आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 428/JP/2014
निर्धारण वर्ष/Assessment Year : 2008-09.

Shri Ram Narayan S/o Late Shri Nanda Ji R/o Kumharon Ka Mohalla, Near Akawad House, Chhawani, Kota.	बनाम Vs.	The Income Tax Officer, Ward 2(1), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. AVVPG 9786 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Naresh Gupta (Advocate)
राजस्व की ओर से/ Revenue by: Shri Jai Singh (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 16.05.2019.
घोषणा की तारीख/ Date of Pronouncement : 28/06/2019.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 25th March, 2014 of ld. CIT (A), Kota for the assessment year 2008-09. The assessee has raised the following grounds :-

1. That the ld. CIT (A) has committed gross illegality in holding the re-assessment proceedings u/s. 147/148 of the Income-tax Act, 1961 to be valid; inasmuch as, holding the service of notice u/s. 148 to be valid.

2. Because the ld. CIT (A) has grossly erred in assuming the service of notice dated 29-12-2009 u/s. 148 of the Act of 1961 to be valid on the basis of service of subsequent notice dated 10-12-2010 alleged to have been issued u/s. 142(1).

3. That the whole of the re-assessment proceeding including appellate proceedings have been vitiated for want of adequate opportunity of hearing as the ld. AO has neither allowed the Inspection of the record nor provided the certified copies of the order sheets of the assessment record to the assessee, though requested by him in writing; and as such, the same are liable to be quashed.

4. That the order of ld. CIT (A), in denying the exemption u/s. 54F and 54B of the Act of 1961 of Rs. 8,60,210/- invested in purchase and construction of new residential house and of Rs. 1,70,210/- invested in purchase of new agricultural land, being wholly perverse and misconceived both of facts and law is vitiated in applying wholly mistaken test violating settled principles of law of interpretation and in ignoring the relevant provisions contained in sections 2 (7), 27(i), 47(iii), 49(1)(ii), 56(2)(vi), 64(iv) and 159 of the Income Tax Act, 1961 read with provisions contained in section 3(2) of the Benami Transactions (Prohibition) Act, 1988.

5. That the ld. CIT (A) has grossly erred in denying the exemption u/s. 54B of the Act of 1961 of Rs. 40,00,000/- invested by the appellant in purchase of new agricultural land vide agreement to sell dated 05-10-

2007 followed by another agreement to sell dated 23-09-2009 evidencing payment of consideration and transfer of possession of land.

6. **That alternatively,** the assessee is entitled to benefit of exemption u/s. 54B and 54F of the Act so claimed on the actual sale consideration of Rs. 50 Lacs received to the appellant instead of Rs. 60,30,000/- as assumed by the AO as per DLC Rates u/s. 50C of the Act.

Ground Nos. 1 to 3 are regarding validity of reassessment order passed under section 147 read with section 144 of the IT Act for want of valid service of notice under section 148 of the IT Act.

2. The assessee is an Individual and not filed any return of income for the year under consideration. The AO received the information that the assessee has sold land during the year under consideration for a sale consideration of Rs. 50,00,000/- which was valued by Stamp Duty Authority at Rs. 60,30,000/-. Accordingly, the AO issued a notice under section 148 on 29.12.2009 which was stated to be served on the assessee on 30.12.2009 through the wife of the assessee. Thereafter the AO also issued notice under section 142(1) but there was no compliance on the part of the assessee. The AO completed the assessment under section 144 read with section 147 on 20th December, 2010 at long term capital gain of Rs. 49,95,330/-. The assessee challenged the action of the AO before the ld. CIT (Appeals) and also disputed the service of notice under section 148. The ld. CIT (A) held that the notice issued by the AO under section 148 was served upon the assessee and, therefore, the ground raised by the assessee was dismissed.

3. Before us, the ld. A/R of the assessee has submitted that the alleged service claimed by the department is not a valid service of notice under section 148. He has submitted that the name of wife of the assessee is Smt. Bhura Bai whereas the signature on the said notice was taken of Smt. Pushpa Bai. The assessee has explained before the ld. CIT (A) that there is no person by the name of Smt. Pushpa Bai in the family of the assessee and, therefore, there is no service of notice under section 148 of the IT Act and consequently the assessment framed under section 144 read with section 148 is not sustainable for want of notice. The AO has nowhere stated as to when the notice under section 148 was served. There is vague statement that notice dated 29.12.2009 was served by hand on the assessee. The ld. A/R has submitted that the assessee has shifted from Raipura to Chhawani after selling the agricultural land in the month of September, 2007, therefore, there is no scope of serving the notice under section 148 at the same address from where the assessee already shifted. The ld. A/R has further submitted that the subsequent notices issued under section 142(1) were also claimed to have been served on minor daughter (Anju) and minor grandson (Dinesh) who lives at the old address of Raipura where the assessee did not stay. He has referred to the birth certificates of these two children to show that they were minor at the time of alleged service. Therefore, there was no valid service of notice issued under section 148 of the IT Act. The ld. A/R then referred to the proceedings under which this Tribunal tried to resolve the issue by referring the disputed signature and the signature of wife of the assessee to Central Forensic Science Laboratory (CFSL), Chandigarh and submitted that even the report of the CFSL, Chandigarh has not proved the fact that the alleged signature on the notice under section 148 was of the wife of the assessee.

Once the AO failed to prove the service of notice under section 148 of the Act, then the subsequent assessment order is not valid and liable to be quashed. The ld. A/R has also contended that the revenue has not proved that the notices were served as per procedure laid down in section 282 of the IT Act read with Order 5 of CPC. He has relied upon the decision of Hon'ble Supreme Court in case of Y. Narayana Chetty and Another vs. ITO, 35 ITR 388 (SC) and submitted that the notice for initiating the reassessment proceedings is not mere procedural requirement but it is a condition precedent to the validity of any reassessment. If no notice issued or if the notice issued is shown to be invalid, then the proceedings taken by the assessee without a notice or in pursuance of an invalid notice would be illegal and void. He has also relied upon the following decisions :-

CIT vs. Kurban Hussain Ibrahimji Mithiborwala
82 ITR 821 (SC)

Smt. S. Nachiar vs. ITO & Others
326 ITR 77 (Mad.)

CIT vs. Chetan Gupta
382 ITR 613 (Del.)

Km. Teena Gupta vs. CIT
400 ITR 376 (All.)

Thus the ld. A/R has contended that there is no valid service of notice under section 148 on the assessee and therefore, the assessment order passed by the AO is liable to be quashed.

4. On the other hand, the ld. D/R has submitted that the assessee has disputed the service of notice whereas the ld. CIT (A) has discussed this issue by analyzing the relevant record and it was found that the notices issued under section 142(1)

were also received by the family members of the assessee. However, the assessee has not disputed the service of those notices. The assessee is non-cooperative right from the very beginning as despite various opportunities and notices issued by the AO, there was no compliance on behalf of the assessee. The assessee has challenged the service of notice to defeat the assessment proceedings and to avoid the due tax. The ld. D/R has filed the record of Despatch Register as well as copies of the notices issued by the AO which were served upon the family members of the assessee. The ld. D/R has further pointed out that the notice under section 142(1) dated 1st December, 2010 was even served upon the assessee and the assessee has not disputed the service of the same. The said notice was also served at the same address at which the other earlier notices were issued. Therefore, the entire contention of the assessee is an after-thought self serving stand.

5. We have considered the rival submissions as well as the relevant material on record. Since the assessee has disputed the service of notice dated 29.12.2009 issued under section 148 of the IT Act, therefore, we will decide first the fact whether the notice issued under section 148 of the Act was served on the assessee or not. As per department's record, the said notice was served through process server and one Pushpa Bai has received the notice on 30.12.2009. The assessee has taken a stand that there is no person in the family of the assessee by the name of Pushpa Bai. The assessee has submitted that the name of the wife of the assessee is Smt. Bhura Bai. In support of his contention, the assessee filed the Voter ID Card of Smt. Bhura Bai as well as other documents of Purchase and Sale of land on which she has signed as Bhura Bai. The assessee has also produced his wife before the Tribunal and requested for examination of her signature. The Tribunal on

23rd April, 2018 on the application of the assessee about the verification of signature, tried to take the specimen signatures of wife of the assessee. However, she has written her name as Smt. Bhura Bai and refused to write Pushpa Bai. This attitude of the lady clearly shows that she was tutored not to write 'Pushpa Bai'. In those circumstances the Tribunal after taking the said signature being Bhura Bai sent along with the disputed signature to CFSL Hyderabad then to CFSL Chandigarh. However, the said exercise was without any result. The CFSL Chandigarh returned back the documents containing specimen signatures with the remarks that the two signatures marked Exhibit A-1 and A-2 are not comparable with the writing features of the writings/signature marked. It was also pointed out that the principle of handwriting identification is 'like is compared with like' and, therefore, two signatures having different letters and not having a common letter cannot be compared. For ready reference, we reproduce the CFSL Chandigarh report dated 19th September, 2018 as under :-

