

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

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

**ITA No. 6036, 6037, 6038/Del/2012  
A.Y. 2001-02, 2002-03, 2003-04**

**ITA No. 688 and 689/Del/2013  
A.Y. 2001-02 and 2002-03**

Mrs.Manju Agarwal  
14 B/23, Ist Floor, Dev Nagar  
New Delhi 110 005

vs. ITO, Ward 26(4)  
New Delhi

PAN: ADRPA 7112 P

**(Appellant)**

**(Respondent)**

Appellant by : Sh. R.Santhanam, C.A.  
Sh. Deepak Ostwal, C.A. and  
Sh. Rishabh Ostwal, Adv.

Respondent by : Sh. P.Damkanunjna, Sr.D.R.

**ORDER**

**PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

All these appeals are directed against separate but identical orders of the ld.CIT(A)-XVIII, New Delhi dt. 21.9.2012 for the A.Y. 2001-02, 2002-03 and 2003-04.

ITA 688/Del/13 and 689/Del/13 are directed against the order of the Ld.CIT(A)-XVIII, wherein penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (the Act) by the Assessing Officer (AO) was confirmed by the First Appellate Authority. As the issues arising in all these appeals are common, for the sake of convenience they are heard together and are disposed of by way of this common order.

**2.** We have heard Shri R.Santhanam, the Ld.Counsel for the assessee and Shri P.Damkanunjna, Ld.Sr. D.R. on behalf of the Revenue.

**3.** On a careful consideration of the facts and circumstances of the case, on a perusal of orders of lower authorities, material placed on record and case laws cited, we hold as follows.

**4.** The contention of the assessee is that, there is no valid service of notice u/s 148 of the Income Tax Act, 1961 (the Act) on the assessee. It is also submitted that the notice u/s 143(1) of the Act has not been issued or served on the assessee. Under these circumstances it is considered that the assessments are bad in law. Both the parties advanced detailed arguments on this issue.

**4.1.** On facts we find that the A.O. at para 2 records as follows.

*“No return of income was however filed in response to notice u/s 148 of the Act. Subsequently, a notice u/s 142(1) was issued on 11.6.2007 calling for return of income and detailed information. The notice was received back unserved with postal remarks ‘left’. Accordingly, the Inspector of Income Tax was deputed to make enquiries and serve notice u/s 142(1) on 10.10.2007 calling for return of income and detailed information listed therein. The Inspector has reported that the assessee vacated the premises which was a one room flat at 203-D, Ishwar Apartments almost five years ago. Consequently, the notice was served by affixture and report placed on record. Since this is a time barring case, I have no option but to complete the assessment ex parte to the best of judgement.”*

**4.2.** From the above it is clear that no valid notice has been served on the assessee. Before the Ld.CIT(A) the assessee submitted that the latest Income tax return was filed with the department on 30.3.2005, giving correct address of the assessee. In the remand report dt. 3.9.2012 the AO has affirmed that the latest address of the assessee was available in the department records. The DIT(Investigations) Unit V, New Delhi in March 2007 had issued summons at the latest address of the assessee and this

was duly served on the assessee. The assessee had replied to the same. From all the

above it is clear that no valid notice was served on the assessee. Affixing notice on the address which is admittedly vacated by the assessee 5 years back, is invalid. Under these circumstances we uphold the contentions of the assessee that the assessments have to be quashed as proper notice has not been served on the assessee.

**4.3.** In the case of Principal CIT vs. Atlanta Capital Pvt.Ltd. dt. 21.9.2015 in ITA 665 and 666/2015 (Del) judgement dt. 21.9.2015 the Hon'ble Jurisdictional High Court has held as follows.

*"8. It is the contention of Mr. N.P. Sahni, learned Senior Standing counsel for the Revenue, that the notice satisfied the requirement as to limitation under Section 149 (b) of the Act. However, as noted by the ITAT, the notice itself was not issued at the correct address. The fact that the said notice, sent by speed post, was not returned unserved, would be to no avail since the address given in the notice was not the last known address of the Assessee.*

*9. Mr. Sahni then submitted that it was incumbent on the Assessee to have got his changed address entered in the PAN Data Base failing which the AO would only go by the address given in the record of the relevant AY which in the case is AY 2001-02.*

*10. The Court is unable to agree with this submission. No provision in the Act has been shown to the Court which obliges the Assessee to ensure that his changed address is entered in the PAN Data Base failing which he is precluded from insisting on the notice under Section 148 being issued to him at the known address and being served upon him. In the present case, on facts, it is not in dispute that the AO was aware of the change of address of the Assessee and yet the notice under Section 148 of the Act was issued at the older address.*

*11. Mr. Sahni submitted that the order of the CIT (A) notes the fact that a photocopy of the notice was given to the Assessee during the re-assessment proceedings and that by itself should constitute sufficient service of notice on the Assessee. In light of the law explained by the Supreme Court in R.K. Upadhyaya v. Shanbhai P. Patel (1987) 3 SCC 96 which has in turn been followed by this Court in Chetan Gupta (supra), the requirement of both the issuance and the service of such upon the Assessee for the purposes of*

*Section 147 and 148 of the Act are mandatory 'jurisdictional requirements'. The mere fact that an Assessee participated in the re-assessment proceedings*

*despite not having been issued or served with the notice under Section 148 of the Act in accordance with law will not constitute a waiver of the said jurisdictional requirement.*

*12. On facts, therefore, the Court finds no legal error committed by the ITAT in holding that there was no proper service of notice on the Assessee under Section 148 of the Act."*

**4.4.** Respectfully following the same we quash the impugned assessment orders for the A.Y. 2001-02, 2002-03 and 2003-04 and allow the appeals of the assessee.

**5.** As the quantum assessment has been quashed, the penalties levied u/s 271(1)(c) of the Act based on these assessment orders do not survive. Hence the same are quashed.

**5.1.** In the result ITA Nos. 688/Del/13 and 689/Del/13 are also allowed.

**6.** In the result ITA Nos. 6036/D31/12, 6037/Del/12, 6038/Del/12 and ITA 688/Del/13 and ITA 689/Del/13 for the A.Ys 2001-02, 2002-03 and 2003-04 are allowed.

Order pronounced in the Open Court on 30<sup>th</sup> March, 2016.

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(J. SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 30<sup>th</sup> March, 2016

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ITA Nos. 6036, 6037, 6038/Del/12  
ITA 688/Del/13 and 689/Del/13  
A.Y. 2001-02, 2002-03 and 2003-04  
Mrs. Manju Agarwal, N.Del 110 005

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**