

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 743/HYD/2016

Assessment Year: 2009-10

M/s. Soubhagya Projects, HYDERABAD [PAN: ABHFS3057K]	Vs	The Income Tax Officer, Ward-7(1), HYDERABAD
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(Appellant)

(Respondent)

For Assessee	:	Shri Md. Afzal, AR
For Revenue	:	Smt. U. Minichandran, DR

Date of Hearing	:	04-04-2018
Date of Pronouncement	:	27-04-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of Commissioner of Income Tax (Appeals)-5, Hyderabad, dated 28-03-2016. Assessee has raised originally seven grounds, which are as under:

"1. The order of the learned Commissioner of Income Tax (Appeals), is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner of Income Tax (Appeals) erred in not declaring the assessment as null and void as the assessment u/s. 144 r.w.s. 147 is completed on a notice u/s 148, which is an invalid notice.

3. *The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer, which is made beyond the period provided u/s 153 (31.12.2011), on the strength of a notice alleged to have issued/served on 18.07.2011 by way of affixture, without following the procedure laid down for the substituted service.*

4. *The learned Commissioner of Income Tax (Appeals) erred in confirming the order u/s 144 r.w.s 147, which is made by serving a notice u/s. 148, by affixture without following the procedure in terms of provisions of Order V, Rule 17-20 of CPC r.w.s 282 of the IT Act.*

5. *The learned Commissioner of Income Tax (Appeals) erred in confirming an amount of Rs.50 lakhs, which is considered as income, suppose to have admitted by the assessee, by a letter after survey u/s. 133A, in the absence of any incriminating material found during the course of survey.*

6. *The learned Commissioner of Income Tax (Appeals) erred in accepting the validity of the notice u/s 148, in view of the Assessing Officers submissions, ignoring the submission of assessee, during the course of assessment proceedings and also before the Commissioner.*

7. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary”.*

2. In the course of present proceedings, assessee pleaded for admission of additional ground and the pleading and additional ground is as under:

“It is respectfully submitted that the learned Assessing Officer issued notice u/s. 142(1) of the IT Act on 19.11.2010, for filing of the return of income for the assessment year 2009-10. The assessee has not filed return of income in response to 142(1), as the income of the assessee was below the taxable limits. The learned Assessing Officer has not made an assessment order u/s. 144 after issuing this notice, however, resorted to issue notice u/s. 148 on 18.07.2011, keeping the proceedings initiated u/s. 142(1) pending, whereas, the time was available upto 31.12.2011 for making an ex-party assessment. As the proceedings u/s. 147 were initiated, keeping the proceedings u/s. 142(1) pending, therefore, the proceedings u/s. 147 initiated by issuing notice u/s. 148 of the IT Act are invalid.

This matter was raised before the First Appellate Authority but was not adjudicated.

While filing the original grounds of appeal along with Form no.36 this ground was not included inadvertently. Therefore, the Hon'ble Bench is requested to kindly admit the additional ground for adjudication.

Additional Ground of Appeal:

1. The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, no action was taken in respect of proceedings initiated u/s. 142(1) pending such proceedings u/s. 142(1), further proceedings u/s. 147 were initiated, by issuing notice u/s. 148 of the IT Act, therefore, the order u/s. 144 r.w.s. 147 is bad in law”.

The additional ground being legal in nature and as facts are on record as stated in asst. order itself the same is admitted.

3. Briefly stated facts leading the present appeal are that, assessee is a partnership concern consisting of two partners. The firm came into existence on 04-01-2007. Survey proceedings u/s. 133A were conducted at the business premises of 19-02-2009. During the course of survey, certain documents and books of account were impounded by the Assessing Officer (AO) and statement of partners were recorded. Assessee has admitted incomes for AY. 2007-08 at Rs. 10 Lakhs for AY. 2008-09 at Rs. 20 Lakhs and for AY. 2009-10 at Rs. 50 Lakhs. While assessee complied with the disclosures for AY. 2007-08 and 2008-09 and filed returns, it did not offer the amount of Rs. 50 Lakhs disclosed for the impugned assessment year. AO has noticed that assessee has not filed any return of income in AY. 2009-10 and has issued notice u/s. 142(1) calling for return of income on 19-11-2010,

