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**% 06.12.2010**

Present: Mr. V.K. Sabharwal, Advocate for the appellant assessee.  
Ms. Prem Lata Bansal, Advocate for the respondent/Revenue.

**CM APPL. 21410/2010**

Exemption allowed subject to just exception.

Application stands disposed of.

**ITA 1895/2010**

Having regard to the nature of the order we propose to pass, it may not be necessary to take into account the detailed factual matrix of the case. Suffice it to state that in this appeal which pertains to the assessment year 2005-06, the appellant assessee had filed his income declaring income of ₹ 1,05,264/-. It resulted into *ex-parte* assessment and the Assessing Officer assessed the income at ₹ 5,16,440/- vide assessment order dated 6<sup>th</sup> December, 2007.

The assessee went in appeal and his main plea was that no notice under Section 143 (2) of the Act was ever served upon him. It was also the case of the appellant that no doubt counsel/representative of the appellant appeared before the Assessing Officer, but that was because of the telephonic information received by the assessee which cannot be a substitute for the mandatory requirement of service provided under Section 143 (2) of the Act. It was also submitted that appearance before the Assessing Officer was



beyond the period of one year i.e. on a date which was beyond the prescribed period stipulated under Section 143 (2) of the Act and the Department could not take umbrages under the provisions of Section 292 BB of the Act as this provision was inserted by an amendment w.e.f. 1<sup>st</sup> April, 2008.

The CIT (A) though did not accept the aforesaid appeal on merits, he gave substantial relief to the appellant by restricting the net profit rate @ 2% on gross receipt of lump sum basis. We may point out at this stage that the total turnover of the assessee in the year in question was ₹ 1,03,28,806/-. As against this, net profit was shown by the assessee in his return at ₹ 1,05,264/- which was roughly 1%. The addition, thus, made is to the tune of ₹ 1 lakh approximately.

The ITAT dismissed the appeal of the appellant. Challenging that order, present appeal is preferred under Section 260A of the Act.

Learned Counsel for the appellant has referred to the judgment of this Court in the case of **Commissioner of Income-Tax Vs. Eqbal Singh Sindhana**, 304 ITR 177 and on that basis, it is contended that it was mandatory on the part of the Assessing Officer to send notice under Section 143 (2) of the Act which should have been served upon the assessee within the prescribed period and, therefore, the assessment was invalid.

Learned Counsel for the appellant, however, makes a statement at the Bar that since the assessment was *ex-parte* and if the



assessee is given a chance to produce his books of accounts, and demonstrate before the Assessing Officer that the return filed by it is proper, he would not contest the issue of proper service of notice or that the assessment was not made within time.

On this statement of learned counsel for the appellant and having regard to the facts and circumstances of the case, we are of the view that the assessee be given one chance to appear before the Assessing Officer and assessment be passed after hearing him.

We accordingly set aside the impugned orders passed by the authorities below and remit the case back to the Assessing officer to decide the same on merits after giving an opportunity to the assessee herein.

The appeal is disposed of in terms of the above.

  
A.K. SIKRI, J.

  
INDERMEET KAUR, J.

**DECEMBER 06, 2010**

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