



\$~74

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

%

Date of Decision : 01.10.2024

+ **W.P.(C) 13831/2024 CM APPL. 57943/2024 CM APPL.
57944/2024 CM APPL. 57945/2024**

AMBIENCE PRIVATE LIMITED

.....Petitioner

Through: Mr. N.P. Sahni and Mr. Kumar
Abbas, Advocates

versus

**ASSISTANT COMMISSIONER OF INCOME
TAX & ANR.**

.....Respondents

Through: Mr. Vipul Agrawal, Senior Standing
counsel with Mr. Gibran Naushad and
Ms. Sakashi Shairwal, Junior
Standing Counsels

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, impugning a notice dated 23.06.2024 issued under Section 143(2) of the Income Tax Act, 1961 (hereafter *the Act*). The petitioner also impugns notices dated 10.07.2024, 06.09.2024 and 17.09.2024, issued under Section 142(1) of the Act in respect of the assessment year 2023-24. According to the petitioner, the said notices have been issued without jurisdiction.

2. The petitioner's challenge to the notice dated 23.06.2024, issued



under Section 143(2) of the Act, is premised on the basis that it has been issued by an officer, who is not a ‘prescribed income-tax authority’. It is also contended that even if it is assumed that the authority issuing the notice dated 23.06.2024 is a prescribed income-tax authority, he cannot issue a notice but can merely serve a notice.

3. Insofar as the impugned notice issued under Section 142(1) of the Act is concerned, the petitioner claims that the said notice has been issued by the Assessing Officer, Central Circle 20, Delhi (hereafter *the AO*), and the same is beyond the period of limitation. This contention is premised on the basis that the impugned notice dated 23.06.2024 issued under Section 143(2) of the Act, is invalid as it was issued by an officer that lacked the jurisdiction to issue the same.

4. Insofar as the challenge to the impugned notice dated 23.06.2024, issued under Section 143(2) of the Act, is concerned, it is relevant to refer to the provisions of Section 143(2) of the Act. Section 143(2) of the Act is set out below:

“(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be



served on the assessee after the expiry of three months from the end of the financial year in which the return is furnished.”

5. It is apparent from the above, that a notice under Section 143(2) of the Act can be issued by the ‘Assessing Officer or the prescribed income-tax authority, as the case may be’.

6. Mr. Sahni, learned counsel appearing for the petitioner submits that the expression ‘as the case may be’ clearly indicates that in case, where the jurisdiction is vested within the Assessing Officer, that officer alone can issue notice under Section 143(2) of the Act. According to him, in such cases, it would not be open for the prescribed income-tax authority to issue a notice under Section 143(2) of the Act.

7. We do not find any merit in the aforesaid contention. A plain reading of Section 143(2) of the Act clearly indicates that either of the two authorities – either the ‘Assessing Officer’ or ‘the prescribed income-tax authority’ – can issue a notice under Section 143(2) of the Act. The expression ‘as the case may be’ also indicates the same.

8. The learned counsel appearing for the Revenue also referred to Section 12E of the Income-Tax Rules, 1962 (hereafter *the Rules*) which expressly provides that the Central Board of Direct Taxes (hereafter *the CBDT*) can authorise an Income-tax Officer to act as a ‘prescribed authority’ under Section 143(2) of the Act. Rule 12E of the Rules is set out below:

“12E. Prescribed authority under sub-section (2) of section 143. –



The prescribed authority under sub-section (2) of section 143 shall be an income-tax authority not below the rank of an Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as income-tax authority for the purposes of sub-section (2) of section 143.”

9. In the present case, the CBDT had issued a notification dated 12.05.2022 and 28.05.2022, in exercise of powers under Rule 12E of the Rules, and had authorised the Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (International Taxation), Circle-1(1)(1) Delhi to act as the ‘prescribed income-tax authority’ for the purpose of issuance of notice under Section 143(2) of the Act. The said notification is reproduced below:

**“NOTIFICATION S.O. 2432(E) [NO. 56/2022
/F.NO. 225/91/2022/1TA-II], DATED 28-5-2022**

In exercise of powers conferred under sub-section (2) of section 143 of Income-tax Act, 1961 (43 of 1961) (the Act), read with Rule 12E of the Income-tax Rules, 1962, and in supersession of Notification No. 25/2021/F.No. 187/3/2020-ITA-I, dated 31-3-2021, the Central Board of Direct Taxes hereby authorises the Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (International Taxation), Circle -1(1)(1), Delhi to act as the 'Prescribed Income-tax Authority' for the purpose of issuance of notice under sub- section (2) of section 143 of the Act.

2. This Notification shall come into force from the date of publication in the Official Gazette.”

10. In the present case, the impugned notice under Section 143(2) of the Act has been issued by the Assistant Commissioner of Income Tax/ Deputy



Commissioner of Income Tax (International Taxation), Circle-1(1)(1), Delhi. In view of the above, the contention that the said Income Tax Officer did not have the jurisdiction to issue a notice under Section 143(2) of the Act, is devoid of any merit.

11. The contention that other than the Assessing Officer, only the authorised Income Tax Officers of the National Faceless Assessment Centre (NaFAC) can issue a notice under Section 143(2) of the Act as the same would be in furtherance of automation of such process, is also unmerited. This proposition is not supported by the plain language of Section 143(2) of the Act or Rule 12E of the Rules. Rule 12E of the Rules does not confine the power of the CBDT to authorise only the Income Tax Officers of the NaFAC as the prescribed authority for the purposes of Section 142(1) of the Act.

12. The contention that the prescribed income tax authority can only serve a notice under Section 143(2) of the Act but cannot issue it, is insubstantial.

13. In view of the above, we are unable to accept that the AO did not have the jurisdiction to issue the impugned notices dated 10.07.2024, 06.09.2024, 17.09.2024 under Section 142(1) of the Act or that the same are beyond the period of limitation.

14. Once it is accepted that the AO has the jurisdiction to issue a notice under Section 143(2) of the Act – which is also the contention of the petitioner in this case – the AO cannot be faulted for proceeding to complete the assessment.

15. Mr. Sahni, at this stage, also submits that there is an issue as to the



jurisdiction of the AO as well, as in terms of Section 144B of the Act, the assessments are now required to be completed only by the NaFAC. However, he concedes that no such ground has been urged in this petition. In view of the above, we do not consider it apposite to address the same.

16. The petition is unmerited and is, accordingly, dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 01, 2024

ns