which was served on assessee on 20-11-2010. Assessee did not respond to the said notice. Subsequently, proceedings u/s. 147 were initiated and a notice u/s. 148 dt. 18-07-2011 was issued which was served by affixture on 18-07-2011 itself. Thereafter, a notice u/s. 143(2) was issued on 16-01-2013 and various notices and summons were issued. Assessee denied having earned the amount of Rs. 50 Lakhs and submitted that books of account were impounded by the department and since necessary permissions have been not taken for retention of the books, it pleaded for return of the books of account. AO issued show cause notice on 22-02-2013 and proposed why an *ex-parte* assessment cannot be made u/s. 144 of the Act. Even though assessee responded and appeared on 14-03-2013 and asked for return of the books and verification of the file for evidence of issuance on notice u/s. 148, AO came to the conclusion that assessee has no intention to file return of income for the year under consideration and also not to take copies for the impounded books for filing them. Accordingly, he has estimated the income of Rs. 16 Lakhs on the total deposits in the bank account estimated to be at Rs. 80 Lakhs [deposits in bank statements upto 23-03-2009 have been totaled to Rs. 76,37,508/-]. AO took the profit in the line of business at 20% and estimated the income at Rs. 16 Lakhs. Apart from that, addition was also made of Rs. 50 Lakhs stated to be disclosed amount in the course of survey.

4. Aggrieved on the said order u/s. 144 r.w.s. 147, assessee contested on various grounds, particularly issuance of

notices u/s. 143(2), service of notice u/s. 148 by way of affixture and non-return of books impounded, along with the merits of additions made.

5. Ld.CIT(A), however, in his 21 page order, rejected the contentions on the technical issues, deleted estimation of income at Rs. 16 Lakhs but confirmed the disclosed income at Rs. 50 Lakhs. Aggrieved on the said confirmation of Rs. 50 Lakhs, assessee has raised the above grounds.

6. It was the contention of Ld. Counsel that proceedings u/s. 142(1) were initiated by the AO, calling for return of income on 19-11-2010 and without concluding those proceedings, issuance of notice u/s. 148 is bad in law. Referring to the provisions of Section 144 of the Act, it was submitted that in case assessee has not responded to the notice u/s. 142(1), the Act provides that an assessment u/s. 144 can be completed even without issuing any further show cause notice. Therefore, having been initiated the proceedings u/s. 142(1) without concluding those proceedings, initiation of proceedings u/s. 147 cannot be appreciated. He relied on the following case law:

- i. Arunlal Vs. Asst. CIT [1 ITR (Trib) 1];
- ii. Co-ordinate Bench decision in the case of Sri Anthi Reddy Yamireddy Vs. The Dy.CIT in ITA No. 96/Hyd/2017, dt. 23-05-2017;

7. Coming to the issue of notice u/s. 148 and service by affixture, the contention of Ld. Counsel was that assessee is being served with notices regularly at the given address and referred to the proceedings for AY. 2007-08 and 2008-09, wherein various additions have been made by the AO and appeals were pending before the Ld.CIT(A) at that point of time. Pointing out to the show cause letter issued by the assessee asking for recovery of outstanding demand on 07-07-2011, it was the contention that AO is very much aware about the whereabouts and address of assessee. Therefore, service by affixture does not arise. Further, Ld. Counsel submitted that the so called notice was stated to have been issued on 18-07-2011 and without going through the procedure of service prescribed, AO resorted to service by affixture which procedure is not proper. Ld. Counsel relied on the Co-ordinate Bench decision in the cases of Arunlal Vs. Asst. CIT [1 ITR (Trib) 1]; and Co-ordinate Bench decision in the case of Sri Anthi Reddy Yamireddy Vs. The Dy.CIT in ITA No. 96/Hyd/2017, dt. 23-05-2017. It was the submission that before resorting to service by affixture, AO should have exhausted all other methods of service and then only he can resort to the service by affixture. He referred to the copy of the Inspector report to submit that there are no witnesses also for the said service. Therefore, the entire proceedings initiated are bad in law. Thus, the consequential assessment itself becomes bad in law.

8. Coming to the merits of the addition, it was submitted that the books of account maintained by assessee

were impounded by the department and as admitted by the Ld.CIT(A) in the order, there were only approval for retention upto 31-03-2010. As can be seen from the sequence of events, assessee was asking for the return of the books after 31-03-2010 but for the best known reasons of the AO, he was asking assessee to take photo copies of the books impounded and retained illegally. It was submitted that assessee was asking for return of books of account, which was not done even till to-day. Further, it was submitted that even though assessee was made to disclose an amount of Rs. 50 Lakhs, there is no basis for such disclosure and relying on the judgments of Hon'ble Madras High Court in the case of CIT Vs. M/s. S. Khader Khan Son and other Co-ordinate Bench decisions, it was submitted that the disclosure without any basis cannot be brought to tax and therefore, there is no merit in confirmation of Rs. 50 Lakhs by the Ld.CIT(A). It was the submission that entire addition made may be deleted.

9. In reply, Ld.DR vehemently supported the orders of the AO and CIT(A). It was submitted that the AO could have directly invoked the provisions of Section 144 as assessee has not replied to the notice u/s. 142(1), however, following the principles of natural justice, AO initiated the proceedings u/s. 147. The judgment of Hon'ble High Court of Delhi in the case of KLM Royal Dutch Airlines Vs. Asst. Director of Income Tax, in W.P.(C) No. 16574-75 of 2006 and 16576-77/2006, dt. January, 12, 2007, relied upon by the Ld. Counsel in his arguments are distinguishable as those judgments were given

in the context of that assessee filing returns. But in this case, assessee has not filed return of income and there was no response even to the notice u/s. 142(1) or notice u/s. 148. It was the submission that there was no bar for initiating proceedings u/s. 147. Regarding service of notice u/s. 148 also, it was the contention of Ld.DR that assessee is evading the notices and therefore, there was no option than to straightaway serve the notice by affixture, as assessee is not cooperating in completing the proceedings. Further, assessee itself has filed the 'statement of income disclosure' on the basis of which assessment has been completed and that is to be upheld as assessee itself admitted the income in respective assessment years and has honoured in earlier two years. It was stated that the statement has to be taken as correct in the absence of any contradictory evidence from assessee. It was the submission that proceedings are validly initiated and the addition was properly confirmed by the Ld.CIT(A).

10. We have heard the rival contentions and perused the documents placed on record and the case law relied upon. It is true that assessee has made the disclosures consequent to the survey. It is also true that assessee had honoured the disclosures made in earlier two years. However, the AO went on to make certain other additions in other years which were contested by assessee. In this assessment year, being the year of survey, the books of account are open on the date of survey. These were impounded and it is on record that the AO has taken permission, as per the provisions of the Act, to retain the

books till 31-03-2010. As can be seen from the order of the assessment, the notice u/s. 142(1) calling for the return was issued only on 19-11-2010, that too, after the period for permission taken has expired. Therefore, assessee is well within his rights to ask for the return of books of account, so that he can file the return of income. We are not in a position to appreciate the observations of the CIT(A) in pg. 11 which are as under:

“The AR in his submissions to the Hon'ble Commissioner of Income Tax (Appeals)-VI, Hyderabad, claimed that the books of accounts after Survey u/s. 133A can be detained only for 10 days and the Assessing Officer has not obtained the I approval of Chief Commissioner of Income Tax. This contention of A.R. is ill informed I as the Assessing Officer has obtained for approval for retention of books from Chief Commissioner of Income Tax vide letter dated 03-03-2009 and the permission was obtained till 31-03-2010. The mindless mudslinging by the AR is not acceptable. For the reasons unknown extension of the books of accounts for subsequent years was not obtained by the Assessing Officer. The AR is clinging to this particular point and showcasing as if he was deprived of his liberty and was throttled to subjugation. The AR has objected that AO failed to supply the copies of impounded material and thus disable the assessee to file the return of income and reply to notice u/s. 148. The AR first doubted the veracity of notice u/s. 148 and now he showing to cover up the non filing of written to the impounding material”.

10.1. It is on record that AO has not taken extension of the books of account for the subsequent period and hence the books are retained without any permission by the AO. He should have returned the books, rather than asking the assessee to take photo copies of the books which involves money and effort in copying. Thus, the action of AO cannot be supported on the facts of the case.

10.2. Coming to the contention that AO has un-necessarily initiated the proceedings u/s. 147 when proceedings u/s. 142(1) are pending, this contention is to be upheld. AO himself records in the assessment order that he has issued a notice u/s. 142(1), for which there is no response. The provisions of Section 144 permits the AO to complete the assessment u/s. 144, that is *ex-parte*, even without issuing any further show cause notice. Thus, when there is a failure to comply with the notice u/s. 142(1), AO could have completed the assessment *ex-parte* based on the books of account detained by him and had he based his assessment on the basis books available with him there could be some logic in completing *ex-parte* assessment. Surprisingly, he resorts to estimation of income on the so called turnover, which Ld.CIT(A) has deleted wisely. Therefore, we are not in a position to appreciate the initiation of proceedings u/s. 147 *per se*. We rely on the principles laid down by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Sanjay Kumar Garg in ITA No. 92 to 96/2012, dt. 02-09-2015, wherein the Hon'ble Delhi High Court has held as under:

“9. The contention of the Assessee which has been accepted by the ITAT is that when the re-assessment proceedings pursuant to the notices issued on 21st September 2005 were still pending and had not been completed by 31st December 2006 as was required by law, it was legally impermissible that fresh notices under Section 148 of the Act could be issued to the Assessee. The ITAT has after examining a large number of decisions of the High Court and the Supreme Court come to the conclusion that the issuing of fresh notices under Section 148 of the Act for AY s 2001-02 to 2004-05 was impermissible in law. The assessments for the said AY s were annulled as being barred by limitation.

10. The legal position appears to be fairly well settled. In *S.B. Jain, Income Tax Officer, Nagpur v. Mahendra* [1972] 83 ITR 104 (SC) a notice was issued a notice has been issued to the Assessee on 5th January 1962 under Section 34(1)(a) of the Income Tax Act, 1922 seeking to reopen the assessment for AY 1946-47. While the said proceedings were pending, the Income Tax Act, 1961 came into force with effect from 1st April 1962. The challenge by the Assessee to the validity of the notice issued under the 1922 Act succeeded with the Bombay High Court quashing the said notice by the order dated 6th March 1963. Thereafter the Income Tax Officer issued a fresh notice on 26th March 1963 under Section 148 of the Act in respect of the very assessment which had sought to be reopened by the earlier notice under Section 34(1)(a) of the 1922 Act. The Supreme Court held that the proceedings initiated under Section 34 (1)(a) of the 1922 Act were pending at the time when the 1961 Act came into force and, therefore, the Income Tax Officer was not competent to issue a fresh notice under Section 148 of the Income Tax Act, 1961.

11. In *Nilofer Hameed v. Income Tax Officer* [1999] 235 TTR 161 (Ker) after referring to a number of judgments of the High Courts, it was held by the Kerala High Court that "if an assessment is pending either by way of original assessment or by way of reassessment proceedings, the Assessing Officer cannot issue a notice under Section 148 but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice under Section 148 within the time mentioned,"

12. In the present case, the time limit for completing the reassessment proceedings pursuant to the notice issued on 23rd September 2005 was 31st December 2006. As is evident from the narration hereinabove, the reassessment proceedings were in progress and were being adjourned from time to time. Without those proceedings having come to an end a fresh reassessment could not have been initiated by the AO by issuing a notice under Section 148 of the Act on 24th November 2006. The proceedings initiated by the notice dated 23rd September 2005 ought to have been completed within the time stipulated and till such time there was no occasion to initiate fresh reassessment proceedings by issuing notice under Section 148 of the Act.

13. Consequently, the impugned order of the ITAT annulling the assessments for AY 2001-02 to 2004-05 cannot be said to be erroneous".

10.2.i. Similar principles were also laid down in the case of in the case of KLM Royal Dutch Airlines Vs. Asst. Director of Income Tax, (supra), wherein the Hon'ble Delhi High Court has held as under:

“7.....

The neat question which arises before us is whether on the commencement of assessment proceedings must they first be brought to their logical conclusion by framing an assessment before embarking on the proceedings as envisaged on Sections 147/148 of the Act; or more precisely stated, can resort to Section 147 be made even whilst the normal assessment proceedings are pending conclusion.....”

The Hon'ble Court has further held as under:

“15. Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no 'fresh evidence or material' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the AO for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular AY, it would have to be assumed that since proceedings had not been opened under Section 143(2), the Return had been accepted as correct. It may be argued that thereafter recourse could be taken to Section 147, provided fresh material had been received by the AO after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the AO had attempted to travel the path of Section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law”.

10.2.ii. In view of the principles laid down therein, we are of the opinion that proceedings initiated u/s. 147 *per se* are bad in law as these proceedings are initiated without completing the proceedings u/s 142(1) which are pending on the date of initiation of proceedings u/s. 147. As AO could have completed assessment u/s. 144 in the earlier proceedings itself, the later

proceedings are to be held bad in law. Not only that assessee has merit in the contentions that the notice has been served by affixture with out resorting to service by other means. As can be noticed from the dates involved, AO initiated proceedings on 18-07-2011 and without resorting to any of the prescribed procedures for service, resorted to service by affixture. Further, as seen from the report of the ITI placed in pg. 77 of the Paper Book, the ITI records that the above address is the last known address given in the return of income for the AY. 2009-10 whereas proceedings are initiated for AY. 2009-10; which itself throws some doubt about veracity of the report of the ITI. Moreover even though there are two signatures of so called witnesses- neither their names nor their addresses have been placed on report, therefore, the veracity of the witnesses evidencing the service by affixture cannot be verified. The procedure followed by the AO to get the notices by way of affixture itself shows some doubt about the whole procedure. In the case of Sri Anthi Reddy Yamireddy Vs. The Dy.CIT (supra), the Co-ordinate Bench of this Tribunal vide order dt. 23-05-2017, after analyzing various case law has held as under:

“12. As per the provisions of Section 282 of the IT Act 1961, the notice may be served either by post or as if it were a court summons under the Civil Procedure Code. The procedure for service by post is given in Section 27 of the General Clauses Act. Requirements for valid service by post are:

- i. Proper addressing;*
- ii. Prepaying*
- iii. sending by registered post with acknowledgement due*

12.1. *The service of notice is affected when the letter is delivered in the ordinary course by post. The presumption is that the delivery on assessee has been affected. This is so even if a third person receives the post. The onus of proving otherwise is on assessee. If the notice comes back with a postal remark 'refused' it will still have the effect of valid service. If assessee denies such refusal on oath, the postman must be examined. But if the notice is returned with the postal remarks left, not found or not known, valid service cannot be presumed.*

12.2. *The Code of Civil Procedure [Chapter-V, Rule 9-30] specifies the manner of service of court summons. Rule 9 specifies that a notice can be served in the following manner:*

- i. Personal service;*
- ii. Registered post acknowledgment due;*
- iii. Speed post;*
- iv. Courier service approved by High Court;*
- v. Other means of transmission of documents (including fax message or electronic mail service) provided by the Rules made by the High Court.*

For personal service, copy of the notice is served on assessee or his empowered agent, generally in the department, by a notice server. In case the notices are not served personally, service by affixture is resorted to in two circumstances:

- i. When the addressee or his agent refused to sign the acknowledgment for service of notice and*
- ii. When the serving official after using of due and reasonable diligence cannot find the addressee in his residential or business premises within a reasonable time and there is nobody else authorised to receive the notice.*

12.3. *In the above circumstances, ITI can effect the service by affixture on his own initiative, without waiting for an order from the AO. A copy of the notice should be affixed on the outer door or a conspicuous part of business or residential premises. A report is to be drawn up by the ITI on the facts and circumstances of the service by affixture, specifying date and time of service and name of the identifier if any. It should conclude with an affidavit of the ITI solemnly affirming the facts and particulars of service as reiterated. The report is to be filed as an endorsement to the original notice after being docketed in the order sheet. The report should be verified by an affidavit. In the absence of such affidavit, the officer must examine the Inspector on oath. The AO can also order service by affixture or by*

putting a newspaper advertisement under certain circumstances. Such service is called substituted service. This can be resorted to (a) when AO is satisfied that there is reason to believe that addressee is kept out of the way for the purpose of avoiding service and (b) the notice cannot be served in the ordinary way for any other reason. In these cases, AO is expected to pass a speaking order to the effect that he is satisfied as to the existence of the circumstances which necessitates a substituted service. A detailed noting in the order sheet to this effect will satisfy the requirements. The above procedure stated in this Para 12 is as prescribed in the Manual of Office Procedure (Volume-II, Technical), [February, 2003] of the department.

12.4.

12.5. *Specifying the procedure of service of notice, in the case of Sanjay Badani Vs. DCIT-10(3), Mumbai, Co-ordinate Bench of ITAT [35 ITR(T) 536] has held as under:*

•As per sub-section (1) of section 282, the notice is to be served on the person named therein either by post or as if it was a summons issued by Court under the Code of Civil Procedure, 1908 (V of 1908). The relevant provisions for effecting of service by different modes are contained in rules 17, 19 and 20 of Order V of CPC. Rules 17, 19 and 20 of Order V of CPC lay down the procedure for service of summons/notice and, therefore, the procedure laid down therein cannot be surpassed because the intention of the Legislature behind these provisions is that strict compliance of the procedure laid down therein has to be made. The expression after using all 'due and reasonable diligence' appearing in rule 17 has been considered in many cases and it has been held that unless a real and substantial effort has been made to find the defendant after proper enquiries, the Serving Officer cannot be deemed to have exercised 'due and reasonable diligence'. Before taking advantage of rule 17, he must make diligent search for the person to be served. He therefore, must take pain to find him and also to make mention of his efforts in the report. Another requirement of rule 17 is that the Serving Officer should state that he has affixed the copy of summons as per this rule. The circumstances under which he did so and the name and address of the person by whom the house or premises were identified and in whose premises the copy of the summon was affixed. These facts should also be verified by an affidavit of the Serving Officer. [Para 13]

•The reason for taking all these precautions is that service by affixture is substituted service and since it is not direct or personal service upon the defendant, to bind him by such mode of service the mere formality of affixture is not sufficient. Since the service has to be done after making the necessary efforts, in order to establish the genuineness of such service, the Serving Officer is required to state his

full action in the report and reliance can be placed on such report only when it sets out all the circumstances which are also duly verified by the witnesses in whose presence the affixture was done and thus the affidavit of the Serving Officer deposing such procedure adopted by him would also be essential. In the instant case, the whole thing had been done in one stroke. It was not known as to why and under which circumstances another entry for service of notice by affixture was made on 27-7-2012 when sufficient time was available through normal service till 30-9-2012. Nor there is any entry in the note-sheet by the Assessing Officer directing the Inspector for service by affixture and had only recorded the fact that the notice was served by the affixture. It appears that the report of the Inspector was obtained without issuing any prior direction for such process or mode. However, the fact remained that Serving Officer had not set out reason for passing subsequent entry nor for adopting the mode for service by affixture and without stating the reasons for doing so, the adoption of the mode of substituted service could not be legally justified. Notice was served by affixture. The reason for service through affixture has not been noted by the Assessing Officer in the note sheet nor he had issued any direction for issuing notice through affixtures. The next entry of note sheet dated 28-7-2012 just indicates that letter was filed by the Inspector regarding service of notice by affixtures, dated 17-7-2012. Thus, on 17-7-2012, the first entry was made and without recording any apprehension about the delay by such mode second entry for affixation was made on 28-7-2012 without showing justification for the same. Thus, it is clear that report of the Inspector was obtained without issuing any prior direction for such process or mode. Thus, the adoption of mode of substituted service was not legally justified. It is also clear from the Inspector's report that there is no mention of name and address of the person who had identified the house of the assessee and in whose presence the notice under section 143 (2) was affixed. There is no evidence or indication in the report of Inspector that he had personal knowledge of the place of the business of the assessee and was, thus, in a position to identify the same. Therefore, neither the procedure laid down under Order V rule 17 had been followed nor that laid down under Order V rules 19 and 20 had been adhered to. Neither before taking recourse to service by affixture, the Assessing Officer or the concerned officer had recorded the findings to justify the service by this mode nor afterwards called for the affidavit or certificate of service by affixture from the Serving Officer. He had not certified that the service had been effected by adopting this course. [Para 14]

•In view of the above, it is clear that there was no valid service of notice under section 143(2) by way of affixation. Since in the instant case, the department has not been able to demonstrate that notice under section 143(2) was served within the statutory time limit, the assessment made on the basis of such invalid notice could not be treated to be valid assessment and, hence, such assessment order deserves to be treated as null and void and liable to be quashed and annulled. Accordingly, the assessee's appeal on legal issue regarding non-service of notice under section 143(2) is allowed. [Para 15] ”

13. *Hon'ble Supreme Court in the case of Commissioner of Income Tax, West Bengal-III and others Vs. Ramendra Nath Ghosh [82 ITR 888] (SC) has held, affirming the decision of the High Court on the facts, that the service of notices was not in accordance with law and therefore, it could not be said that assessee had been given proper opportunity to put forward their case as required by Section 33B of the Income Tax Act, 1922. In the above said case, the facts are similar, that the CIT initiated revision proceedings u/s. 33B of the Income Tax Act, 1922, corresponding to Section 263 of Income Tax Act, 1961. There the ITI who had to serve notices u/s. 33B of the said Act claimed to have served notices by affixing them on assessee's place of business, but in his report did not mention the names and addresses of the proceedings, who identified the place of business of assessee nor did he mention in his report or in the affidavit filed by him that he personally know the place of business of assessee. Assessee, however, claimed that they had closed their businesses long before the notices were issued. In the Writ Petition filed by assessee, the High Court held that there was no proper service on assessee and the orders of Commissioner pursuant thereto could not be sustained. The Hon'ble Supreme Court upheld the judgment of Hon'ble High Court".*

10.2.iii. Thus, we are of the opinion that procedure resorted to by the AO is not the prescribed procedure. Accordingly, the orders passed thereon becomes *void ab initio*.

10.3. Coming to the main issue of addition of Rs. 50 Lakhs as confirmed by the Ld.CIT(A), there is no merit in the addition itself. AO has not linked the disclosure either by way of investment or by way of any deposits or transactions supposed to have been undertaken by assessee. If there was any unaccounted incomes/ turnovers/ investments found in the course of survey, AO could have verified them in the statement recorded, which may lead to disclosure of incomes. How and why the assessee disclosed incomes in earlier years is not before us to examine but as far as this year is concerned, as seen from the assessment order, or from the order of the

CIT(A), nowhere any basis for disclosure was mentioned. In the absence of any supporting evidence, a mere disclosure of income cannot be brought to tax as held by the Hon'ble Madras High Court in the case of CIT Vs. M/s. S. Khader Khan Son(supra) and also reiterated by the Board circular given in the contest of search and seizure cases – 'disclosure of incomes'. Looking at any angle, since there is no basis for the disclosure of amount of Rs. 50 Lakhs, the same cannot be brought to tax, just because assessee has disclosed the same by way of letter. In view of that, we are not in a position to appreciate the addition made by the AO.

10.3.i. For all the reasons stated above, we have to uphold the grounds raised by assessee and additional ground by assessee *in toto*. The orders of AO and CIT(A) are hereby set aside.

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

Order pronounced in the open court on 27th April, 2018

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 27th April, 2018

Copy to :

- 1. M/s. Soubhagya Projects, C/o. Mohd. Afzal, Advocate, 11-5-465, Sherson's Residency, Flat No. 402, Criminal Court Road, Red Hills, Hyderabad.*
- 2. The Income Tax Officer, Ward-7(1), Hyderabad.*
- 3. CIT(Appeals)-5, Hyderabad.*
- 4. Pr.CIT-7, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*