IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.2089/Del/2018
निर्धारणवर्ष/Assessment Year: 2009-10

Naveen Tyagi **C/o M/s Sanjeev Anand & Associates, 77, Navyug Market, Ghaziabad, Uttar Pradesh.**	**बनाम** **Vs.**	**ITO** **Ward 1(2),** **Ghaziabad.**
PAN No. ADMPT7873K		
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे **/Assessee by**	**S/Sh. Somil Aggarwal, Adv.** **Shrey Jain, Adv.** **Deepesh Garg, Adv.**
राजस्वकीओरसे **/Revenue by**	**Shri Om Prakash, Sr. DR**

सुनवाईकीतारीख/ Date of hearing:	19.05.2022
उद्घोषणाकीतारीख/Pronouncement on	20.06.2022

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Noida dated 18.01.2018 for the AY 2009-10.

2. The assessee has raised several grounds on merits and also on jurisdiction of the Assessing Officer in reopening of the assessment. The assessee also raised additional grounds challenging the validity of 148 proceedings and the consequential assessment order pursuant to reopening stating that the mandatory requirement of service of notice u/s 148 is not followed thereby vitiating the entire reassessment proceedings. The additional grounds raised by the assessee are as under:

1. *"That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld.AO that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*

2. *That in any case and in any view, the Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in framing the impugned reassessment order u/s 144/147 and that too without serving mandatory notices in this regard and without giving adequate opportunity of hearing as prescribed under th law.*

3. *That having regard to the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in not quashing the impugned reassessment order on the ground that mandatory notice u/s 148 was not served upon the assessee much less when the same was issued on incorrect address and thus, impugned proceeding is nullity in the eyes of law more so without following the principles laid down in the case of* ***GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19, Supreme Court of India"***

3. The ld. Counsel submits that the additional grounds are purely legal grounds which are going to the root of the matter and do not require fresh facts to be investigated. Therefore, the same may be admitted. Reliance was placed on the decision of the Hon'ble Delhi High Court, Full Bench in the case of CIT Vs. Sardari Lal & Compnay (251 ITR 864).

4. On hearing both the contentions, the additional grounds are admitted as they are purely legal grounds. In the additional grounds raised by the assessee it was contended that the AO failed to serve notice u/s 148 of the Act. The Ld. Counsel for the assessee referring to page 25 of the Paper Book submits that notice u/s 148 was sent to assessee mentioning the address as Shri Naveen Tyagi, Village Ghookna, Ghaziabad without mentioning the complete address. Referring to page 23 of the Paper Book, which is the Form for recording reasons for initiating the proceedings u/s 147 and for obtaining the approval of the Pr. CIT the Ld. Counsel submits that even in this Form the AO stated the address as resident of Ghookna, Ghaziabad. Further the column against permanent account number was shown as not available. Referring to page 1 to 22 of the paper book the Ld. Counsel submits that the assessee has filed return for the AY 2015-16 on 29.03.2016 which clearly mentioned the address of the assessee as 506-A, Tyagi Market, Meerut Road, Village Ghookna, Ghaziabad, Uttar Pradesh-201011. The Ld. Counsel for the assessee submits that the return for the assessment year under consideration i.e., AY 2009-10 was filed on 04.03.2010 clearly mentioning the address of the assessee as 506-A, Tyagi Market, Meerut Road, Village Ghookna, Ghaziabad, Uttar Pradesh-201011. Therefore, the Ld. Counsel submits that the Department has in its knowledge the complete address, PAN details, copies of returns of the assessee with it but, however, notice u/s 148 was issued simply mentioning the address of

the assessee as Village Ghookna, Ghaziabad. Therefore, it is the submission of the Ld. Counsel for the assessee that the notice u/s 148 was not served on the assessee.

5. The Ld. Counsel further submits that even in the order sheet noting the AO stated that notice u/s 148 was issued with prior approval of the Pr. CIT, Ghaziabad and nowhere it is stated that the said notice was served on the assessee. The Ld. Counsel submits that since the address in the notice is incomplete the said notice could not have been served on the assessee. Therefore, the Ld. Counsel submits that in the absence of mandatory service of notice the assessment made pursuant to such notice is bad in law. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of RK Upadhyaya Vs. Shanabhai P. Patel (166 ITR 163).

