

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 39/VIZ/2017
(Asst. Year : 2007-08)**

ITO, Ward-4(1),
Visakhapatnam.

vs. Smt. Ghatty Venkata Rajya
Sesha Sri, D.No. 45-47-14/3,
Narasimha Nagar,
Visakhapatnam.

(Appellant)

PAN No. AARPG 6268 M
(Respondent)

Assessee by : Shri C. Kameswara Rao - FCA.
Department By : Shri T. Satyanandam - Sr.DR

Date of hearing : 08/03/2018.
Date of pronouncement : 14/03/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 24/11/2016 for the Assessment Year 2007-08.

2. Facts of the case, in brief, are that as per the assessment order, the assessee has sold her property at 49-5-9, Lalitha Nagar, Visakhapatnam, which was registered vide document No. 428/2007 on 15/02/2007 for a consideration of Rs. 50 lakhs, whose SRO value was Rs. 78,30,000/-. The Assessing Officer has

issued a letter dated 31/01/2014 to the assessee seeking information as to whether capital gains was offered on the above transaction under the provisions of section 50C of the Act. As there was no response, the Assessing Officer has initiated proceedings under section 147 and approval was sought from the Addl. CIT for issuance of notice under section 148. The Addl. CIT has given his approval on 14/03/2014. Thereafter, notice dated 14/03/2013 was issued. There is a typo error in the date mentioned in the said notice as it ought to have been 14/03/2014. The said notice was served by affixture on 16/03/2014. The Inspector, who served the notice by affixture, has given report as under:-

"I have been directed to serve notice under section 148 of the I.T. Act against Smt. Ghatty Venkata Rajya Seshasri.

The address of the above person as mentioned in the notice is D No.49-57-14/3, Narasimhanagar, Visakhapatnam,

I have located die D.No.49-57-14/3, Narasimhanagar, Visakhapatnam at that time i.e. 14.03.2014 none of the persons presently staying in that building. I asked neighbours of that building regarding whereabouts of Smt. Ghatty Venktak Rajya Seshasri They informed to me that Smt. Ghatty Venkata Rajya Seshasri is vacated the said building a year ago. Regarding present whereabouts of Smt. Ghatty Venkata Rajya Seshasr4 they expressed inability about her address.

As directed by the ITO, Ward-4(1), Visakhapatnam, I have gone to the above mentioned address on 14.03.2014, 15.03.2014 and 16.03.2014 to serve the notice u/s. 148 against Smt. Ghatty Venkata Rajya Seshasri. He was never available at that premises.

In these circumstances, there is no other way except to affix the said notice. Hence I have affixed the said notice u/s. 148 on 16.03.2014, on

the front waif of the said building i.e. D.No. 49-57-14/3, Narasimhanagar, Visakhapatnam in the present of two local persons as witness and obtained their signatures. The same is enclosed herewith for your kind perusal."

- 3.** On appeal, it was contended before the Id. CIT(A) that as the service of notice by affixture was done at the wrong address, therefore the impugned proceedings initiated under section 147 was not valid and required to be quashed. According to the assessee, the service of affixture was done at D.No. 49-57-14/3, Narasimha Nagar, Visakhapatnam and submitted that assessee's address is at D.No.45-57-14/3, Narasimha Nagar, Visakhapatnam. The Id. CIT(A) after considering the submissions made by the assessee, gave a categorical finding that as per the sale document and also the household card show the address of the assessee to be at D.No. 45-57-14/3 and notice affixture at D.No. 49-57-14/3 there is no nexus to the assessee and held that the notice is not served to the assessee and therefore impugned assessment is not in accordance with law, the same is set aside.
- 4.** The Department is in appeal before the Tribunal.
- 5.** The Id. Departmental Representative supported the order passed by the Assessing Officer.
- 6.** On the other hand, Id Authorized Representative for the assessee has supported the order passed by the Id. CIT(A) and

submitted that the notice served at D.No. 49-57-14/3 is not at all related to the assessee and therefore, no notice is served on the assessee and prayed that the assessment may be cancelled.

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. The only issue involved in this appeal is whether the notice is served to the assessee in accordance with the procedure or not. In this case, the assessee has sold her property and no return was filed. The Assessing Officer has initiated the proceedings under section 147 and issued notice under section 148 dated 14/03/2014 to the address at Smt. Ghatty Venkata Rajya Seshasri W/o G.Sudhakar, D.No.49-57-14/3, Narasimha Nagar, Visakhapatnam. The said address was purportedly served by affixture at the above address stated in the notice. The Inspector in his report dated 16/03/2014 stated that he has visited the above address on 14/03/2014, 15/03/2014 & 16/03/2014 as assessee was not available to serve the notice under section 148, therefore, impugned notice was affixed on the front door of the wall of the said building at D.No. 49-57-14/3, Narasimha Nagar, Visakhapatnam. The contention of the assessee is that the address of the assessee is at D.No. 45-57-14/3 and not at D.No.

