

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.567/CHD/2016

निर्धारणवर्ष / Assessment Year :2008-09

Sh. Balbir Singh, S/o Sh Dharam Singh, Through L/H Sh. Navpreet Singh, S/o Late Balbir Singh, Sub Registrar, Sub Tehsil office Banur, Tehsil Derabassi, Distt. Mohali	Vs. बनाम	The ITO, Ward-1, Khanna
स्थायीलेखासं./PAN NO:AMGPS6979J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No.568/CHD/2016

निर्धारणवर्ष / Assessment Year :2008-09

Sh. Navpreet Singh, S/o Late Shri Balbir Singh, House No. 1575, Seactor 36-D, Chandigarh	Vs. बनाम	The ITO, Ward-III, Khanna
स्थायीलेखासं./PAN NO:AFTPS4686N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate

राजस्वकीओरसे/ Revenue by : Sh. N.D.Gupta, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 08.04.2019

उदघोषणाकीतारीख/Date of Pronouncement : 13.05.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeals by different but related assesseees have been preferred against the separate orders dated 15.2.2016 of the Commissioner of Income Tax (Appeals)-2, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. First, we shall take up the assessee's appeal in the case of **Shri Balbir Singh, ITA No.567/Chd/2016**. This Appeal has been preferred by Shri Navpreet Singh legal heir of the deceased Shri Balbir Singh, wherein, following grounds have been taken :-

1. *That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer with regard to reopening of the case u/s 148 and also on merits.*
2. *That the Ld. CIT(A) has erred in holding that the notice u/s 148 was legally valid and has failed to consider the fact that the notice u/s 148 having been issued to the dead person and, as such, the proceedings are void.*
3. *Notwithstanding the above ground of appeal, there was no proper and valid service of notice u/s 148.*
4. *Notwithstanding the above said ground of appeal, the Ld. CIT (A) has erred in confirming the action of the Assessing Officer in*

assessing the 50% share of capital gain at Rs. 76,12,500/-.

- 5. That the CIT(A) has erred in confirming the action of the Assessing Officer in adopting the sale consideration on the basis of so called alleged sale agreement, which is not reliable at all.*
- 6. That the Ld. CIT (A) has erred in not admitting the additional ground of appeal, which was legal ground of appeal and which ought to have admitted in view of the judgment of Hon'ble Supreme Court in the case of CIT Vs. National Thermal Plant as reported in 229 ITR 383.*
- 7. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. At the outset, the Ld. Counsel for the assessee has submitted that as per the instructions of his client, he does not press ground No. 6. This ground is therefore, dismissed as 'not pressed'.

4. The facts of the case in brief are that in this case the assessment was reopened u/s 147 of the Income-tax Act, 1961 (in short 'the Act') by way of issuance of notice dated 26.3.2013 u/s 148 of the Act in the name of deceased assessee Shri Balbir Singh. However, admittedly the assessee had already died on 25.11.2012 i.e. much before the issuance of notice u/s 148 of the Act. Even, the notice u/s 148 of the Act was

served through affixation and not in a regular mode of service. The notice was issued in the name of the deceased assessee.

The issue, in our view, is squarely covered by the various decisions of the Hon'ble High Courts including the latest decision of the Hon'ble Bombay High Court in the case of 'Sumit Balkrishna Gupta Vs. ACIT' in Writ petition No. 3569 of 2018 vide order dated 15.2.2019, wherein, the Hon'ble Bombay High Court has held that the issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. The Hon'ble High Court has further observed that Section 148 of the Act requires that before a proceeding can be taken up for reassessment, a notice be served upon the assessee. The assessee on

whom the notice must be sent must be a living person i.e legal heir of the deceased assessee, for the same to be responded. That this in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational / substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notices and the impugned assessment order required to be quashed and set aside.

Similarly, the Hon'ble Delhi High Court in the case of 'Rajender Kumar Sehgal Vs. ITO' [2019] 101 taxmann.com 233 (Delhi) held that where the notice seeking to reopen assessment was issued in the name of deceased assessee, since she could not have been participated in reassessment proceedings, provisions of section 292BB were not applicable to the assessee's case and as a consequence, reassessment proceedings deserved to be quashed.

5. At this stage, the Ld. DR has pointed out that the LR of the assessee should have promptly come forward to apprise the Assessing officer that the assessee had died so that notice could have been issued in the name of legal representative of the assessee. We do not find any force in the above contention of the Ld. DR. as noticed above, the notice was not served through registered post / or by regular mode of service.

The notice in this case was allegedly served through substituted mode of the service i.e. by affixation of the same at the door of the house of the assessee. Further, the report of service through affixation have not been witnessed by any person. Had the Income-tax officials actually gone to the house of the deceased assessee and enquired from the villagers about the whereabouts of the assessee for the purpose of service of the notice, they could have easily come to know about the death of the original assessee and would have accordingly apprised the Assessing officer.

6. It is not believable that the Revenue officials had visited the house of the assessee and they could not get the information about the death of the assessee despite affixation of the notice which is also required to be witnessed by some independent / respectable of the village.

7. The Ld. counsel has further invited our attention to the receipt which has been printed on the back of the stamp papers upon which the alleged agreement to sell has been executed, wherein, the name and address of the seller i.e. Shri Balbir Singh has been mentioned as Shri Balbir Singh S/o Shri Dharam Singh 1535/34-D, Chandigarh. However, the alleged notice was never served by the Assessing officer on the said address despite the address of the assessee duly mentioned on the receipt which was the part and parcel of the alleged agreement to sell on

the basis of which reopening of the assessment has been made. This otherwise show that even otherwise the notice is never served on the address at which the assessee actually was residing before his death.

8. In view of this, the issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of 'Sumit Balkrishna Gupta Vs. ACIT' (supra) and of the Hon'ble Delhi High Court in 'Rajender Kumar Sehgal Vs. ITO' (supra). The impugned notice issue u/s 148 of the Act, therefore, is held as 'invalid' and the consequent assessment proceedings, are, therefore, liable to be quashed. We order accordingly.

In the result, the appeal of the appellant is hereby allowed.

ITA No. 568/Chd/2016

9. The present appeal has been preferred by the assessee Navpreet Singh against the order dated 15.2.2016 of the Commissioner of Income Tax (Appeals)-2, Ludhiana.

10. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer with regard to reopening of the case u/s 148 and also on merits.*
2. *That the Ld. CIT(A) has erred in holding that the notice u/s 148 was legally valid.*

3. *Notwithstanding the above said ground of appeal, the Ld. CIT (A) has erred in confirming the action of the Assessing Officer in assessing the 50% share of capital gain at Rs. 76,12,500/-.*
4. *That the CIT(A) has erred in confirming the action of the Assessing Officer in adopting the sale consideration on the basis of so called alleged sale agreement, which is not reliable at all.*
5. *That the Ld. CIT (A) has erred in not admitting the additional ground of appeal, which was legal ground of appeal and which ought to have admitted view of the judgment of Hon'ble Supreme Court in the case of CIT Vs National Thermal Plant as reported in 229 ITR 383.*
6. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

11. The Ld. Counsel for the assessee stated at Bar that as per the instructions of his client, he does not press ground No. 5, this ground is, therefore, dismissed as not pressed.

12. The assessee, in this appeal, apart from contesting the additions made by the lower authorities on merits has also taken the legal ground regarding the validity of the assessment framed u/s 147 of the Act on the ground that there was no valid service of mandatory notice required to be issued u/s 148 of the Act.

13. The facts of the case in brief are that in this case the assessment was reopened u/s 147 of the Income-Tax Act, 1961 (in short 'the Act')

by way of issuance of notice dated 26.3.2013 u/s 148 of the Act through registered post as well as by way of substituted service by affixture on the same date i.e. 26.3.2013

14. The Ld. Counsel for the assessee has submitted that the Assessing officer allegedly issued the notice u/s 148 of the income Tax Act at the wrong address / old address from which the assessee had already left long back. That the alleged notice u/s 148 of the Act was never served upon the assessee. Inviting our attention to the impugned assessment order framed by the Assessing officer, the Ld. counsel has submitted that as per the assessment order the Assessing officer issued the alleged notice u/s 148 of the Act through normal mode of service i.e by registered post as well as allegedly served the notice through substituted mode of service i.e byway of affixation, on the same date i.e. 26.3.2013. He, therefore, has submitted that if the Assessing officer was under bonafide belief that the assessee was residing at the address at which notice was issued i.e. village Bhatian Tehsil Khanna and the notice was issued in the normal course at the last address through registered post then what prompted the Assessing officer to simultaneously effect the service through substituted mode i.e. by way of affixation on the same date. He in this respect has submitted that perhaps the Assessing officer

was already aware that the assessee was not residing at the said address. The Ld. Counsel, further inviting our attention to the Affixture Report of the notice, has submitted that the said affixture report has not been signed by any independent witness in whose presence the alleged affixture was done at the house of the assessee. The Ld. counsel has further submitted that the father of the assessee namely Shri Balbir Singh had already died whereas the assessee had already left the said address long back. Had the officials of the Department had gone to the house of the assessee and enquired about the assessee, they could have easily come to know not only about the death of the father of the assessee Shri Balbir Singh but also the fact that the assessee was not residing there.

The Ld. Counsel has further submitted that the old address of Village Bhattian, Tehsil Khanna at which the notice was allegedly served / sent to the assessee has not been mentioned in the agreement to sell in question. Though in the front part of the agreement, the address of his deceased father Shri Balbir Singh has been mentioned as H. No. 2208C, Phase-7, SAS Nagar, Mohali, however, since the said house itself was the subject matter of sale, the Assessing officer served the alleged notice / letter at the old address / village address of the assessee

at Village Bhattian, Tehsil Khanna. However, the other address of the assessee and his father was available in the agreement to sell itself i.e. on the receipt printed on the back side of the stamp paper at which the Assessing officer never served notice u/s 148 of the Act.

The Ld. counsel has invited our attention to the receipt which has been printed on the back of the stamp papers upon which the alleged agreement to sell has been executed, wherein, the name and address of the seller i.e. Shri Balbir Singh, the deceased father of the assessee, has been mentioned as Shri Balbir Singh S/o Shri Dharam Singh 1535/34-D, Chandigarh. However, the alleged notice was never served by the Assessing officer on the said address despite the address of the assessee duly mentioned on the receipt which was the part and parcel of the alleged agreement to sell on the basis of which reopening of the assessment has been made. That the notice was never served on the address at which the assessee actually was residing at that time.

15. So far as the validity of service through affixture is concerned, a copy of the letter / affixture order has been placed at page 4 of the paper book, the contents of which are reproduced as under:-

“AFFIXTURE ORDER

I, Swaran Singh, Income Tax officer, Ward-III, Khanna, am satisfied that the Notice u/s 148 of the I.T. Act, 1961 issued in the case of Sh. Navpreet Singh S/o Sh. Balbir Singh, Vill. Bhattian, Khanna cannot be served in an ordinary way. I, therefore, direct Sh. Param Vir Singh Duggal, Income Tax Inspector of this office to effect service of the said notice by affixture under Order V Rule 20 of CPC, 1908 on the conspicuous part of palace where the assessee is known to have last resided or carried on his business or personally worked for gain.

Dated 26.3.2013

*Sd/-
(Swaran Singh)
Income Tax Officer,
Ward-III, Khanna*

A copy of this order should be placed on the Notice Board of this office.

*Sd/-
(Swaran Singh)
Income Tax Officer,
Ward-III, Khanna*

Attested by me

*Sd/-
P V Duggal
26.3.2013*

*Imp.
Sd/-
Mangat Ram”*

16. A perusal of the above affixture order reveals that Shri Swaran Singh, ITO, Ward-III, Khanna directed Shri PamamVir Singh Duggal, Income Tax Inspector to effect the service of the notice u/s 148 of the Act by way of affixture under Order V Rule 20 of CPC, 1908 on the conspicuous part of place where the assessee is known to have last resided or carried on his business or personally worked for gain. However, no address of such place has been mentioned in the said affixture order. It is not clear from where the Income Tax Inspector would come to know about the last known address of the assessee either of his residence or of his working place. Even in the report of the Inspector of the same date i.e. 26.3.2013, he has simply written 'affixed by me'. Even he has not mentioned as to where he had gone to affix the notice, to say whether it was affixed at the last known residential address of the assessee or at the last known work place of the assessee. Though the signature of one Shri Mangat Ram has also been appended but who that Mangat Ram is/was, has not been mentioned; whether he was an independent witness available at the place where the affixation was done or was an employee of the income Tax office, is not coming out. Even as mentioned above, the notice by registered post as well as by way of substituted service was allegedly served on the same date.

Under the circumstances, there was no reason for the satisfaction of the Assessing officer that the alleged notice cannot be served in an ordinary way. The Assessing officer issued the affixture order on the same day without waiting for the outcome of the service of notice sent through ordinary way i.e. by way of registered post.

17. A perusal of the assessment order further reveals that when the service could not be effected at the village address of the assessee, the Assessing officer thereafter served the notice u/s 142(1) of the Act at his office address which means that the Assessing officer had come to know the office address of the assessee at which service can be effected but admittedly no notice u/s 148 of the Act was served on the assessee at his office address also. Under the circumstances, it is clear that there was no valid service of notice u/s 148 of the Act on the assessee.

18. The issue, therefore, is squarely covered by the recent decision of the Hon'ble Bombay High Court in the case of 'Sumit Balkrishna Gupta Vs. ACIT' (supra) in Writ petition No. 3569 of 2018 vide order dated 15.2.2019, wherein, the Hon'ble Bombay High Court has held that the issue of a notice under Section 148 of the Act is a foundation for reopening of assessment and condition precedent for framing of the

assessment u/s 147 of the Income Tax Act. Since there was no valid service of the notice u/s 148 of the Act, therefore, the consequent assessment proceedings framed u/s 147 of the Act are not sustainable in the eyes of law and the same are accordingly quashed. The appeal of the assessee is hereby allowed.

19. In the result, both the captioned appeals are hereby allowed.

Order pronounced in the Open Court on 13/05/2019

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

Dated : 13. 05.2019
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar