, no order as to costs. The application is disposed of.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 31, 2017
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