49-57-14/3. The Id. CIT(A) has considered the contention of the assessee and verified the sale document and household card of the assessee, held that the notice issued by the Assessing Officer under section 148 was not served on the assessee. As per the established procedure, the impugned assessment is not in accordance with law and the same is set aside. As per the assessment order, the address of the assessee is at D.No. 45-57-14/3, Narasimha Nagar, Visakhapatnam. The Id.CIT(A) has also considered that the Assessing Officer has sent the initial letter on 31/01/2014 to the address at D.No. 45-57-14/3, Narasimha Nagar, Visakhapatnam. Subsequent notice under section 142(1), the final opportunity letter dated 25/03/2015 has been sent to the address at D.No. 45-57-14/3. He further observed that the notice of demand under section 156 along with impugned assessment order was also served at this address. He further observed that there is no information in the record to show nexus of the assessee to the address at D.No. 49-57-14/3. When Bench asked the Id. Departmental Representative why notice has affixed at D.No. 49-57-14/3, he except stating that the Inspector has followed the procedure and affixed the notice because of non-availability of assessee, but he is not able to explain the reasons for affixture at wrong address. Therefore, by considering

these facts and circumstances of the case, we hold that the Id.CIT(A) has rightly held that no notice is served on the assessee because affixture of notice by the Inspector is at a wrong address. The correct address is at D.No. 45-57-14/3, Narasimha Nagar, Visakhapatnam. The notice affixed at D.No. 49-57-14/3 is an invalid notice and set aside the order by following the judgment of Hon'ble Supreme Court in the case of *Y. Narayana Chetty & another Vs. ITO* (35 ITR 388) and also the decision of the Hon'ble Assam High Court in the case of *Tansukhrai Bodulal vs. ITO* (46 ITR 325) (Gau.FB) and also the case of *Smt. S. Nachiar vs. ITO* (326 ITR 77). For the sake of convenience, the relevant portion of the order is extracted as under:-

"9. *It was contended that as the service by affixture was done at the wrong address there was no valid service and therefore the impugned proceedings initiated u/s.147 was not valid and required to be quashed. The perusal of the record show that the impugned notice u/s.158 bearing date 14.03.2013 (correct date would be 14.03.2014) was addressed to Sri/ Smt, Ghatty Venkata Rajya Sesshasri w/o. G. Sudhakar, D.No.49-57-14/3, Narasimhanagar, Visakhapatnam. The said notice was purportedly served by affixture at the above address stated in the notice. The ITI in his report dated 16.03.2014 had stated that he visited the above address on 14.03.2014, 1.03.2014 & 16.03.2014, and as the assessee was not available, the impugned notice was affixed on the front wall of assessee has contended that her Visakhapatnam and not D.No. 49-57-14/3, Narasimha Nagar, Visakhapatnam. The perusal of the sale documents and the household card show the address of the assessee to be at D.No. 45-57-14/3, Narasimhanagar, Visakhapatnam. It is also seen that the AO had sent the initial letter dated 31,01.2014 to the address at D.No.45-57-14/3, Narasimhanagar, Visakhapatnam. The subsequent notice u/s.142(1), the final opportunity letter dated 25.03.2015 were*

been sent to this address i.e. D.No.45-57-14/3, Narasimhanagar, Visakhapatnam. The notice of demand u/s.156 along with impugned assessment order were also served at this address. There is no information in the record to show nexus of the assessee to the address at D.No.49-57-14/3, Narasimhanagar Visakhapatnam. I find that there was an error in sending the impugned notice u/s.148 to the address at D.No.49-57-14/3, Narasimhanagar Visakhapatnam, which was not the address of the assessee. It is also noted that the other notices namely the notice u/s.142(1), the final opportunity letter.etc, were addressed to D.No.45-57-14/3, Narasimhanagar, Visakhapatnam and were duly served, In view of the factual scenario, it is concluded that the notice u/s. 148 was not affixed at the address of the assessee and thus not served on the assessee.

10. The Hon'ble Supreme Court In the case of Y. Narayana Chetty and Another vs. ITO (35 1TR 388) held

"The service of the requisite notice on the assessee is a condition precedent to the validity of any reassessment made under s.34; and if a valid notice is not issued as required, proceedings taken by the ITO in pursuance of an invalid notice and consequent orders of reassessment passed by him would be void and Inoperative. The notice prescribed by s.34 cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the ITO would be justified in taking proceedings against him. If no notice is issued or if the notice issued is shown to be invalid then the validity of the proceedings taken by the ITO without a notice or in pursuance of an invalid notice would be illegal and void - CIT vs. Ramsukh Mothilal (1955) 27 ITR 54 and R.K. Das & Co. vs CIT (1956) 30 ITR 439 approved; Y. Narayana Chetty & Ors. vs. ITO & Ors. (1954) 26 ITR 310 (Mad) : TC51R.1798 affirmed."

The Hon'ble High Court of Assam in Tansukhrai Bodulal v. ITO (46 ITR 325 Gau FB) held that the jurisdiction upon the ITO to proceed to assess or reassess the income is conferred only after the notice has been, served, and that a valid notice is a foundation for exercise of jurisdiction by ITO. The Hon'ble Madras High Court in Smt. S. Nachiar vs. ITO (326 ITR 077) held that "Reassessment made without service of a notice u/s. 148 is vitiated as service of requisite notice on the assessee is a condition precedent to the validity of reassessment". In the light of the above factual scenario and the judicial pronouncements

discussed above, I find that the AO had not assumed valid jurisdiction u/s.147 as the requisite notice u/s.148 was not served on the assessee and accordingly it is held that the impugned assessment is not in accordance with law and hence set-aside. In view of the same, the various other pleas raised become academic and not adjudicated."

9. In view of the above findings, we find no infirmity in the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 14th day of March, 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 14th March, 2018.

vr/-

Copy to:

1. The Assessee - Smt. Ghatty Venkata Rajya Sesa Sri, D.No. 45-47-14/3, Narasimha Nagar, Visakhapatnam.
2. The Revenue - ITO, Ward-4(1), Visakhapatnam.
3. The CIT-2, Visakhapatnam.
4. The CIT(A)-2, Visakhapatnam.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.