

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 5115/Del/2018
Assessment Year 2009-10

NIRMALA, Akhilesh Kumar, Adv. 206-207, Ansal Satyam, RDC Raj Nagar, Ghaziabad Uttar Pradesh,	Vs.	ITO, Ward-2(5) Ghaziabad Pan AUCPN2027Q
(Appellant)		(Respondent)

Department by:	Shri Akhilesh Kumar, Advocate Shri Vipin Garg, Advocate
Assessee by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	31/01/2019
Date of pronouncement	/03/2019

ORDER

The aforesaid appeal has been filed by the assessee in the impugned order dated 31.05.20018 passed by the Ld. CIT(Appeals) Ghaziabad for the quantum of assessment passed u/s 147/144 for Asstt. Year 2009-10. In the grounds of appeal assessee has raised following grounds:-

"1. Because, the learned lower authority grossly erred in upholding the validity of solitary notice u/s 148 dt. 21.03.2016 which was not correctly issued or served being without proper address against the ration of decisions of jurisdictional court/Jurisdictional tribunal.

2. Because, in addition to above, admittedly 'reasons' were not supplied to assessee before the limitation without which notice and subsequent proceeding are illegal as per ration of jurisdictional court.

3. Because, notice issued u/s 148 of Act is beyond jurisdiction being without any valid 'reason to believe' and/or satisfaction of Id. AO or of superior authority, to conduct roving enquiries merely on the basis of information.

4. Because, without prejudice and in alternative, the. learned lower authority grossly erred in sustaining the addition of Rs. 12,95,000/- summarily without any material against the assessee and without conducting any proper enquiry.

Therefore, it is prayed notice u/s 148 and order passed u/s 144/147 may kindly be declared illegal or alternatively is prayed that the total addition may kindly be quashed.”

2. Brief facts qua the issue of notice u/s 148 are that, AIR information was received that assessee has deposited cash of Rs. 12,95,000/- during the relevant assessment year 2009-10 in the bank account of Oriental Bank of Commerce. Accordingly, a notice u/s 148 was issued on 21.3.2016. Before me, Ld. Counsel has challenged the validity of service of notice and pointed out that the notice u/s 148 has been issued in the following name and address:-

“Smt. Nirmala

Banthala, Loni, Ghaziabad

The said notice was not served upon the assessee. The Ld. AO has passed *ex parte* order u/s 144, without brining on record, whether the notice has been served upon the assessee or not. Ld. Counsel pointed out that he has obtained the documents from the department and also

from the postal authorities that the impugned notice u/s 148 which was sent through speed post was not served at all and same was received back to the department. In support he has filed certified copy of record of speed post no. **EU127707095IN**. He further pointed out that the address mentioned in the postal address was incorrect or incomplete, because as per the PAN data of the assessee, correct address is, **197, Banthala 2, Ghaziabad, UP, 201102**. The scan copy of PAN data in the record of income tax department reads as under:-

<i>PAN</i>	<i>AUCPN2027Q</i>
<i>Name</i>	<i>NIRMALA</i>
<i>Date of Birth</i>	<i>05/07/1970</i>
<i>Gender</i>	<i>Female</i>
<i>Category</i>	<i>Individual</i>
<i>Address</i>	<i>197, BANTHALA 2, GHAZIABAD, UTTAR PRADESH, 201102</i>
<i>Status</i>	<i>Active</i>
<i>Indian Citizen</i>	<i>Yes</i>
<i>Jurisdiction Details</i>	
<i>Area Code</i>	<i>KNP</i>
<i>AO Type</i>	<i>W</i>
<i>Range Code</i>	<i>17</i>
<i>AO Number</i>	<i>1</i>
<i>Jurisdiction</i>	<i>WARD 2(1)(1) GHAZIABAD</i>
<i>Building Name</i>	<i>CGO, COMPLEX-I, PURANI HAPUR CHUNGI, GHAZIABAD</i>
<i>Email ID</i>	<i>GHAZIABAD.IT01.1.1 @INCOMETAX.GOV.IN</i>

3. If assessee's correct address is available with the department in their PAN data, then issuance of notice on a wrong address cannot clothe the AO jurisdiction u/s 148. He further submitted that Ld. CIT (A) has completely erred on facts in holding that the address in the PAN and the address mentioned in the notice is the same. He then pointed out that it is apparent from the bare perusal address mentioned in the notice u/s 148 and address given in PAN. Thus, such a finding cannot be sustained. He further submitted that, it is well settled principle of law that issuance and service of notice u/s 148 is a mandatory requirement and in support, he relied upon following judgments:-

- “ A. *Issuance of a valid Notice u/s 148 And its service is mandatory*
- a) *Suresh kumar Sheetlani V ITO [2018] 96 taxmann.com 401 (Allahabad)*
 - b) *CIT V DR. AJAY PRAKASH~ [2014] 42 TAXMANN.COM 387 (ALL)*
 - c) *Renu Gupta V ITO -ITA NO. 2926/2018 –Order dt. 21.12.18.*
 - d) *Shailendra Kumar Jain --ITA-No. 3885/Del/2017 (SMC-DEL)*
 - e) *CIT V Atlanta Capital (P) LTD. (Delhi) -- ITA NO. 665/2015*

4. On the other hand, Ld. DR submitted that in the notice also assessee's address has been mentioned at Banthala, Loni, Ghaziabad except for the fact that house number has not been mentioned and once the notice has been sent through speed post then it is a deem service of notice. He strongly relied upon order of the Ld. CIT(A).

5. I have heard the rival submission and also perused the relevant material placed on record. As stated above, the notice u/s 148 dated 21.3.2016 was issued to the assessee on a address mentioned as **“Smt. Nirmala, Banthala, Loni, Ghaziabad”**. The said notice was sent through speed post, however from the record as submitted by the Ld. Counsel, it is seen that the postal department has provided the

track record giving the details of track events for the speed post, wherein it is clearly culled out that notice sent to the assessee at the given address has been received back to the AO on 2.4.2016 and all other notices also have received back on 3.4.2016. Thus, it would be incorrect to presume that speed post sent by the department has been served upon the assessee on the correct address mentioned. It appears that the address mentioned in the AIR information received from Oriental Bank of Commerce has mentioned "Banthala, Loni, Ghaziabad 201102". Without ascertaining the correct facts from the PAN data, the AO has sent the notice on incorrect or incomplete address. As borne out from the PAN data available with the Income Tax Department, the particulars of the address of the assessee given in PAN **AUCPN2027Q** has been written as "**197, Banthala, 2 Ghaziabad, UP 201102**". When the notice itself was sent to a wrong address which too has been received back, then it cannot be held that jurisdictional notice u/s 148 has been served upon the assessee in accordance with law. Precisely under the same situation, Hon'ble Jurisdictional High Court in the case of **Suresh Kumar Sheetlani vs ITO (2018) 257 taxman 338 (Allahabad)**, Hon'ble High Court observed that when department had correct address of the assessee furnished in the return of income, then sending papers at incorrect address available with the bank and drawing presumption of service of notice cannot be sustained. The relevant observation of the Hon'ble High Court reads as under :-

"17. The Department being' aggrieved by the order of the CIT (A) preferred appeal before the Tribunal.

18. The Tribunal vide impugned judgment and order has held that notice dated 28th March, 2006 under Section 148 was issued to the assessee on the address available with the Canara Bank (SSI Branch), Sanjay Place, Agra by speed post, which was not received back served or unserved from the assessee's side. The Tribunal held that the notice dated 28th March, 2006 had been

sent to the assessee on the address available with the Department through speed post and the notice under Section 148 issued to the assessee by speed post had not been received by the Department unserved, it would be deemed to be valid service and, therefore; the Tribunal set-aside the order passed by the CIT(A) and directed the CIT (A) to adjudicate the case on merit, after hearing the parties.

19: It is important to mention here that CIT(A), after considering the report submitted by the A.O. in response to the directions under Section 250(4) of the Act, had held that the assessee was not residing at 109, North Idgah Colony, Agra and he had left the address two years back. The assessee had filed his return at his new address i.e. 2, Rishi Marg, Shahganj, Agra. The Department had with it the new address of the assessee, but the notice was sent at old address on the ground that it was the address available with the Bank in respect of bank account of the assessee. The Tribunal has not dealt with the report of the A.O. submitted in response to the directions under Section 250(4) of the Act.

20. Considering the aforesaid aspect of the matter, when the Department had correct address of the assessee, sending notice at incorrect address and then presumption drawn of service of notice is wholly erroneous. We find that the presumption drawn by the Tribunal on the ground that since notice was not received back unserved, it would be deemed to be service of notice, cannot be sustained.”

6. Similar view has been taken in another judgment of the Jurisdiction High Court in the case of **CIT vs. Dr. Ajay Prakash (2014) 226 taxman 71 Allahabad**, wherein Hon'ble High Court held that where AO issued notice seeking to reopen assessment on wrong address and a person alleged to be an employee of the assessee was not authorised to receive notice, presumption of service of notice u/s 292B would not be attracted and all the additions made in the reassessment proceedings were set aside. Similar view has been taken in other judgments also as relied upon by the Ld. Counsel.

7. Thus, in view of the admitted fact that the notice u/s 148 was sent on an incorrect address which remain unserved and also the

speed post sent was received long back to the AO, then proceedings initiated vide such a notice is void ab initio and same deserves to be quashed. Accordingly, the entire reassessment proceedings initiated by notice dated 21.3.2016 is held as null and void.

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

Order pronounced in the open court on 25th March, 2019.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 25/03/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi