

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F', NEW DELHI)**

**BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

I.T.A. No.1041/Del/2011
(Assessment Year 2006-07)

Ramesh Kumar Gupta, Vs. ITO, Ward 29(1),
3968 B, Naya Bazar, New Delhi
New Delhi.

GIR / PAN :AAEPG8444J
(Appellant)

(Respondent)

Appellant by : Ms. Manju Goel, CA
Respondent by : Shri R S Negi, Sr. DR

Date of hearing: 05.01.2016

Date of Pronouncement: 29.01.2016

ORDER

PER KULDIP SINGH, JM:

The appellant, Shri Ramesh Kumar Gupta (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 15.12.2010 passed by Ld. CIT(A) XXV, New Delhi qua the Assessment Year 2006-07 on the grounds inter alia that:

"1. That the learned CIT(A)-XXV, New Delhi has erred, both of facts and in law in confirming the order of the Assessing Officer Ward 29(1) New Delhi.

2. That the learned CIT (A) has record, the cases cited and principles of natural justice.

3. That on facts and in the circumstances of the case & in law the learned CIT (A) failed to consider the ground of proper service of notice which is the foundation for valid jurisdiction & the case

cited of Delhi High Court CIT VS Hotline International (P) Ltd. (2008) 296 ITR 333 Delhi.

4. *That on facts and in circumstances of the case & in law the learned CIT (A) erred by not allowed of Rs.5,91,000/-(out of 91,000/-subject to verification)the claim of bad debts.*

5. *That the following observations of the learned CIT (A) in the order are perverse, arbitrary, baseless and misleading.*

(a)In regard to disallowance of Rs. 58,442/- under the head telephone, business promotion and car maintenance that the assessee has not brought any material or satisfactory explanation.

(b)In regard to service to notice stating and assuming that the notice issued by the Assessing Officer was never returned back unserved to the Assessing Officer.

(c)In regard to service to notice stating that change of address in PAN card has not been done by the assessee whereas the same were also filed before CIT (A).

(d) In regard to bad debts stating that the amount of Rs.5 lacks is not a trading receipt accounted for in the P&L whereas it is not receipt but payment.

(e)In regard to rejecting of our ground of charging of interest u/s 2348 & 2340 and penalty initiation u/s 271 (1) (c) of I. Tax Act.

6. *That without prejudice to the above grounds of appeal the order passed by the' CIT (A) is bad in law and passed in contravention of equity and justice, hence additions are liable to be deleted.*

2. Briefly stated, the facts of this case are: during the processing of return of income filed by the assessee qua the Assessment Year 2006-07, the case was subjected to scrutiny and consequent upon notice issued u/s 143(2) of the Act, Shri Atul Gupta CA/AR attended the proceedings and

filed documents and discussed the case. The assessee is into the business of trading and commission agent in food grains, under the name and style of M/s. Makhan Lal Ramesh Kumar. The Assessing Officer disallowed Rs.21,447/- out of telephone expenses, Rs.3,290/- out of business promotion expenses and Rs.33,705/- out of user of vehicle on account of personal usage, out of the lumpsum amounts claimed by the assessee in P & L accounts.

3. The assessee also claimed bad debt of Rs.5,91,000/- in computation of income for the year under consideration but in the Assessment Year 2005-06, no such bad debt had been claimed. In response to the queries, assessee stated that financial position of the party M/s. Amar Sales Corporation was weak but failed to furnish any supporting evidence. Assessee, vide letter dated 17.12.2008 also claimed that the notice u/s 143(2) of the Act was not served upon the assessee in time and at the correct address, which has not been accepted by the Assessing Officer on the ground that the case was selected for scrutiny through computer and notice was generated as per the computerized address furnished by the assessee in Form 49A, so, treated the notice sent through registered post on 24.07.2007 as a valid service and thereby assessed the total income of the assessee at Rs.9,77,392/-.

4. The assessee carried the matter before Ld. CIT(A) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by filing the present appeal.

5. We have heard both the authorized representatives and have gone through the material placed on record in the light of orders of authorities below and facts & circumstances of the case.

6. Ld. A.R. for the assessee, challenging the impugned order, vehemently contended that since notice u/s 143(2) has never been served upon the assessee, the said assessment order stands vitiated. Since Ld. A.R. for the assessee contended that his main ground against the Revenue is non service of notice upon the assessee u/s 143(2) of the Act, the only question arises for determination first in this case is, "*as to whether the Assessing Officer has not provided the opportunity of being heard to the assessee by affecting proper service of notice upon the assessee u/s 143(2) of the Act*", if answer to the aforesaid question is in affirmative, there is no need to go into the merits of the present case.

7. On the other hand, Ld. D.R. for the Revenue to repel the arguments addressed by the Ld. A.R., relied upon the order of Ld. CIT(A).

8. Bare perusal of the provisions contained u/s 143(2) shows that it incorporates the rule of *audi alteram partem* i.e. no man should be condemned unheard. Notice u/s 143(2) implies mandatory duty of the Assessing Officer to get the notice served upon the assessee before proceeding for assessment. Now, advertent to the case at hand, assessment record was summoned and perused in the open court and the assessee has submitted a letter dated 25.04.2008 to the Assessing Officer categorically raising the question that the notice dated 16.04.2008 has never been served upon him and as such it is not possible to prepare the case. Perusal of the return of income filed by the assessee for the relevant

Assessment Year 2006-07 shows that he has categorically mentioned his name as Ramesh Kumar Gupta S/o M L Gupta, 3968-B, Naya Bazar, Delhi and has also mentioned his PAN as AAEPG8444J. A perusal of notice dated 24.07.2007 issued by the Assessing Officer u/s 143(2) accompanied with postal receipt goes to prove that the same was issued on the address Ramesh Gupta, C-628, New Friends Colony, New Delhi. Assessee vehemently denied to have received the notice. Even otherwise it is not the case of Revenue that the notice in question was served upon the assessee.

9. Ld. CIT(A) has declined the contention of the assessee on the ground that since the notice was issued on the computer generated address given by the assessee in form 49A, the issuance of notice through registered posts on 24.07.2007 is a valid service.

10. However, we are of the considered view that when apparently, the notice was sent on the wrong address as the assessee has categorically given his address as Ramesh Kumar Gupta, 3968-B, Naya Bzar, Delhi in the relevant return of income for the Assessment Year 2006-07, which was subjected to scrutiny, the issuance of notice in a mechanical manner does not mean that service of notice on the assessee has been effected. Presumption can only be raised against the assessee for service of notice u/s 143(2) when the notice was sent on the correct address. The revenue is also silent if the alleged notice sent through registered cover was received back undelivered or has never been received back within the stipulated period to raise the presumption against the assessee. The entire record of the Assessing Officer is silent and as such, the Assessing Officer

cannot be allowed to raise the presumption for service of notice on assessee. So, we are of the considered view that service of notice u/s 143(2) is essential and assessment made without service of such a notice is invalid. So, when the assessee has categorically proved that the change of address has already been intimated to the Revenue by incorporating the same in the relevant return of income for the Assessment Year 2006-07, the assessment order due to non service of notice u/s 143(2), is not sustainable.

11. So without entering into the merits of the case, we are of the considered view that the assessment order passed in this case by the Assessing Officer without getting service of notice on the assessee on his new address duly intimated to the revenue is not sustainable in the eyes of law. Hence, we hereby set aside the impugned order passed by Ld. CIT(A).

12. In view of what has been discussed above, appeal of the assessee stands allowed.

13. Order pronounced in the open court on 29th Jan., 2016.

Sd./-

(J. S. REDDY)
ACCOUNTANT MEMBER
Date: 29.01.2016

Sd./-

(KULDIP SINGH)
JUDICIAL MEMBER

Sp.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy

By Order

(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	11/1		Sr. PS/PS
2	Draft placed before author	21,30/1		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	29/1/16		Sr. PS/PS
6	Kept for pronouncement	29/1		Sr. PS/PS
7	File sent to Bench Clerk	29/1		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			