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

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Judgment delivered on: 24.10.2017

+ ITA 887/2017

+ ITA 888/2017

PRINCIPAL COMMISSIONER OF INCOME TAX – 7 Appellant

versus

M/S PARAMOUNT BIOTECH INDUSTRIES LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sanjay Kumar with Mr. Rahul Chaudhary,
Advocates

For the Respondent : None.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

CM No.37922/2017 (exemption) in ITA 888/2017

Exemption is allowed subject to all just exceptions.

ITA 887/2017 & ITA 888/2017

1. The Revenue impugns order of the ITAT dated 10.03.2017 for Assessment Years 1999 – 2000 and 2000 – 2001.

2. The Revenue urges that the Tribunal fell into error in following the decision in *Additional Commissioner of Income Tax vs. Hotel Blue Moon*: (2010) 321 ITR 362(SC). It is argued that the requirements of issuing notice under Section 143(2) cannot apply universally. *Hotel Blue Moon*

(supra) is sought to be distinguished in the present case on the ground that the Supreme Court was concerned with such assessment under Section 158BC(b).

3. It is urged on the contrary, in the present case, that the assessment concerning subsequent years showed that the assessments and the documents relating to the later years – in respect of the assessee in the present case – disclosed that the income has escaped assessment for the concerned years (AY 1999 – 2000 & AY 2000 – 2001).

4. ITAT – in paragraphs 7 and 8 of the impugned order went by the view that the *Hotel Blue Moon* (supra) had conclusively held that unless Section 143(2) notice is issued, leading to an assessment, the reassessment order passed by the Assessing Officer for the concerned years would be without jurisdiction.

5. This Court was informed, during the hearing, that the subsequent judgment of the Division Bench in *PR. Commissioner of Income Tax vs. Silver Line*: (2016) 383 ITR 455 has revisited the issue.

6. The Court here held that:

“16. As regards the objection of the Revenue to the ITAT permitting the Assessee to raise the point concerning non-issuance of notice under Section 143(2) of the Act for the first time in the appeal before the ITAT, the Court is of the considered view that in view of the settled legal position that the requirement of issuance of such notice is a jurisdictional one, it does go to the root of the matter as far as the validity of the reassessment proceedings under Section 147/148 of the Act is concerned. It raises a question of law as far as the present cases are concerned since it is not in dispute that prior to finalisation of the reassessment orders, notice under Section 143(2) of the Act was not issued by the AO to the

*Assessee. With there being no fresh evidence or disputed facts sought to be brought on record, and the issue being purely one of law, the ITAT was not in error in permitting the Assessee to raise such a point before it. This finds support in the decision of the Supreme Court in **National Thermal Power Co. Ltd. v. Commissioner of Income Tax** (supra) and the decision of this Court in **Gedore Tools (P) Ltd. v. Commissioner of Income Tax** (supra).*

17. *On the question of whether the notice under Section 143(2) of the Act was in the facts and circumstances mandatory, Mr. Sahni sought to distinguish the long line of decisions including the recent decision of this Court in **Pr. CIT v. Shri Jai Shiv Shankar Traders Pvt. Ltd.** (supra) on the ground that there was no occasion for the AO to issue any notice under Section 143 (2) of the Act since the Assessee had, in fact, not filed a return. He submitted that the original return was filed in the 'Saral Form' which had since been replaced with a different form for filing of returns. Consequently, the said return could not have been treated as a return filed pursuant to the notice issued to the Assessee under Section 148 of the Act. He further submitted that with no discrepancy having been found by the AO in the returns for AYs 2005-06 till 2007-08, which were processed under Section 143 (1) of the Act, there was no occasion for the AO to issue a notice under Section 143 (2) of the Act. Mr. Sahni submitted that in the circumstances, the action of the AO in finalising the reassessment orders without notice under Section 143 (2) of the Act was justified.*

18. *The wording of Section 143(2)(ii) of the Act, which is applicable in the present case, requires the AO to be satisfied on examining the return filed that prima facie the Assessee has 'understated the income' or has 'computed excessive loss' or has 'underpaid the tax in any manner'. The AO has the discretion to issue a notice under Section 143 (2) if he considers it 'necessary or expedient' to do so. This exercise by the AO under Section 143 (2) of the Act is qualitatively different from the issuance of a notice under Section 142(1) of*

the Act, which as noted hereinbefore, is in a standard proforma.

20. The proposal to reopen an assessment under Section 147 of the Act is to be based on reasons to be recorded by the AO. Such reasons have to be communicated to the Assessee. However, merely because the Assessee participates in the proceedings pursuant to such notice under Section 148 of the Act, it does not obviate the mandatory requirement of the AO having to issue to the Assessee a notice under Section 143(2) of the Act before finalising the order of the reassessment. ”

7. In the light of the above decision, this Court is of the opinion that the reasoning and conclusion of the Tribunal cannot be faulted. No substantial question of law arises. The appeals have to fail and are dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

**OCTOBER 24, 2017
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