IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

TCA No.288 of 2012
and M.P.No.1 of 2012

Siva Industries & Holdings Limited
(Formerly known as Sterling Infotech Ltd)
327, Anna Salai, Teynampet
Chennai-600 018

Appellant

Vs

The Assistant Commissioner of Income Tax
Company Circle VI(4)
Chennai-600 034

Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, dated30.04.2012 in ITA No.1917/Mds/2011.

For Appellant: Ms.Vandana Vyas

For Respondent: Mr.J.Narayanasamy

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal impugns the order dated 30.04.2012 passed by the Income Tax Appellate Tribunal (ITAT) "A"Bench, Chennai.

2. Appeal was admitted on 20.09.2012 on the following substantial questions of law:

> *"1.Whether in the facts and circumstances of the case, the respondent is right in law in reopening the assessment by issuing a notice under Section 148 of the Act when the time limit for passing an order under Section 143(3) of the Act had not expired?*
>
> *2.Whether, in the facts and circumstances of the case, the Tribunal is right in law in not adjudicating on the ground raised by the appellant that the respondent has failed to issue the mandatory notice required under Section 143(2) of the Act?*

3.Whether in the facts and circumstances of the case, the Tribunal is right in ignoring its own order for the earlier Assessment Year 2006-07?

4.Whether in the facts and circumstances of the case, the Tribunal is right in applying the provisions of Section 14A of the Act, where no exempt income was earned by the appellant?"

3. One of the issues raised in the appeal is that the assessing officer has erred in not issuing the mandatory notice under Section 143(2) of the Income Tax Act, 1961 (the Act) before completing the assessment under Section 143(3) read with Section 147 of the Act.

4. Shri Narayanasamy submitted that this issue has not been answered by the Tribunal and, therefore, the matter be remanded to the Tribunal.

5. In our view, it is not required to be remitted to the Tribunal, because the indisputable position is that such notice was not issued. Assessee had raised this issue even before the Dispute Resolution Panel (DRP) as per the direction given on 8th September, 2011.

6. Law on this is very clear. As held by the Co-ordinate Benches of this Court in ***Sapthagiri Finance & Investments v. Income-tax Officer, Ward I(4), Kanchipuram***[1] and ***Commissioner of Income-tax, Chennai v. Alstom T & D India Limited***[2], the completion of assessment proceedings under Section 143(3) read with Section 147 of the Act without issuance of notice under Section 143(2) of the Act was bad in law. The Court held that when there was a failure on the part of the revenue in complying with the procedure laid down under Section 143(2) of the Act, the assessment had to fail. The Question Nos.1 to 3, as framed on 20th September, 2022, are answered in favour of assessee.

7. As regards Question No.4, it goes on merits. Once we have held that re-opening under Section 148 of the Act itself was bad, the question of going into merits does not arise. Question No.4 is answered accordingly.

1 [2012] 25 taxmann.com 341 (Mad.)
2 [2014] 45 taxmann.com 424 (Madras)

Appeal is allowed. There shall be no order as to costs. Consequently, interim application is closed.

(K.R.SHRIRAM, CJ.) (SUNDER MOHAN, J.)
12.06.2025

Index : Yes/No
Neutral Citation : Yes/No
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To:

1. The Assistant Registrar
   Income Tax Appellate Tribunal
   "A" Bench, Chennai.

2. The Commissioner of Income Tax (A)-V
   Chennai.

3. The Income Tax Officer (OSD)
   Company Range V(3)
   Chennai

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

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