

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 464/Del/2014 : Asstt. Year : 2002-03**

Sh. Daya Ram Goyal, 134, Rajdhani Enclave, Pitampura, Delhi-110034	Vs	Income Tax Officer, Ward-25(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAEPR2739P</b>		

**Assessee by : Sh. V.K. Sabharwal, Adv. & Rajan Gupta, CA  
Revenue by : Sh. V. R. Sonbhadra, Sr. DR**

<b>Date of Hearing : 23.05.2016</b>	<b>Date of Pronouncement : 25.05.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 11.11.2013 of Id. CIT(A)-XVII, Delhi.

2. Following grounds have been raised in this appeal:

*“1. That the proceedings invoked u/s 147 of the Act, are wrong and illegal on the facts and contrary to the provisions of law, because no legal and proper notice as required under the law u/s 148 of the Act, was ever issued and served.*

*2. That the sanction accorded u/s 151 of the Act, is further not in consonance of the provisions of law, as such invalidate the whole proceedings.*

*3. That the assessment framed u/s 143(3) is further illegal and not valid under the law, because of*

*completed by the Assessing Officer having no jurisdiction to assess the case as the jurisdiction to assess the case lies with Assessing Officer, Ward-25(1) only, where the return was filed by the appellant, which the CIT(A) has failed to appreciate while upholding the orders of the Assessing Officer.*

*4. That the orders passed and confirmed by the CIT(A) are further not correct, because the Assessing Officer has never opined or concluded that the documents filed in support of the gift received were not correct or found un-genuine under the law due to which its genuineness remained un-approved.*

*5. That the order passed by the Assessing Officer are further not tenable as the Assessing Officer has not adjudicated and comment upon at any time about the documents filed and placed upon records, in support of the gift received, prior to hold that the same remains un-approved, while passing the orders.*

*6. That the orders passed is also unconstitutional as becomes invalid, because no proper, sufficient and reasonable opportunity if any was afforded by the Assessing Officer, prior to hold that the claim of gift remain unproven in the hands of appellant for which the additions made of Rs. 511000/- in the income of the appellant.*

*7. That the interest charged u/s 234B is also illegal as being consequential to the illegal and impugned additions made in the declared income.*

*8. That the assessee assails his right to amend, alter or change any grounds of appeal of any time even during the course of hearing of instant appeal.”*

3. The main grievance of the assessee in this appeal relates to the initiation of proceedings u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the AO received an information that the assessee had taken accommodation entry of Rs.5,11,000/- from Sh. Narender Kumar Gupta vide instrument drawn on State Bank of Patiala, Darya Ganj, New Delhi. Accordingly, a notice u/s 148 of the Act was issued on 25.03.2009. In response the assessee furnished a copy of return of income filed on 30.01.2003 declaring income of Rs.80,276/-. However, the assessment was framed at an income of Rs.5,91,280/- by making an addition of Rs.5,11,000/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the validity of the initiation of proceedings u/s 147 of the Act by stating that no notice was received by the assessee and inspection of the records revealed that the notice was issued at the following address:

Mr. Daya Ram Goyal  
50, Rampura,  
Delhi-110035

Though the address of the assessee was:

Sh. Daya Ram Goyal,  
134, Rajdhani Enclave, Pitampura,  
Delhi-110034

The Id. CIT(A) did not find merit in the submission of the assessee by observing that the address available with the AO was 50, Rampura, Delhi and the notice was sent u/s 148 of the Act by post to the said address by the AO, Ward-25(2), New Delhi who was having the territorial jurisdiction over the assessee.

6. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the address of the assessee in the Income Tax Return as well as the assessment order was "Sh. Daya Ram Goyal, 134, Rajdhani Enclave, Pitampura, Delhi-110034" and the same address was the actual address of the assessee which is also evident from the impugned order dated 11.11.2013 of the Id. CIT(A). It was contended that no notice u/s 148 of the Act was received by the assessee and the alleged notice issued was at a wrong address which was also evident from the records of the department inspected by the assessee. It was accordingly submitted when no notice was issued to the assessee u/s 148 of the Act, therefore, the

reopening was not valid. The reliance was placed on the following case laws:

- *CIT (Central)-I Vs Chetan Gupta, order dated 15.09.2015 of Hon'ble Delhi High Court in ITA No.72 of 2014*

7. In his rival submissions the ld. DR supported the order of the authorities below and further submitted that the assessee participated in the assessment proceedings. Therefore, there was no merit in this contention of the assessee that the notice u/s 148 of the Act was not served upon the assessee.

8. I have considered the submissions of both the parties and carefully gone through material available on the record. In the present case, it is an admitted fact that the notice u/s 148 was issued by the AO to the assessee at the following address:

*Mr. Daya Ram Goyal  
50, Rampura,  
Delhi-110035*

And actual address of the assessee as mentioned in the assessment order as well as the impugned order of the ld. CIT(A) is as under:

*Sh. Daya Ram Goyal,  
134, Rajdhani Enclave, Pitampura,  
Delhi-110034*

9. The above said fact relating to the address of the assessee has also been admitted by the Id. CIT(A) who mentioned at page no. 9 of the impugned order in para 5.6 that he had verified from the record that the address of the assessee available with the AO was 50, Rampura, Delhi. From the above narrated facts, it is clear that no notice u/s 148 of the Act was issued to the assessee at the address where he resided and mentioned in the return of income. On a similar issue their lordships of the Honøble Jurisdictional High Court in the case of CIT, Central-1, Vs Chetan Gupta at paras 46 & 47 of the order dated 15.09.2015 in ITA No. 72/2014 has held as under:

*“46. To summarize the conclusions:*

*(i) Under Section 148 of the Act, the issue of notice to the Assessee and service of such notice upon the Assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.*

*(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under Section 148 (1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282 (1) of the Act read with Order V Rule 12 CPC and Order III Rule 6 CPC.*

*(iii) Although there is change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding*

*Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with Section 282 (1) and Section 153 (2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.*

*(iv) The onus is on the Revenue to show that proper service of notice has been effected under Section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.*

*(v) The mere fact that an Assessee or some other person on his behalf not duly authorized participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the Assessee under Section 148 of the Act.*

*(vi) Reassessment proceedings finalized by an AO without effecting proper service of notice on the Assessee under Section 148 (1) of the Act are invalid and liable to be quashed.*

*(vi) Section 292 BB is prospective. In any event the Assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292 BB is not attracted.*

*47. On the facts of the present case, the Court finds that the ITAT was right in its conclusion that since no proper service of notice had been effected under Section 148 (1) of the Act on the Assessee, the reassessment proceedings were liable to be quashed. Consequently, the question framed is answered*

*in the affirmative, i.e., in favour of the Assessee and against the Revenue.”*

10. In the present case also no proper service of notice had been affected u/s 148(1) of the Act on the assessee. The reassessment proceedings were liable to be quashed. Accordingly, the reassessment proceedings initiated by the AO by issuing the noticed at a wrong address which was not served upon the assessee are quashed.

11. In the result, the appeal of the assessee is allowed.  
(Order Pronounced in the Court on 25/05/2016)

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 25/05/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**