

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.6132/Del/2018
Assessment Year 2009-10

Deepak Kumar, H.No. 09, Ekansh Vatika, Near Surya Colony, Fazelpur, Meerut Uttar Pradesh (Appellant)	vs.	Income Tax Officer Ward-1(2) Ghaziabad PAN ATYPK8980A (Respondent)
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For Assessee:	Shri Ramesh Kumar Verma, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	20.12.2018
Date of Pronouncement:	21.02.2019

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 29.5.2018, passed by Ld. CIT (Appeals) Ghaziabad, for the quantum of assessment passed u/s 144 for the assessment year 2009-10. In the grounds of appeal the assessee has challenged the addition of Rs. 12,23,550/- on account of cash deposits and also the validity of proceedings u/s 148 on the ground that notice u/s 148 has not been served properly.

2. The facts in brief are that, on the basis of AIR information that assessee has deposited cash of Rs. 12,23,550/- in his saving bank account, the AO sought to acquire jurisdiction u/s 147 for assessing the same. Accordingly, notice u/s 148 dated 28.3.2016 was issued through speed post which as per the AO was duly served upon the assessee and thereafter, notice u/s 142(1) was also issued which was served through affixture. However, as observed by AO no compliance

of such notices was made and hence, in absence of any documentary evidences with regard to the source of the cash deposit and that the assessee has also not filed any return of income for A.Y. 2009-10, AO added the entire cash deposits of Rs. 12,23,550/-.

3. Before Ld. CIT(A), assessee contended that a notice u/s 148 was not received, because assessee was presently living in Meerut, since year 2010 and notice has been served on address in Ghaziabad and therefore, AO was not justified in acquiring jurisdiction u/s 147. It was further submitted that assessee was a contractor and all the contractual receipts was deposited in his bank account and since assessee's income was below taxable limit, therefore, assessee did not filed any return of income. However, Ld. CIT(A) held that assessee has preferred an appeal from the same address as given in the assessment order and no proof of non-service of notice has been given by the assessee, hence assessee's plea was rejected. On the issue of addition of Rs. 12,23,550/-, he held that, since assessee has not filed any return and the fact of carrying out the activity of Civil Contractor, has not been established as assessee has not filed any documentary evidences, therefore, the entire cash deposits were treated to be unexplained by him.

4. After hearing both the parties and on perusal of the material on record, it is seen that the address mentioned in the assessment order is, "C-134, Devenderpuri, Modi Nagar, Ghaziabad", whereas assessee contends that he has shifted long back to Meerut for which voter ID and Electricity bill was produced. However, it is not clear whether address in the PAN data belongs to Ghaziabad or Meerut. If the address in the PAN data mentions the address of Ghaziabad, then notice u/s 148 issued through speed post shall be deemed to have been served in accordance with law, if the registered post has been

sent on the given address which has not been returned back then it is a deemed service. However, this fact needs verification from the end of the AO and accordingly, I set aside this issue to the file of the AO to be decided afresh. Further, in so far as the addition on account of cash deposit is concerned, I find that, since no notice could be served upon the assessee and no compliance was made, therefore, assessee was not able to substantiate the contention regarding the source of cash deposit. If assessee was carrying out any business of Civil Contractor, then onus is upon the assessee to show that such activity was carried out and the source of cash deposits is out of such business activity. Accordingly, in the interest of justice, we are remanding back the file to the AO to decide afresh.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st February, 2019.

(AMIT SHUKLA)
JUDICIAL MEMBER

Delhi, Dated 21st February, 2019

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