> " RESULT OF EXAMINATION
>
> The documents of this case have been carefully and thoroughly examined.
>
> On perusal of the documents of this case, it is observed that writings/signature marked A1 (Exhibit-A1) and A2 (Exhibit-A2) have been supplied for comparison/Examination. It has not been possible to express any opinion regarding the authorship or otherwise on the writings/signatures marked A1 and A2, for the manifest reason that writing features of the writings/signature marked A1 are not comparable with the writing features of the writings/signature marked A2. It deserves to mention here that the principle of handwriting identification is – **'like is compared with like'.**

> Therefore, in this connection it is informed that the questioned documents (all originals) containing writings/signatures may be got encircled with pencil and marked as Q1, Q2, Q3, Q4 ..... For comparison, sufficient number of specimen writings/signatures may be got obtained from the person (s) concerned containing similar letters and their combinations as occurring in the questioned writings/signatures and encircled with pencil and marked as S1, S2, S3 .... Similarly, sufficient admitted genuine writings/signatures written in normal course of routine by the person (s) concerned on some existing documents, containing similar letters & their combinations as occurring in the questioned writings/signatures may be obtained and encircled with pencil and marked as A1, A2 A3 .... A questionnaire illustrating the details of questioned and standard (specimen/admitted) writings/signatures and specific query to the effect that which writings/signatures are to be compared with whom, may also be prepared and sent along with the documents."

Even otherwise, we find that the disputed signature and the specimen signatures have not a single alphabet/letter of vernacular in common. Therefore, these two written words cannot be compared. Accordingly, the said exercise of verification of the signature remained inconclusive due to unsuccessful attempt for getting the signature verified, we proceed on the basis of material on record. The assessee has taken a stand that after sale of the land vide Sale Deed dated 24th September, 2007 the assessee shifted from the said place. However, we find that all other notices issued by the AO under section 142(1) were served at the same place. Some of them were served through the family members of the assessee and notice dated 01.12.2010 was served on the assessee in person. For sake of completeness, we reproduce the said notice as under :-

Final Opportunity

No. ITO/Wd 2(1)/KTA/2010-11/ **Dated 01.12.2010**

To,

Shri Ram Narayan,
S/o Shri Nanda Ji,
Gram Raipura, Tehsil Ladpura, Kota.

Sir,

Sub:- Assessment Proceedings for the assessment year 2008-2009 – Regarding

_____

Kindly refer to the following notices issued u/s 142(1) & 148 of the Income Tax Act, 1961 as under:-

Sr. No.	Letter dated	Compliance
1	29.12.2009 Notice U/s 143(2)	Non-compliance
2.	13.07.2010 Notice u/s 142(1) alongwith Details	Non-compliance
3.	03.09.2010 Letter, date of hearing 18.09.2010	Non-compliance
4	11.10.2010 Letter, date of hearing 16.10.2010	Non-compliance

In response to above, you have not made compliance till date.

In this connection, your case is re-fixed on 06.12.2010. Therefore, you are requested that in this regard your reply should reach to the undersigned on 06.12.2010 alongwith the details as per letter dated 13.07.2010 otherwise your case will be decided as per provisions of section 144 of the Income Tax Act, 1961.

Yours faithfully,

(K. L. Meena)
Income Tax Officer
Ward-2(1), Kota

1.12.2010

The assessee has not disputed the receipt of the said notice dated 01.12.2010. However, there was no compliance even to the said notice by the assessee. We find that if the assessee would have complied with any of the notices issued under section 142(1) and if it would have been pointed out that there was no service of notice under section 148, then a fresh service could have been effected on the

assessee as there was no issue of limitation in the case in hand. The ld. A/R of the assessee has raised various contentions about the service of notices to the minor family members of the assessee. However, we find that those notices were served not only on one person but these were issued to various persons including one Shri Jagdish son of the assessee along with the mobile number of the said person and then it was also signed by two other persons with the particulars of relation. Therefore, the said notice dated 03.09.2010 was received by the son of the assessee and also signed by granddaughter and grandson of the assessee with their mobile numbers and the assessee has not disputed those particulars. Even if the notices were received by the minor family members of the assessee and if the same were brought to the knowledge of the assessee, it will be a proper service. Only when the notice received by the minor and not brought to the knowledge of the assessee then the same will not be treated as proper service. There is no quarrel on the point that the issuance of notice under section 148 and valid service of the same on the assessee is a mandatory pre condition for reassessment made under section 147 of the Act. The AO has given the details of various notices issued to the assessee at page 2 of the impugned order as under :-

Sr. No.	Notice/Letter dated	Mode of service	Compliance
1.	29.12.2009 Notice u/s 148	By hand	Non-compliance
2.	13.07.2010 Notice u/s 142(1)	By hand to Anju (Grand daughter)	Non-compliance
3.	03.09.2010	By hand to Dinesh (Grand son)	Non-compliance
4.	11.10.2010	By hand to Dinesh (Grand son)	Non-compliance

5.1. Apart from these details, the final notice dated 01.12.2010 was served on the assessee in person. Thus it is clear that despite all these notices, the assessee deliberately did not attend the proceedings before the AO and subsequently challenged the assessment order. It is strange to note that the assessee has disputed the service of notice issued by the AO whereas service of the assessment order passed by the AO was not disputed by the assessee and immediately challenged the same before the ld. CIT (A). This conduct of the assessee clearly established that the assessee was deliberately avoiding the proceedings before the AO. The ld. CIT (A) has also referred to the notice dated 10.12.2010 which is made annexure to the impugned order wherein notice was received by one Manju, granddaughter and thumb impression of the wife of the assessee is put on the notice, the particulars of the 'wife' are written as Bhura Bai alias Pushpa Bai. Service of this notice is not disputed by the assessee. Therefore, all these facts clearly established that the assessee was having knowledge of all the notices issued by the AO but chosen not to participate in the proceedings before the AO and thereafter challenged the very service of the notice issued under section 148 of the IT Act. The ld. CIT (A) has decided this issue in para 4.12 as under :-

> *" 4.12. <u>Ground No.1:</u>*
>
> *The assessee challenged reopening of the assessment u/s 148 on the ground that no notice u/s 148 was served on the assessee. The assessee submitted an affidavit from assessee that no notice was served on him.*
>
> *I have gone through the assessment record and it wa seen that notice u/s 148 was served on one "Pushpa Bai". The assessee contended that there is no person by the name of Pushpa Bai in his family.*

The AO was asked to comment on the same and the AO submitted that he had enquired from Shri Kalu Ram (son of assessee) and gathered that Smt. Pushpa Bai is wife of assessee and notice was rightly served upon the family member of assessee.

In rebuttal, the assessee submitted that there is no person by the name of Shri Kalu Ram in the family of assessee, the name of assessee's son is Kalu Lal. It was also submitted that assessee's wife's name is Smt. Bhura Bai and there is no material on record to prove that assessee's wife is Smt. Pushpa Bai.

The A/R of the assessee was asked to produce the assessee so that he may be examined to find the truth, however, the A/R submitted that assessee is confined to bed and therefore, he cannot attend the proceeding. The assessee submitted that this happened because of brain hemorrhage in the month of January, 2012, however, before loosing his senses prior to brain attack, it was told by the appellant that no notice u/s 148 was served upon him.

I have gone through the case record and it was seen that one letter dated 10.12.2010 was served upon assessee's wife and alongwith his thumb impression it was written (wife) Bhura Bai alias Pushpa Bai, this letter is placed as Annexure-A to this order.

In view of the above, it is held that Smt. Bhura Bai & Smt. Pushpa Bai are one and the same person and assessee has taken a false plea with a view to obtain a wrong decision. It is also held that notice was rightly served on the wife of assessee (Smt. Bhura Bai alias Smt. Pushpa Bai). Subsequent notices u/s 142(1) were also received by other family members of the assessee.

Now the question arises whether service of notice on wife of assessee can be treated as proper service or not.

Service of notice is to be made as per section 282 of the I.T. Act. Section 282 provides that personal service of notice is to be made in a manner provided under the code of Civil Procedure, 1908. Sub-rule 15 of code of Civil Procedure, related to service of notice provides as under :-

> *" Where in any suit, the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him."*

From the above, it can be concluded that assessee was not available on the given address and that he had not appointed any agent for receiving notices and that there was no likelihood of his being found at the residence within a reasonable time. Therefore, service of notice on the wife of assessee has to be treated as proper service of notice.

This ground of appeal is therefore, dismissed.

Ground No. 1.1.

I have gone through the records and it was seen that assessee was given sufficient opportunity. Last opportunity was given vide letter dated 10.12.2010 (Annexure-A to this order) which was served on wife of assessee and his grand daughter.

This ground of appeal is therefore dismissed."

5.2. In view of the above facts and circumstances as discussed, we find that the contention of the assessee is contrary to the record and further once the AO has issued a notice under section 148 dated 29.12.2009 which is also established from the Despatch Register filed before us, then the dispute of the service of the same will not render the assessment proceedings null and void. The notice under section 148 was duly issued by the AO and it was also attempted to serve on the assessee at the given address. The address is not disputed though the assessee has claimed to have shifted from the said address. However, all subsequent notices issued by the AO even one dated 01.12.2010 was received by the assessee in person issued at the same address, then the notice issued at the correct address with the report of the process server in the light of the subsequent notice issued at the same address received by the assessee would be deemed to be a proper service of the notice issued under section 148 of the Act. Accordingly, we do not find any error or irregularity in the impugned order of the ld. CIT (A) qua this issue.