6. The Ld. Counsel further placed reliance on the following decisions:

- *CIT vs. Chetan Gupta (2016) 382 ITR, Delhi High Court*
- *CIT vs. Eshaan Holding (P) Ltd. 344 ITR 541, Delhi High Court*
- *ITO vs. Hepta Developers Pvt. Ltd. ITA No. 3608 of 2014 (ITAT Delhi) Date of order 08.07.2015*
- *CIT vs. Avtar Singh (P&H) (HC), 219 CTR 588*
- *CIT vs. Eqbal Singh Sindhana 304 ITR 177 (Delhi)*
- *ACIT vs. Vindhya Talylinks Ltd. 107 TTJ 149 (JAB)(TM)*
- *CIT vs. Hotline International (P) Ltd. 296 ITR 333 (Del)*

- *CIT vs. Laxmi Narain 168 Taxman 128 (P&H) (HC)*
- *Ram Singh Mathur vs. ITO, ITA 834/2005, date of order 21.09.2007 (Delhi ITAT)*
- *Venkat Naicken & Anr. vs. ITO, 242 ITR 141 (Madras High Court)*

The Ld. Counsel also placed reliance on the decision of Delhi Bench, SMC in the case of Akhtar Khan Vs. ITO, ITA No. 138/Del/2008 dated 27.04.2022.

7. The Ld. DR at the time of hearing produced the original records before me and fairly submits that the proof of service of notice u/s 148 is not traceable from the record.

8. Heard rival submissions, perused the original record furnished before me. From verification of the original assessment record, I found that there is no proof of service of notice u/s 148 of the Act by the AO to the assessee. The order sheet noting recorded on 21.03.2016 only suggest that notice u/s 148 was issued with the prior approval of the Ld. Pr. CIT, Ghaziabad. Therefore, the submissions of the assessee that notice u/s 148 was not served on the assessee could not be controverted with evidences by the Revenue.

9. In the case of RK Upadhyaya Vs. Shanabhai P. Patel (supra), the Hon'ble Supreme Court held that section 148(1) provides for service of notice as a condition precedent to make the assessment order. The

Hon'ble Supreme Court held that once a notice is issued within the period of limitation jurisdiction becomes vested in the Assessing Officer to proceed to make reassessment. Further, it was held that the mandate of section 148(1) is that reassessment shall not be made until there has been service of notice. While holding so the Hon'ble Supreme Court held as under:

> *"**3**. Sec. 34, conferred jurisdiction of the ITO to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within the limitation was the foundation of jurisdiction. The same view has been taken by the Court in J.P. Jani, ITO vs. Induprasad Devshanker Bhatt (1969) 72 ITR 595 (SC) : TC51R.400 as also in CIT vs. Robert (1963) 48 ITR 177 (SC) : TC51R.1714. The High Court, in our opinion went wrong in relying upon the ratio of Banarsi Debi vs. ITO (supra), in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in s. 34 of the 1922 Act has been spread out into three sections, being ss. 147, 148 and 149, in the 1961 Act. A clear distinction has been made out between the "issue of notice" and "service of notice" under the 1961 Act. Sec. 149 prescribes the period of limitation. It categorically prescribes that no notice under s. 148 shall be issued after the prescribed limitation has lapsed. Sec. 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the ITO to proceed to reassess. The mandate of s. 148(1) is that reassessment shall not be made until there has been service. The requirement of the issue of notice is*

satisfied when a notice is actually issued. In this case, admittedly the notice was issued within the prescribed period of limitation as 31st March, 1970, was the last day of that period. Service under the new Act is not a condition precedent to confirm of jurisdiction on the ITO to deal with the matter but it is a condition precedent to the making of the order of assessment. The High Court, in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi vs. ITO (supra). As the ITO has issued notice within limitation the appeal is allowed and the order of the High Court is vacated. The ITO shall now proceed to complete the assessment after complying with the requirement of law. Since there has been no appearance on behalf of the respondents we make no orders for costs."

10. In the case of CIT Vs. Eshaan Holdings (P) Ltd. (supra) the Hon'ble Delhi High Court held as under: -

"Notice under Section 148 of the Income Tax Act, 1961 (for short, the 'Act') was issued by the Assessing Officer on 29.1.2004 It was sent at 438, Mount Kailash Towers, East of Kailash, New Delhi (hereinafter referred to as the 'old address'). By that time, the assessee had shifted from the said address to N-118, Panchsheel Park, New Delhi (hereinafter referred to as the 'new address'). Return for the assessment year 2003-04 was also filed on 28,11.2003, i.e. before the issue of the aforesaid notice on 29.1.2004, showing the new address. However, not a single communication was sent at that address and further steps for serving the notice under Section 148 of the Act were also taken showing the old address.

Commissioner of Income Tax (Appeal), in these circumstances, held that no valid notice was served upon the assessee under Section 148 of the Act. The entire discussion in this behalf, in appeal, is summarized by the ITAT in para 8 of its order, relevant portion whereof makes the following reading:-

> *We have carefully considered the matter. We have also perused the record produced by the department. In our humble opinion, the CIT (A) has taken the correct view*

of the matter in holding that there was no valid service of notice under section 148 and hence the reassessment proceedings are null and void. The first notice issued on 29.1.2004 by speed-post was said to have been served on the old address at East of Kailash. There is no proof of service on record. Even otherwise, this is not valid service because the assessee had already filed its return for the assessment year 2003-04 on 28.11.2003 and in this return the address shown was Panchsheel Park. Thus, the record of the department already contained the new address of the assessee. Before issuing the notice under section 148 it was expected of the Assessing Officer to have checked up if there was any change of address, because valid service of a notice of reopening the assessment is a jurisdictional matter and this is a condition precedent for a valid reassessment. The contention of the learned counsel for the assessee that the Act does not provide for a formal intimation of the change of address and therefore the only place where one would find if there has been a change in the address is the return of income (for later years) contains force.

So far as the presumption to be drawn under sec. 27 of the General Clauses Act is concerned, it can be drawn only if the notice is properly addressed which is not the case here. As already noted, it was sent to the old address. Further, in the letter dated 20.11.2004 written to the Assessing Officer the assessee has denied service of the notice under section 148. Hence even if s scope for drawing a presumption, the assessee has come before the Assessing Officer and denied service. The notice served by affixture is also not valid service because it was done at the old address, which is not the last-known address, as the new address has already been intimated to the department in the return of income filed for the assessment year 2003-04 and that is the last-known address.

Ld. Counsel for the Revenue argued that no doubt in the return filed on 28.11.2003 for the assessment year 2003-04, on the first page new address is given, the assessee had also shown the old address in the annexure to the said return showing computation of assessable income. However, learned counsel for the assessee had explained that the assessee had sold and disposed of the old premises at East of Kailash by a sale deed and even given the possession to the purchaser on 3.9.2003. Affidavit to that effect is filed along with the copy of the sale deed.

After hearing the arguments at length and going through various documents, we gather the impression that it may be a case of

bona fide mistake on the part of the Assessing Officer However, a valuable right accrued to the respondent and, furthermore, when we find that the tax effect is only Rs.4,13,210/- (as per the CBDT circular, appeals with tax effect upto Rs.4,00,000/- are not to be filed). Going by these considerations, we are of the opinion that the aforesaid findings need no interference in the present appeal.
Dismissed."

11. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Chetan Gupta (supra), wherein the Hon'ble High Court held that where notice u/s 148 was not served on the assessee in accordance with law the reassessment made consequent thereto was without jurisdiction and liable to be quashed.

12. In the case on hand as the Revenue could not prove the service of notice u/s 148 on the assessee in accordance with law the re-assessment made u/s 147 read with section 144 pursuant to such notice is *void ab initio* and bad in law. Hence, the reassessment order made u/s 144 read with section 147 is quashed. Since the appeal of the assessee is allowed on preliminary ground I am not going into other legal grounds and grounds taken on merits as they become only academic at this stage.

13. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 20/06/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 20.06.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi