

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.1942/Del./2013
Assessment Year 2009-2010

Gautam Automobiles Pvt. Ltd., 3, Tansen Marg, Bengali Market, New Delhi – 110001 PAN AAACG0336L	vs.,	The Income Tax Officer, Ward-12(1), 3 rd Floor, C.R. Building, I.P. Estate, New Delhi.
(Appellant)		(Respondent)

ITA.No.3632/Del./2013
Assessment Year 2009-2010

The Income Tax Officer, Ward-12(1), 3 rd Floor, C.R. Building, I.P. Estate, New Delhi.	vs.,	Gautam Automobiles Pvt. Ltd., 3, Tansen Marg, Bengali Market, New Delhi – 110001 PAN AAACG0336L
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate. Shri Ashish Goyal, C.A.
For Revenue :	Smt. Rinku Singh, Sr. D.R.

Date of Hearing :	02.05.2019
Date of Pronouncement :	09.05.2019

ORDER**PER BHAVNESH SAINI, J.M.**

Both the cross-appeals are directed against the Order of the Ld. CIT(A)XV, New Delhi, Dated 25.03.2013, for the A.Y. 2009-2010.

2. Briefly the facts of the case are that assessee company filed its return of income on 29.09.2009 declaring profit of Rs.22,71,790/-. The case was selected for scrutiny. The A.O. made certain additions to the returned income and computed the income at Rs.6.41 crores vide assessment order under section 143(3) Dated 28.12.2011. The assessee challenged the additions before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal of assessee.

3. Both the parties are in cross-appeals.

4. We have heard the Learned Representatives of both the parties and perused the material available on record.

5. The assessee on Ground No.1, challenged the validity of the assessment proceedings because no notice under section 143(2) was served upon the assessee company within the limitation period of 12 months as per proviso to Section 143(2) of the I.T. Act, 1961. It is, therefore, pleaded that assessment order dated 28.12.2011 is barred by limitation, illegal and bad in law and liable to be quashed.

5.1. The assessee challenged this issue before the Ld. CIT(A) as well. It was stated that first time notice under section 143(2) was served upon the assessee company on 07.03.2011 (Dated 28.02.2011) scheduling the case for hearing on 09.03.2011. It was submitted that since assessee company had filed its income tax return on 29.09.2009, therefore, as per law, statutory notice under section 143(2) of the I.T. Act, 1961 should have been served at any time within the period of six months from the end of the financial year ending 31.03.2010 i.e., on or before 30.09.2010. It was pleaded that notice dated 28.02.2011 having been served beyond the statutory period prescribed

in law, was barred by limitation, rendering the assessment proceedings and assessment order bad in law. The assessee submitted that vide letter dated 08.03.2011 assessee objected to the notice dated 28.02.2011 on the ground that same was barred by limitation and further required the A.O. to lead the evidence, if any other notice under section 143(2) was issued and served upon the assessee company prior to notice dated 28.02.2011. It was informed that on 07.04.2011, assessee company again filed its objections with the A.O. on this ground. It was also informed that on 15.09.2011 Shri Rakesh Jain, Managing Director of the assessee company filed affidavit whereby the above facts were affirmed on oath.

5.2. The assessee was aggrieved that A.O. did not rebut the allegations of the assessee company and did not produce any evidence that any notice under section 143(2) have been served upon the assessee company within the period of limitation. The Ld. CIT(A) sent these evidences to the A.O. and a remand report has called for from the A.O. The A.O. in the remand report dated 28.06.2012 claimed

that first notice under section 143(2) was sent under speed post on 03.09.2010 at 2659/3, Gurudwara Road, Karol Bagh, New Delhi, within the stipulated period in law and was not time barred. The A.O. attached copy of the application filed by the assessee company for allotment of PAN wherein the above address along with other address at 3, Tansen Marg, Bengali Market, New Delhi was shown as was also shown in the return of income. Copy of the remand report was provided to the assessee for rejoinder. Assessee submitted that the A.O. in the remand report has only referred to address of Gurudwara Road, Karol Bagh and has made no reference to the address of 3, Tansen Marg, Bengali Market, New Delhi, mentioned in the PAN application as for “*return purposes*” and as “*communication address*”. The assessee company filed copy of the acknowledgment of income tax returns for A.Ys. 2001-2002 to A.Y. 2011-2012 in support of the contention that address in the tax return filed has always been shown as “3, *Tansen Marg, Bengali Market, New Delhi*”. Further, the assessee also filed copies of various documents as evidence in

support of its contention that even the A.O, on time to time, had served various notices, the assessment orders of the assessee company for various proceedings on the above referred address. In this regard, the assessee filed several documents before the Ld. CIT(A) to show that the address of the assessee is mentioned at 3, Tansen Marg, Bengali Market, New Delhi. Such documents are notices under section 143(2), notice under section 156, notice under section 115WE(2), assessment orders under section 143(3) for various years. It was, therefore, submitted that A.O. failed to serve notice under section 143(2) at the correct address of the assessee as given in the return of income. The A.O. has not rebutted explanation of assessee and affidavit filed of the Managing Director. The assessee, therefore, submitted that since no notice under section 143(2) have been served upon the assessee company within the prescribed time, therefore, entire assessment order is illegal and bad in law and liable to be quashed.

