

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.2926/Del/2018
Assessment Year 2009-10

Renu Gupta, Akhilesh Kumar, Advocate Chamber No. 206-207, Ansal "Satyam", RDC Raj Nagar, Ghaziabad Uttar Pradesh (Appellant)	vs.	ITO, Ward-2(2) Ghaziabad PAN ACBPG9556A (Respondent)
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For Assessee :	Shri Akhilesh Kumar, Advocate
For Revenue :	Shri Surendra Pal, Sr. D.R.

Date of Hearing :	24.09.2018
Date of Pronouncement :	21.12.2018

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 13.3.2018, passed by Ld. CIT(Appeals) -2, Noida for the quantum of assessment passed u/s 147/144 for the assessment year 2009-10.

2. In the grounds of appeal the assessee has challenged the validity of notice u/s 148 on the ground that it was not served upon the assessee and reasons recorded are not in accordance with law; and on merits the assessee has challenged the addition of Rs. 10,78,500/- on account of unexplained investment and the purchase of property.

3. At the outset, Ld. Counsel for the assessee submitted that on the basis of AIR information that assessee has purchased immovable property of Rs. 43,50,000/- during the relevant financial year, notice

u/s 148 dated 21.3.2016 was issued. He pointed out that the said notice u/s 148 has not been addressed properly and is without any proper address and that is the reason why the notice u/s 148 or any other notices could not be served upon the assessee and that is the reason why no compliance could be made. The address given in the notice reads as under:-

**“Smt. Renu Gupta,
R/o Ram Nagar,
Ghaziabad”**

Whereas, this not the address of the assessee as correct address is “*Renu Gupta, KJ-130, Kavi Nagar, Ghaziabad (UP) 201001*” as per record.

3. The non service of notice was challenged before the Ld. CIT (A) also who had called for the remand report from the AO on this issue. However, nowhere he has brought on record and the said notice dated 21.3.2016 was served upon the assessee *albeit* he has mentioned that the notice was issued on the basis of PAN AIR information received from Ghaziabad as per the information received and once assessee has received the order u/s 147/144, then in all probabilities assessee was aware of the proceedings and deliberately choose not to respond. On this on this issue, Ld. CIT (A) had not given any finding. Based on material on record, Ld. Counsel thus, pleaded that the valid notice has not been served which is mandatory requirement of the law and in support he relied upon the following judgments:-

- i. Suresh Kumar Sheetlani v. ITO (2018) 96 taxmann.com 401 (Allahabad)
- ii. CIT v DR. AJAY PRAKASH* (2014) 42 TAXMANN.COM 387 (ALL)
- iii. CIT v Atlanta Capital (P) LTD. (Delhi) – ITA No. 665/2015

4. On the other hand, Ld. DR relying upon the order of the AO which I shall be discussing in the later part of the order.

5. After considering the submissions made by the parties and on perusal of the impugned material referred to before me, it is seen that a notice u/s 148 issued on 21.3.2016 was addressed in the following manner :-

**Smt. Renu Gupta,
R/o Ram Nagar,
Ghaziabad**

6. The issue of non service or notice was challenged before the Ld. CIT(A) who had called for the remand report of the AO. The relevant text of remand report dated 7.2.2018 reads as under:-

“ In this case, assessment was completed u/ s 147/143(3) on an income of Rs. 43,50,000/- vide order dated 23/12/2016 on account of unexplained source of investment made in purchase of immovable property. The assessee has raised certain objections and filed additional evidences during the appellate proceedings before the Ld. CIT(A), Ghaziabad. The objections inter alia pertain to issue of notice u/ s 148 with incorrect name 'Reenu' Gupta instead of 'Renu' Gupta and on incomplete address i.e. 'Ram Nagar, Ghaziabad' instead of '259-F, Ram Nagar, Ghaziabad'. The additional evidences filed by the assessee are in respect of source of investment.

2. In this case, notice u/ s 148 was issued on the basis of NON PAN AIR information received from Sub Registrar - 1, Ghaziabad on the name and address of the assessee as available in the information received (which was the last known address available as per records). It is a fact that notice u/ s 148 has been issued to the same assessee to whom the AIR information pertains. The notice has also been issued within time.

2.1 As admitted by the assessee show cause notice u/s 147/144 dated 29/11/2016 was served on her earlier address. If the assessee has received order u/ s 147/ 144 dated 23/12/2016 it is beyond probability that the assessee has not received show cause notice u/s 147/144 dated 29/11/2016 which was served on the same address. Hence, it shows that the assessee was aware of the proceedings and deliberately chose not to respond to the show cause notice. Hence, under the given facts & circumstances of the case, the additional evidences filed by the assessee are not admissible.”

7. In the rejoinder assessee had clarified this point in the following manner:-

"As regards the service of notices on the assessee, we submit that as explained in our written submissions filed on the last date of hearing on 03.10.2017, none of the notices including issued by Ld. A. O. was served on the assessee. It was only before the last notice that Ld. A. O. requisitioned from the Sub registrar complete address and then sent the last notice u/s 144/147 dt. 29/11/2016 at the old address of the assessee, because all earlier notices were not delivered being incomplete address. As regards the last notice we have submitted that though the notice was delivered at the old address, the name was wrongly mentioned as "Reenu" Gupta, there was no mention of PAN, no mention of details of property and there was mention of earlier notices of dt 21/03/2016 and 16/08/2016 which were never received at that address, her husband's relatives who received that notice, were under bonafide belief that this belonged to someone else and therefore did not inform her about that. Thus this notice also could not be received by her.

2) However when another letter containing the assessment order was delivered at that address, the relatives suspected that this might belong to Mrs Renu Gupta and hence informed her about it. She immediately sent her son to collect it and then only came to know of the content. She feeling aggrieved has preferred an appeal before your goodself and have prayed for the relief. ”

8. It has also brought on record that assessee has been filing the return of income for the subsequent years, on 31.7.2013 and 31.7.2014 giving the correct and the changed address. Thus, the address of the assessee was very much on the record of the department before issuance of notice u/s 148. The correct address of the assessee as borne out from the Income Tax return for the assessment year 2014-15 reads as:- **“Renu Gupta, KJ-130, Kavi Nagar, Ghaziabad (UP) 201001”**. This address is also mentioned in the impugned appellate order. When the notice u/s 148 was issued on 21.3.2016, the address of the assessee was already on record and was very well known to the department as well as to the AO. The submission given by the assessee in the rejoinder before the CIT (A) has neither been rebutted nor has been controverted by any material on record. Thus, the onus on the department for service of notice upon the assessee has not been discharged and accordingly, it is presumed on the basis of fact and material on record that no notice u/s 148 has been issued which is condition precedent for acquiring the jurisdiction for making assessment or reassessment u/s 147. This issue stands squarely covered by the judgement of Hon'ble Jurisdictional High Court in the case of **CIT vs. Ajay Prakash 226 taxman 71**, wherein the Hon'ble High Court held that when the AO issued notice seeking reopening assessment on wrong address and the person alleged to be an employee of assessee was not authorized to receive notice, then presumption of service of notice u/s 292BB could not be attracted and

accordingly reassessment proceedings deserves to be set aside. Similar ratio and principle has been reiterated by the Hon'ble Delhi High Court in the case of **Pr. CIT vs Atlanta Capital Pvt. Ltd.** (supra), wherein it was held that if AO was aware of the change of address and yet the notice u/s 148 has been issued at the older address, then reassessment cannot be said to be valid. It was also held that even the assessee has participated in the reassessment proceedings despite not having been issued or served with the notice u/s 148 and in accordance with law; it will not constitute a waiver of said jurisdictional requirement. Otherwise also, from time memorial it is well settled proposition of law that requirement of both, the issue and service of notice u/s 148 upon the assessee is mandatory and jurisdictional requirement which cannot be conferred by consent or acquiescence by the assessee but only when same is acquired under the correct process of law. Thus, in absence of valid service of notice upon the assessee, we hold that the entire reassessment proceeding initiated by such a notice is bad in law and deserves to be quashed. I accordingly quash the notice u/s 148 and consequently the impugned assessment order.

9. In the result appeal of the assessee is allowed.

Order pronounced in the open Court on 21st December, 2019.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 21st December, 2019

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Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.