

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER, AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1184/DEL/2017
[A.Y 2009-10]**

The I.T.O
Ward 38(5)
New Delhi

Vs.

Ajay Raj
L/H Raj Kumar Gaur
M/s S.B. Garg & Co.
20/17, Shakti Nagar
Delhi

PAN No: AAGPG 2726 M

**ITA No. 56/DEL/2017
[A.Y 2009-10]
&
CO No. 07/DEL/2019
[A/o ITA No. 1184/DEL/2017]
[A.Y 2009-10]**

Raj Kumar Gaur
Through L/H Ajay Raj
M/s S.B. Garg & Co.
20/17, Shakti Nagar
Delhi

Vs.

The I.T.O
Ward 38(5)
New Delhi

PAN No: AAGPG 2726 M

[Appellant]

[Respondent]

**Date of Hearing : 12.06.2019
Date of Pronouncement : 18.06.2019**

Assessee by : Shri S.B. Garg, C.A
Shri Sachin Kumar, CA

Revenue by : Shri P.V. Gupta, Sr. DR.

ORDER

PER BENCH:-

The above captioned cross appeals filed by the Revenue and the assessee are preferred against the order of the CIT(A) - 13, New Delhi pertaining to A.Y 2009-10. The assessee has also filed cross objection in ITA No. 1184/DEL/2017. Since both the appeals and cross objection pertain to same assessee and were heard together involving common issues, these are being disposed off by this common order for the sake of convenience and brevity.

2. Briefly stated, the facts of the case are that the assessee filed his return of income disclosing total income at Rs. 1,53,300/- and agricultural income of Rs. 2,60,000/-. The return was selected for scrutiny under CASS guidelines and during the course of assessment proceedings, the assessee was asked to explain the funds deposited in the four bank accounts operated by the assessee but since no explanation was forthcoming, the Assessing Officer treated the peak

credits in the bank accounts as unexplained and made addition of Rs. 1,42,45,849/-. Assessment was completed at an income of Rs. 14,99,150/-.

3. Aggrieved, the assessee approached, the first appellate authority and challenged the addition on merits. The assessee has also raised objections to the assessment proceedings by raising a ground that the statutory notice u/s 143(2) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] was not served on the assessee.

4. The ld. CIT(A) allowed partial relief to the assessee on merits.

5. Now aggrieved with the order of the ld. CIT(A), both the assessee and the revenue are in appeal and the assessee has also filed cross objections.

6. At the very outset, the ld. counsel for the assessee submitted that assessment framed u/s 144 r.w.s 143(3) of the Act was null and void ab initio because no notice u/s 143(2) of the Act was served on the assessee.

7. The ld. counsel for the assessee submitted that notice u/s 143(2) of the Act was issued on 30.08.2010 was addressed at “85, Kumharon Wali Gali, Village Khampur, Delhi” which was not served on the assessee whereas the correct address is “C-83, Village Khampur, Delhi”. He drew our attention to the said notice which was available at page 77 of the paper book filed by the assessee. He also drew our attention to the correct address of the assessee which was mentioned in the assessee’s return of income for assessment year under consideration and the assessment years 2005-06, to 2008–09 available at pages 71 and 92 to 95 of the assessee’s paper book. He also drew our attention to the impugned assessment order wherein correct address has been mentioned. It was submitted that notice was issued at the wrong address and, therefore, could not be served upon the assessee and, hence the assessment proceedings, without service of statutory notices were void ab initio. It was submitted that the assessment framed was liable to be quashed.

8. The ld. counsel for the assessee placed reliance on the judgment of the Hon'ble Delhi Court in the case of CIT Vs. Eqbal Singh Sindhana [2008] 304 ITR 177 [DEL] wherein the Hon'ble Delhi High Court had held that where no notice u/s 143(2) has been served upon the assessee

within the prescribed period, assessment made by the Assessing Officer was invalid. The ld. counsel for the assessee also relied on a catena of decisions in which the Hon'ble High Courts as well as the co-ordinate benches of ITAT have held that the assessment proceedings completed without service of notice u/s 143(2) of the Act could not be considered as valid assessment proceedings.

9. Per contra, the ld. Sr. DR filed written submissions which have been placed on record. Placing reliance on the orders of the authorities below, the ld. DR vehemently argued that assessment was valid and since the assessee had cooperated in the assessment proceedings, service of notice no longer remain a valid objection.

10. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below and have considered the relevant material brought on record. It is seen that notice u/s 143(2) of the Act was issued to the address at "85, Kumharon Wali Gali, Village Khampur, Delhi" which was not served on the assessee whereas the correct address is "C-83, Village Khampur, Delhi". As per the assessment records, i.e. return of income filed by the assessee as well as assessment order, address of the assessee is "C-

83, Village Khampur, Delhi”. Subsequent notices dated 28.01.2011, 19.07.2011, 01.12.2011 as well as Questionnaire dated 19.07.2011 have been issued at the address “C-83, Village Khampur, Delhi”. Thus, it is an undisputed fact that notice u/s 143(2) of the Act was issued at the wrong address and, therefore, it can be safely concluded that the same could not have been served upon the assessee at all.

11. The Hon'ble Delhi High Court has on numeric occasions held that notice issued at a wrong address cannot be said to be a valid service of notice.

12. Rule 127 of the IT Rules prescribes the mode of service of notice, summons, requisitions and other communications. As per Rule 127(2), the address on which the communications are to be delivered or transmitted would be:

- (i) The address on which the communications are to be delivered or transmitted;
- (ii) The address available in the PAN Data base of the assessee;
- (iii) Address available in the last Income tax return furnished by the assessee, and

- (iv) In the case of addressee being a company address of registered office as available on the website of the corporate affairs.

13. Undisputedly, in the case before us, the address which has been mentioned in the notice u/s 143(2) of the Act is none of the addresses as provided in Rule 27(2) and, therefore, it can be safely concluded that service was not proper in terms of Rule 127 of the I.T. Rules.

14. Since in the instant case the notice u/s 143(2) was not served, the consequent assessment made on the basis of such invalid notices cannot be treated as valid assessment and, therefore, assessment order deserves to be treated as null and void and is liable to be quashed and annulled. We order accordingly. Thus, Ground No. 1 in assessee's appeal in ITA No. 56/DEL/2017 stands allowed.

15. Other grounds in assessee's appeal become infructuous and are not being adjudicated. Since in the assessee's appeal we have already quashed the assessment proceedings, the departmental appeal in ITA No. 1184/DEL/2017 also becomes infructuous and is dismissed as such. The assessee's cross objection in CO No. 07/DEL/2017 also becomes infructuous and is dismissed as such.

16. In the result, the appeal filed by the assessee is allowed whereas the appeal of the revenue as well as the cross objection of the assessee stand dismissed.

The order is pronounced in the open court on 18.06.2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Dated: 18th June, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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