

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

**ITA No.3641/M/2016
Assessment Year: 2006-07**

Ms. Namrata Dilip Mukkawar, Flat B/5/6/, 1 st Floor, Suleman Manzil, Dadar-East, Mumbai-400 014 PAN: AEFPM-5400-B	Vs.	Income Tax Officer 17(3)(3), Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle Hariya, A.R.
Revenue by : Shri M.C. Omialingshen, D.R.

Date of Hearing : 20.04.2017
Date of Pronouncement : 14.07.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 16.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. Ground No.1 is general, hence it does not require any adjudication.
3. Brief facts of the case are that assessee is an individual and did not file return of income for the assessment year 2006-07. The Assessing Officer (hereinafter referred to as the AO) has the information that assessee has deposited cash of Rs.11 lakhs in her saving bank account with Apna Sahakari Bank Ltd. and Rs.13,34,000/- with The Greater Bombay Co-op. Bank Ltd. The AO, therefore, reopened the assessment and made attempt to serve the notice to the assessee under section 148 of the Act. However, AO could not locate the assessee at known address and therefore served the notice by

affixture on last known address of the assessee. There was no compliance from the assessee to this notice under section 148 of the Act. Similarly, there were no compliances to the notice under section 142(1) issued by AO. In absence of compliance, AO added total cash deposit of Rs.24,34,000/- as income of the assessee and also taxed the same at maximum marginal rate.

4. Assessee has filed the appeal before the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal of the assessee.

5. Before us, the Ld. A.R. submitted that assessee has filed the return of income for assessment year 2006-07 with the department. The assessee had already given his true address to the department. The AO issued a notice under section 148 on 28.03.13 and served by the affixture on 31.03.13. The copy of the said notice is not provided to the assessee and reasons for service of notice by affixture are not provided to the assessee despite urge and written requests as well as reminders and follow up in this regards. There is no mention how and why this notice is served by the affixture. The Ld. A.R. submitted that similar notice was served and sent to correct address of the assessee by the same officer for A.Y. 2005-06. The copy of the notice dated 16.01.14 issued under section 142(1) to the assessee is showing the correct address of the assessee as 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008. In fact, the said address was not only has incorrect PIN as 400 008 instead of 400012 but also blatantly wrong address of 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai. The assessee was served notice for A.Y. 2005-06 dated 09.03.14 to the correct address of the assessee i.e. Suleman Manzil, Dr. B.A. Road, Mumbai – 400 014 and the reply to the said notice was also served by the assessee. The observation of the AO was that services of notice under section 148 and under 142(1) of the Act on the address “Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008” as the last known address which were returned unserved by postal authority are factually

incorrect and the copies of such advice of postal authority has not been provided to the assessee despite her repeated requests and follow up in this connection. Ld. A.R. has relied upon the decision of Jurisdictional High Court in the case of Techpac Holdings Ltd. vs. DCIT (2016) 382 ITR 474 (Bom) and submitted that the department has to prove that service of notice was served upon the assessee, if the notice under section 148 was not served and the consequent order passed under section 144 of the Act, then it would be void and inoperative. Ld. A.R. also submitted that it is non application of mind by the AO and simply reopened the assessment order. The Ld. A.R. also relied upon the decision of Delhi Bench of ITAT in the case of Bir Bahadur Singh Sijwali vs. ITO 68 SOT 197 (Delhi) wherein it was held that merely if the deposit found in the savings bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee.

The Ld. D.R. submitted that the address of the assessee on which the final show cause notice was served is the same was mentioned in PAN as well as in Form 35. The bank of the assessee has uploaded the transaction details mentioning the address of Ambedkar Road, Parel. The AO has issued the notice under section 148 on this address. The bank cannot imagine an address for the assessee and the address would have been provided to the bank by the assessee herself. Therefore, this constitutes valid service of notice by affixture at the address mentioned by the bank of the assessee. The provisions of section 292BB clearly apply to the facts of the case.

6. We have heard the rival contentions of both the parties. Looking into the facts and circumstances of the case, the assessee has taken the contention before us that the AO has issued the notice under section 148 on 20.03.13 and served by affixture on 31.03.13. The assessee has taken the contention that the

said notice was served by affixture on the address as 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008. The Ld. A.R. submitted that the assessee's correct address is as per the return filed for A.Y. 2006-07. The correct address is Wakani Building, Ground floor, C-28, Jagannath Bhatankar Marg, Parel, Mumbai – 400 012. Assessee's return has been filed in the office of AO with Ward No.73(3)(3), Pirimal Chambers. The return for 2006-07 has been filed on 31.03.07. The assessee was never residing on the address on which the notice was affixed. During the course of hearing, the Ld. A.R. has also given the copy of the notice wherein the return for 2005-06 the AO has mentioned the address as Mrs. Namrata Dilip Mukkawat, Mukkawat Floor, Suleman Manzil, Dr. B.A. Road, Mumbai 400 014.

7. The Ld. A.R. submitted before us that the same AO, Ward No.17(3)(3), Mr. B.K. Arun, on 09.03.12, has sent the notice and assessee has replied to the same notice.

8. We find that the AO has served the notice under section 148 on the address i.e. 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008 as her last address where notice was never served to the assessee. From the above facts, the assessee is able to prove that the notice under section 148 was not served to the assessee. The AO has issued the notice on the addressee which was intimated by the bank but during the course of hearing, the Ld. D.R. could not bring any evidence to show that assessee was residing on the address 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008.

9. The Ld. D.R. could not bring any evidence to show that the assessee was residing on the last address as stated in the notice under section 148.

10. We find that similar issue had come up before the Hon'ble Bombay High Court in the case of Techpac Holdings Ltd. vs. DCIT (supra) wherein it is

held that as stipulated under section 147 of the Act, the notice issued under section 148 of the Act has to be served upon the assessee. This is a **sine qua non** before any further action can be taken. If this notice itself is not served, all other proceedings that flow there from would have no basis. Proceedings taken by the Income Tax Officer in pursuance of the invalid notice and the consequent orders on assessment passed by him, would be void and inoperative. The Income Tax Officer would have jurisdiction to proceed further only if the notice is served on the assessee as required.

11. Respectfully following the same, we hold that the notice served to the assessee was non application of mind by the AO while issuing the notice and the order of re-assessment was passed without jurisdiction. We would like to reproduce judgment of jurisdictional High Court wherein it is held as under:

“As stipulated under section 147 of the Income-tax Act, 1961, the notice issued under section 148 of the Act has to be served on the assessee. This is a sine qua non before any further action can be taken. If this notice itself is not served, all other proceedings that flow therefrom would have no basis. Proceedings taken by the Income-tax Officer in pursuance of the invalid notice and the consequent orders on assessment passed by him, would be void and inoperative. The Income-tax Officer would have jurisdiction to proceed further only if the notice is served on the assessee as required.

Y. NARAYANA CHETTY v. ITO [1959] 35 ITR 388 (SC) relied on.

Section 143(2) of the Act applies where a return of income has been furnished either under section 139 or in response to a notice under section 142(1) of the Act. Therefore, section 143(2) would come into play only when a return is furnished under section 139 of the Act or a return is furnished in response to a notice under section 142(1) of the Act. Notice can never be issued on the same date under sections 142(1) and 143(2) of the Act. Before any notice under section 148 of the Act can be issued for initiating assessment or reassessment proceedings, the Assessing Officer ought to have reason to believe that any income chargeable to tax has escaped assessment for that particular assessment year. This reason to believe is a sine qua non for issuance of notice under section 148.”

12. Respectfully following the order of jurisdictional High Court, we hold that the notices, under section 148 and 142(1) of the Act on the address 4/139, Laxmi Cottage, Dr. Ambedkar Road, Parel, Mumbai-400008 as last known address, were not served in correct address and it is improper, invalid and

unlawful. Therefore, service of notice issued under section 148 for A.Y. 2006-07 by affixture on incorrect address is improper, hence, we allow the appeal.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14.07.2017.

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

**Sd/-
(D.T. Garasia)
JUDICIAL MEMBER**

Mumbai, Dated: 14.07.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.