6. The Ld. CIT(A), considering the explanation of assessee and material on record, decided this issue against

the assessee. His findings in the Order in paras 10 to 10.2 are reproduced as under :

“10. I have carefully considered the facts of the case in the light of the submission made by the appellant, the Remand report by the AO and rejoinder thereto by the appellant company, and applicable law in the matter. In view of the same, my decision on various grounds of appeal is as under:

10.2. Vide the ground no.1 of the appeal, the appellant has challenged service of the first notice u/s 143(2) within the statutorily prescribed time. The AO has claimed to have issued the first notice on 30.8.2010, at the address given in the form for application of PAN at 2659/3 Gurudwara Road, Karol Bagh, New Delhi- 110005. The AO also claims that this notice was sent by the speed post and was never returned un-served by the postal department.

The appellant's contention is that it files Income Tax return from its address at 3, Tansen Marg and not from the Karol Bagh address and that the AO also had

been communicating with the appellant through that address, in the past and in subsequent years.

In view of this, I am in agreement with the plea of the appellant company that the Assessing Officer should have sent the notice u/s 143(2) at the address "3, Tansen Marg, Bengali Market, New Delhi-110001", which is the address given by the appellant company in its application for PAN as the address for filing the returns and for communication purposes and also in the return of income of the current year.

Therefore, while there was infirmity in the aforesaid notice, to the extent it was sent at the other address of the appellant, which was distinct from the returned address, the undisputed fact, as confirmed by the Id. AR, is that the premise of the appellant at Karol Bagh was also in the possession of the appellant during the year and was not let out to any 3rd party during the year. The Ld. AR has got the inspection of the file done and there is no evidence that the said notice was

unserved, which is likely, as the appellant was holding possession on the premise at that address.

Under these circumstances, the probability of preponderance suggest that there is no reason why the notice sent at the address at Karol Bagh, whose possession was not denied by the appellant, may not have been served on the appellant or any Authorized representative thereof, even though the appellant may have given some other address for return filing purpose. The position would have been different if the notice had been sent at some unrelated address, or address for the premise let out or sold by the appellant, or the premise not in possession of the appellant due to any reason. However, the address at the first notice dated 30.8.2010 is that of one of the premise of the appellant, and there is no evidence of return of the same by postal department, the proceedings cannot be treated as bad in law, merely on account of the defect in the notice of mentioning some other address of appellant compared

to the returned address, while both premise were in appellant's possession.

In view of this, the Ground no. 1 is decided against the appellant and accordingly the case shall be decided on merit on various other grounds raised by the appellant.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to PB-1 which is return of income filed for assessment year under appeal on 29.09.2009. PB-103 is notice under section 143(2) dated 28.02.2011. PB-104 is reply of assessee before A.O. in which assessee objected to the legality of the assessment proceedings because notice under section 143(2) was barred by time and without jurisdiction. The assessee also pleaded in the reply that in case A.O. has any evidence against the assessee of service of notice, the same may be provided to the assessee. PB-106 is affidavit of Shri Rakesh Jain, Director of the assessee company denying service of any notice under section 143(2) within the period of limitation. Learned Counsel for the

Assessee submitted that the A.O. has mentioned in the remand report for the first time that notice was sent by speed post on 03.09.2010 at 2659/3, Gurudwara Road, Karol Bagh, New Delhi. Learned Counsel for the Assessee further filed copy of the sale deed dated 25.02.2010 through which the above property at Gurudwara Road, Karol Bagh, New Delhi, have been sold on 25.02.2010 by Shri Rakesh Jain, Managing Director of the assessee company. Learned Counsel for the Assessee submitted that since no notice under section 143(2) have been served upon assessee within the period of limitation, therefore, entire assessment order is illegal and bad in law. In support of his submission, he has relied upon Judgment of Hon'ble Delhi High Court in the case of CIT vs. Lunar Diamonds Ltd., [2006] 281 ITR 1 (Del.), Judgment of Hon'ble Delhi High Court in the case of Pr. CIT vs. Jai Shiv Shankar Traders Pvt. Ltd., [2016] 383 ITR 448 (Del.) and Judgment of Hon'ble Delhi High Court in the case of Pr. CIT-1 vs. Atlanta Capital Pvt. Ltd., ITA.No.665 of 2015 Dated 21.09.2015.

8. On the other hand, Ld. D.R. relied upon the Order of the Ld. CIT(A) and submitted that notice under section 143(2) was to be generated on the address selected by the assessee for communication in its PAN data and assessee had selected the address at 2659/3, Gurudwara Road, Karol Bagh, New Delhi as address for communication. The assessee did not change the PAN data and that notice sent through speed post never returned back to the A.O. Therefore, there is a presumption that same have been duly served upon the assessee. In support of the contention, the Ld. D.R. filed copy of PAN data and also submitted that refund was also provided at the same address along with intimation under section 143(1) of the I.T. Act, 1961. Copy of the receipt of speed post along with notice under section 143(2) dated 30.08.2000 also placed on record. The Ld. D.R. relied upon Judgments of Hon'ble Delhi High Court in the case of CIT vs. M.B. Energy Corporation 337 ITR 389 (Del.) and CIT vs. Yanu Industries Ltd., 214 CTR 445 (Del.).

9. We have considered the rival submissions. It is not in dispute that assessee filed return of income on

29.09.2009 and therefore, as per proviso to Section 143(2) of the I.T. Act, notice under section 143(2) should have been served at any time within the period of six months from the end of the financial year ending on 31.03.2010 i.e., on or before 30.09.2010. The proviso to Section 143(2) provides that *“no notice under this clause shall be served upon the assessee, after expiry of six months from the end of the financial year in which the return is furnished.”* The Hon'ble Delhi High Court in the case of CIT vs. Lunar Diamonds Ltd., [2006] 281 ITR 1 (Del.) held as under :

“Service of notice - burden of proof - According to the assessee, in terms of section 143(2) of the Act, the notice ought to have been served on it within a period of one year and in any case before November 30, 1996. Since that was not done, the proceedings initiated against the assessee were not in accordance with law - Before the Assessing Officer, this issue was not directly raised but before the Commissioner of Income-tax (Appeals) (CIT (A)), it was contended by the assessee that it had not received any notice under section 143(2)

of the Act by registered post - Tribunal rightly held that under these circumstances, the burden was upon the appellant to prove that notice was served upon the assessee within the prescribed time. The appellant had failed to prove its case in this regard. Appeal does not raise any substantial question of law which requires our decision. Dismissed.”

9.1. The Hon’ble Delhi High Court in the case of CIT vs. CPR Capital Services Ltd., [2011] 330 ITR 43 (Del.) held as under :

“The Tribunal held that no notice under section 143(2) of the Income-tax Act, 1961 was prepared and served upon the assessee. On appeal:

Held, dismissing the appeal, that mere noting in the order sheet would not suffice and the copy of the notice issued under section 143(2) of the Act was not available on record. Since the Department had failed to produce the copy of the notice under section 143(2) of the Act there was no option but to

agree with the findings of the Tribunal that no such notice was prepared and served upon the assessee. In the absence of this mandatory requirement of issuing statutory notice under section 143(2) of the Act, the Tribunal had rightly quashed the assessment as null and void.”

9.2. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Jai Shiv Shankar Traders Pvt. Ltd., 383 ITR 448 (Del.) and Pr. CIT vs. Silverline 383 ITR 455 held that “*re-assessment order cannot be passed without service of notice under section 143(2) of the I.T. Act.*”

9.3. It is not in dispute that notice dated 28.02.2011 under section 143(2) was served upon the assessee which was beyond the above statutory period. The assessee filed objection before A.O. at assessment stage in which assessee denied service of any notice under section 143(2) within the period of limitation. The assessee also pleaded in the reply that in case any other notice have been served in past, such details may be brought on record and provided to the

assessee. The assessee also filed affidavit of Shri Rakesh Jain, Managing Director of the assessee company in which the assessee denied service of any notice under section 143(2) prior to notice dated 28.02.2011. Thus, the material on record have not been disputed or rebutted by the Revenue. The A.O. however, in the remand report before the Ld. CIT(A) contended for the first time that notice under section 143(2) dated 30.08.2010 was sent by speed post on 03.09.2010 at 2659/3, Gurudwara Road, Karol Bagh, New Delhi, within the period of limitation. Copy of the notice and speed post receipt is filed on record. It was, therefore, claimed that it was served upon the assessee because the original notice did not return back to the Revenue. Therefore, there is a presumption of service of notice upon assessee within the period of limitation. The Ld. D.R. also filed PAN data to show that the addresses of Karol Bagh and Bengali Market both have been mentioned in the PAN data. The Ld. D.R. also contended that refund was generated at the same address of Gurudwara Road, Karol Bagh and even intimation under section 143(1) have been issued at the

same address of Gurudwara Road. Learned Counsel for the Assessee, however, filed copy of the sale deed to show that property at Gurudwara Road Karol Bagh have been sold by the Managing Director of the assessee company on 25.02.2010. Therefore, there is no question of service of notice upon assessee at Gurudwara Road, Karol Bagh as is stated by the A.O. in the remand report. The Ld. D.R. contended that since PAN data has not been changed by the assessee, therefore, there is a presumption that notice under section 143(2) have been served earlier upon the assessee. Such contention of the assessee have been negated by the Hon'ble Delhi High Court in the case of Atlanta Capital Pvt. Ltd., (supra) in which in paras 7 to 10 the Hon'ble Delhi High Court held as under :

“7. On the facts of the present case, it is seen that notice dated 27th March 2008 under Section 148 of the Act was issued to the Assessee by the Assessing Officer ('AO') at the address at B-231, Okhla Industrial Area, Phase-I, New Delhi. Admittedly, the Assessee had shifted from that address with effect from 1st February 2005 to a new

address at B-115, Sarvodaya Enclave, New Delhi. For AY 2005-06 and the subsequent AYs, the Assessee disclosed his address as B-115, Sarvodaya Enclave, New Delhi. Even the AO had sent letters to the Assessee at the same address on 8th August 2007. The intimation under Section 143(1) of the Act dated 25th January 2008 for AY 2006-07 was also sent by the AO to the Assessee at the same changed address i.e. B-1 15, Sarvodaya Enclave. New Delhi. There is nothing to show that the notice under Section 148 of the Act was in fact issued by the AO showing the aforementioned changed address.

8. *It is the contention of Mr. N.P. Sahni, learned Senior Standing counsel for the Revenue, that the notice satisfied the requirement as to limitation under Section 149 (b) of the Act. However, as noted by the ITAT, the notice itself was not issued at the correct address. The fact that the said notice, sent by speed post, was not returned unserved, would be to no avail since the address given in the notice was not the last known address of the Assessee.*

9. *Mr. Sahni then submitted that it was incumbent on the Assessee to have got his changed address entered in the PAN Data Base failing which the AO would only go by the address given in the record of the relevant AY which in the case is AY 2001-02.*

10. *The Court is unable to agree with this submission. No provision in the Act has been shown to the Court which obliges the Assessee to ensure that his changed address is entered in the PAN Data Base failing which he is precluded from insisting on the notice under Section 148 being issued to him at the known address and being served upon him. In the present case, on facts, it is not in dispute that the AO was aware of the change of address of the Assessee and yet the notice under Section 148 of the Act was issued at the older address.”*

9.4. It is not in dispute that assessee disclosed address at 3, Tansen Marg, Bengali Market, New Delhi, in the return of income and such address is also disclosed in the returns of income filed for A.Ys. 2001-2002 to 2011-2012. Even statutory notices have been issued by the A.O.

at the same address for preceding assessment years and subsequent assessment years. The A.O. also passed the assessment orders for different years under section 143(3) at the address given at 3, Tansen Marg, Bengali Market, New Delhi. Therefore, assessee has been consistently disclosing the address to the Revenue Department for the purpose of service and communication at 3, Tansen Marg, Bengali Market, New Delhi and this fact is also admitted by the A.O. Therefore, merely notice under section 143(2) for this year have been issued as per PAN data would not be relevant. The A.O, therefore, deliberately did not issue notice under section 143(2) at the address available to the Revenue Department on their record at 3, Tansen Marg, Bengali Market, New Delhi. Therefore, there is no question of service of the notice at Gurudwara Road, New Delhi. The Ld. CIT(A) agreed with the explanation of assessee that notice under section 143(2) should have been issued at 3, Tansen Marg, Bengali Market, New Delhi, but, ultimately, noted that Counsel for Assessee agreed that premises at Gurudwara Road, Karol Bagh is in possession of the assessee, which

fact is contradictory to the fact that property at Gurudwara Road, Karol Bagh have already been sold by the Director of the assessee company. Therefore, there is no question of any concessional statement made by the Counsel for Assessee before the Ld. CIT(A). Considering the totality of the facts and circumstances of the case noted above, we are of the view that notice under section 143(2) have not been issued to the assessee at the correct address within the period of limitation. No notice under section 143(2) have been served upon the assessee within the period of limitation. Therefore, entire assessment order is vitiated and is liable to be set aside and quashed. We, accordingly, set aside the Orders of the authorities below and quash the impugned order. Resultantly, all additions stand deleted. Appeal of Assessee allowed.

10. Since the assessment order itself is quashed, appeal of the Revenue has become infructuous and the same is dismissed.

11. In the result, appeal of Assessee allowed and appeal of Revenue dismissed.

Order pronounced in the open Court.

(O.P. KANT)
ACCOUNTANT MEMBER

(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 09th May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "C" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.