

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "F" New Delhi

BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 5511/Del/2014
AY: - 2002-03

ITO Ward – 20 (3) F- Block Vikas Bhawan, I.P. Estate New Delhi. (Appellant)	vs.	Smt. Saroj Sagar 78, Ground Floor, Gujrawalan Town, Part-III, New Delhi. PAN AGUPS9431K (Respondent)
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Appellant by : Shri G.N. Gupta, Advocate
Respondent by : Shri Sujit Kumar, Sr.DR

Date of Hearing : 11.09.2015
Date of pronouncement : .11.2015

ORDER

PER SUDHANSHU SRIVASTAVA JUDICIAL MEMBER

This appeal is filed by the Department against order dated 21.9.2011 passed by the Ld. CIT (A) XXII, New Delhi.

2. The facts of the case, as borne out from the records, are as under:-

The return of income was filed by the assessee for A.Y. 2002-03 on 1.8.2002 declaring an income of Rs. 9,58,880/- before ITO, Ward-2(4), Agra. Information was received from the Investigation Wing of the Department that the assessee had

obtained an accommodation entry of Rs.7,98,000/- on 02.05.2001 of bogus sales of shares through M/s Singhman Financial Services Ltd. The ITO, Ward-2(4), Agra issued notice u/s 148 on 30.03.2009 and claimed that the same was served on the assessee within the statutory time period prescribed. In response to notice u/s 142(1) the assessee filed a letter dated 28.05.2009 before ITO, Ward-2(4), and Agra and informed the ITO that no notice u/s 148 was received by her till 28.05.2009. It was also informed by the assessee that she has already shifted to Delhi and was residing there for the last five years. She also submitted a copy of return of income filed for A.Y.2008-09, as proof that she was assessed to tax at Delhi with ITO Ward-20(3). Thereafter, ITO Ward-2(4) Agra transferred the case records of the assessee to ITO Ward -20(3) New Delhi, who took up the reassessment proceedings and finalised the assessment at Rs. 22,16,750/-.

3. Before the Ld. CIT (A), the assessee pleaded that since there was no valid service of notice issued u/s 148 of the Act, the reassessment proceedings were invalid. She again raised the issue that ITO Ward 2(4) Agra had no jurisdiction over the case of the assessee on 30.3.2009 when the notice u/s 148 of the Income Tax Act 1961 was issued as she had already shifted to Delhi. The Ld. CIT (A) allowed the assessee's appeal on the ground that the notice u/s 148 dated 30.3.2009 was issued by ITO, Ward -2 (4) Agra who did not have jurisdiction over the assessee at that point of time. He gave a finding that at that particular time the jurisdiction on the assessee was vested with the ITO, Ward-20(3), New Delhi before whom she had filed here return of income for Assessment Years 2004-05, 2005-06, 2006-07 etc. The Ld. CIT (A) held that the very assumption of jurisdiction for reopening of this

case by ITO ward 2(4) Agra was contrary to law and accordingly held that reassessment order passed was without assuming jurisdiction in accordance with law and hence void *ab initio*.

4. In the present appeal before us, the main effective ground of appeal of the revenue is as under:-

- i) *"Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in quashing the assessment order of the AO on the ground that the notice u/s 148 was not validly served upon the assessee."*

5. The Ld. DR submitted that the notice u/s 148 was issued and served upon the assessee within the statutory time period prescribed. The Ld. DR. further submitted that the AO has made the mention of the notice having been served in the assessment order itself. He pleaded that the order of the AO should be restored.

6. On the other hand, the Ld. AR for the assessee again emphasized that no notice u/s 148 was in fact served on the assessee. He pointed out that the notice u/s 148 dated 30.3.2009 was issued by ITO Ward 2(4), Agra who did not have the jurisdiction over the assessee at that point of time and the assessment was completed by ITO Ward 20(3), New Delhi who had not issued the notice u/s 148. He accordingly pleaded that the assumption of jurisdiction u/s 147 without the issue of notice u/s 148 was illegal.

7. We have heard both the parties and have also perused the records. It is mentioned in the assessment order that notice u/s 148 was issued and served upon the assessee within the statutory time period prescribed. However, it is not borne out from the records as to whom and when the said notice was served. The Ld.

CIT(A) has given a categorical finding on this issue by noting that the assessee had filed an affidavit dated 20.9.2011 wherein she had stated that the notice issued u/s 148 dated 30.3.2009 by ITO Ward 2 (4) Agra was never received by her. Ld. CIT (A) has also mentioned that the assessee had again pointed out these facts vide her letter dated 28.5.2009 and 24.09.2010 to ITO Ward 2(4) Agra and again to ITO Ward -20(3), New Delhi respectively. In the present appeal before us also, the Ld. DR could not controvert these findings of the Ld. CIT (A). It is our considered view that when ever a reassessment is sought to be made u/s 147, issuing and serving of a valid notice u/s 148 is a mandatory precondition. The onus lies on the Revenue authorities to prove that the notice was served on the assessee within the stipulated period. It is only if the said notice is served on the assessee that the assessing officer would be justified in taking proceedings against the assessee. If no notice is issued, or if the notice issued is shown to be invalid, then the proceedings taken by the assessing officer would be illegal and void. In this case, there is no dispute that the notice u/s 148 had not been served on the assessee. The Assessing Officer can assume jurisdiction to complete the assessment only after valid and legal service of the notice in accordance with law. Unless such notice has duly been served, the Assessing Officer cannot be said to have been clothed with the jurisdiction to pass the assessment order. The mandate of section 148 is that notice should be served on the assessee, by prescribed mode of service, which has undeniably not been carried out in this case. In the absence of a valid service of notice u/s 148, the reassessment order passed by the Assessing Officer is illegal and void *ab initio*. We, therefore, find no reason to interfere with the order of the Ld. CIT (A).

8. In the result the appeal of the Department is dismissed.

Pronounced in the open court On 30th November, 2015.

sd/-

sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMEBR

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: the 30. 11. 2015

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Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By order

Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	26.11.2015
2.	Draft placed before the Dictating Member	26.11. 2015
3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	