Ground No. 4 & 5 are regarding denial of exemption under section 54F and 54B of the Act.

6. Though there was no return of income filed by the assessee and also there is no appearance before the AO, however, the assessee made a claim of deduction under section 54F and 54B of the Act before the ld. CIT (A). The ld. CIT (A) called for a remand report from the AO and found that the assessee has failed to produce any documentary evidence to show that the investment was made for purchase of agricultural land and construction of house. Only some unregistered agreements were produced by the assessee wherein the payment in cash was claimed.

7. Before us, the ld. A/R of the assessee has submitted that the claim of deduction under section 54F was denied on the ground that the assessee has purchased the agricultural land of Rs. 1,50,000/- in the name of wife. Further, the assessee has also purchased agricultural land of Rs. 40,00,100/- and a house in the name of wife for Rs. 7,20,000/- and claimed deduction under section 54B and 54F of the IT Act. Thus the ld. A/R has submitted that once the assessee has produced the documents through which the assessee has made the investment then the claim of deduction under section 54B and 54F cannot be denied merely on the ground that the investment was made in the name of wife. In support of his contention he has relied upon the decision of Hon'ble Jurisdictional High Court dated 07.11.2017 in case of Laxmi Narayan and Others vs. CIT in DB IT Appeal Nos. 20/2016, 118/2017, 136/2017. The ld. A/R of the assessee has also relied upon the decision of Hon'ble Supreme Court in case of Sanjeev Lal and Another vs. CIT, 365 ITR 389 (SC) in support of the contention that the transfer through agreement to sale was treated as

transfer in terms of section 2(47) of the IT Act. He has also relied upon the decision in case of CIT vs. Rajasthan Mirror Manufacturing Co. 260 ITR 503 (Raj.).

8. On the other hand, the ld. D/R has submitted that the assessee has not produced any title document regarding acquiring the new asset even in the name of wife. The assessee has produced unregistered agreement to sale and claimed that the payment was made in cash. He has relied upon the order of the ld. CIT (A).

9. We have considered the rival submissions as well as the relevant material on record. The assessee claimed to have purchased land on 23rd September, 2009 through an agreement to sale. There is no dispute that the alleged agreement to sale is unregistered and the payment is also claimed to have been made in cash. The assessee has not produced any other document to show that the assessee has acquired the ownership title in land in question. We find that if an agricultural land is purchased by the assessee from the sale proceeds of the existing land, then even if the said land is purchased in the name of the wife, the claim of deduction under section 54B is allowable. However, in the case in hand, despite the expiry of about 10 years from the alleged agreement to sale the assessee has admitted that no sale deed has been executed till date. Though the agreement to sale which has finally culminated in sale deed is relevant only for the purpose of the date of investment, but the alleged agreement to sale itself is not a title document transferring the ownership of land. Therefore, in the absence of subsequent sale deed, the claim of deduction under section 54B and 54F cannot be allowed based on such unregistered agreement to sale. The assessee has failed to prove that he has acquired the new asset within the prescribed period after the sale of the existing asset. Further the purchase of agricultural land through agreement to sale dated 23rd September, 2009

clearly shows that the assessee has managed that agreement only a day before the expiry of the period. However, when there is no subsequent sale deed, then the unregistered agreement will not transfer any title to the assessee of the agricultural land. Accordingly we do not find any merit or substance in the claim of deduction under section 54B and 54F of the IT Act. The decisions relied upon by the assessee are not directly on the point and further after the amendment in the Transfer of Property Act as well as Registration Act with effect from 2001, the registration is a mandatory condition for applicability of section 53A of Transfer of Property Act. Accordingly the decisions relied upon by the ld. A/R will not help the case of the assessee when there is no title document transferring the ownership.

Ground No. 6 is regarding applicability of section 50C of the IT Act.

10. Since the deduction itself is not allowable, therefore, this ground of the assessee's appeal becomes infructuous.

11. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 28/06/2019.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल रॉव)
(VIKRAM SINGH YADAV)	(VIJAY PAL RAO)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

Jaipur
Dated:- 28/06/2019.
Das/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant-Shri Ram Narayan, Kota.
2. The Respondent – The ITO Ward 2(1), Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 428/JP/2014)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar