IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA NO. 1431/DEL/2012

(A.Y. 2007-08)

SHUBHANI ENGINEERING & CONSULTANTS PVT. LTD. WB-12B, GALI NO. 1, SCHOOL BLOCK SHAKARPUR, DELHI – 110 092	VS.	ITO, WARD 8(3), NEW DELHI

Assessee By	Sh. Vivek Bansal, Adv. & Ms. Ashisha Mittal, CA
Revenue By	Ms. Ashima Neb, Sr. DR

ORDER

PER H.S. SIDHU, JM

Assessee has filed this appeal against the impugned order dated 16.8.2010 passed by Ld. CIT(A)-XI, New Delhi on the following grounds:-

1. That on the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in holding that assumption of the jurisdiction of AO u/s. 143(3)/144 was correct simply following the order of his predecessor for AY 2005-06.

2. That on the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in holding the net profit @5% of the declared turnover as agaisnt the declared results imply following the order of his predecessor for the AY 2005-06.
3. That on the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in holding the amount of Rs. 6,53,00,957/- as undisclosed turnover and further erred in holding the net profit @5% of the alleged undisclosed turnover simply following the order of the predecessor for the AY 2005-06.
4. That the appellant craves liberty to add, alter, vary or amend any ground of appeal.

2. The brief facts of the case are that the Assessee Company was incorporated on 21.3.1990 and was engaged in the business of providing engineering consultancy and contract work. Assessee filed its return of income on 30.10.2017 declaring income of Rs. 36,895/-. The AO issued notices u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") and u/s. 142(1) of the Act and served unto the assessee. In response to the same, the AR of the Assessee has not accepted the contention of the Assessee and held that the assessee was not in a position to rebuild the books of accounts and requested that the best judgement u/s. 144 of the Act may be resorted to. The AO has also given the notice to the assessee asking why the best judgment assessment u/s. 144 of the Act should be not be completed by presuming 5% of the total turnover. In response to

the same, Assessee contended that the return of income of the assessee be accepted and the presumption of net profit @5% is unjustified and is on higher side. After considering the reply filed by the assessee the AO completed the assessment on the total income of Rs. 68,78,240/- by making the addition under the head declared turnover of Rs. 36,12,192/- and un-disclosed turnover @5% of the turnover of Rs. 32,65,048/- vide his order dated 18.12.2009 passed u/s. 143(3) of the I.T. Act, 1961. Against the action of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 16.8.2010 has dismissed the appeal of the assessee by upholding the action of the AO. Aggrieved with the impugned order dated 16.8.2010, assessee is in appeal before us.

3. At the time of hearing, Ld. Counsel for the assessee has stated that AO has served the notice u/s. 143(2) of the Act after the expiry of the limitation period. He further stated that the assessment was completed without demonstrating/ providing the service of the notice u/s. 143(2) of the Act and even without providing an opportunity of inspection of the assessment record. Ld. Counsel for the Assessee further submitted that the service of the first notice u/s. 143(2) of the Act dated 16.9.2018 of hearing dated 22.9.2018 which was earlier sent by speed post and returned undelivered and is claimed to be served by affixture on 24.9.2008 at E-82, Mayur Vihar, Phase-II, Delhi – 110 091 is an invalid service as the company as per its return of income specified its address as 311 D-5, Avadh Complex, Laxmi Nagar, Delhi – 110 092, which is attached with the Paper Book Page 1, 8, 9. He further submitted that

service of the second notice dated 24.9.2008 of hearing dated 30.9.2008 is claimed to be served at WB-12-B, Gali No. 1, School Block, Shakar Pur, Delhi – 110 092, a copy of which is attached with Paper Book page no. 10-11. The address as admitted by the AO was based on the address provided by the assessee in the power of attorney filled for the AY 2006-07, copy thereof is at page no. 22 of Paper Book. It was further submitted that this is claimed that the notice was sent through the process server and as the company was not found at the given address the notice was ultimately served by affixture on 25.9.2008. It was further submitted that the claim is prima facie incorrect as the address 'WB-12B, Gali No. 1, School Block, Shakarpur, Delhi – 110 092' was communicated by the assessee on 10.11.2008 and copy of letter dated 10.11.2008 and order sheet of the assessment record for the AY 2006-07 evidencing that the Power of Attorney was submitted on 20.11.2008 which is attached with Paper Book at page no. 26-27. It was further submitted that, all the communications addressed to the company, including service of notices from CIT(A) office are regularly served upon the company at this very address. In view of this conclusive evidences the service of notice dated 24.9.2009 which is claimed to be served on 25.9.2008 when address when the address itself was furnished on 10.11.2008 prima facie appears to be is a concocted piece of evidence which can be relied upon. It was further submitted that the service of the third notice dated 25.9.2008 of hearing dated 29.9.2018 which is claimed to be served by affixture on 25.9.2008 at 311, D-5, Avadh

Complex Laxmi Nagar, Delhi – 110 092 (ITR address) is also unreliable piece of evidence for the reason that once the service of the second notice dated 24.9.2008 was completed by affixture on 25.9.2008 at the address WB-12B, Gali No. 1, School Block, Shakar Pur, Delhi – 110 092' provided by the assessee, what was the reason for issuing another notice on 25.9.2008 and making another service on 25.9.2008. There is another question mark as to why the AO has not provided copy of the affixture report and the notice dated 25.9.2008 in his report. In view of above, Ld. Counsel for the assessee has submitted that none of the three notice claimed to be served within the limitation were served upon the assessee and the appeal of the assessee company deserves to be succeed on this ground. He further submitted that local witness ought to be associated to identify the address of the affixture, no such steps had been taken by the AO. It was submitted that Ld. CIT(A) had not taken the cognizance of the point highlighted by the AR that on the address given affixture claimed on 25.9.2008 is actually given on 10.11.2008. Under the facts and circumstances it cannot be possible to move on the address by affixture which was not otherwise available with the department before hand i.e. on 24.9.2008. In addition of this the need of affixture of third notice on 25.9.2008 on the other address for the hearing dated 29.10.2008 (different date). He further submitted that on the similar ground the ITAT, G Bench in ITA No. 2018/Del/2009 AY 2005-06, in ITA No. 2805 & 3165/Del/2009 the appeal of the assessee has been allowed and that of the Revenue was dismissed, copy of the same placed at Page

no. 38-53 of the Paper Book. In view of above, Ld. Counsel for the assessee stated that the jurisdiction to pass the order u/s. 143(3) of the Act vitiated as the assessment was completed without service of the statutory notice issued u/s. 143(2) of the At within the limitation period and ground no. 1 deserves to succeed and may kindly quash the assessment order. He relied upon the following cases:-

i) Hon'ble Punjab and Haryana High Court decision in the case of CIT vs. Kishand Chand reported in 328 ITR 173.

ii) ITAT, Delhi decision in the case of Ess Aar Exports vs. ITO reported in 94 ITD 484.

iii) CIT vs. Chandra Agencies (Delhi) 202 Taxman 106.

iv) CIT vs. Ramendra Nath Ghosh (SC).

v) ACIT vs. Hotel Blue Moon (SC) 324 ITR 372 (2010).

vi) ITAT, Delhi decision in Mico Steels (P) Ltd. Vs. ITO in ITA No. 1669/Del/2014 dated 30.8.2016.

vii) ITAT, Amritsar Bench decision dated 21.5.2009 in the case of DCIT vs. KG Siknghania.

4. On the contrary, Ld. DR opposed the arguments advanced by the Ld. Counsel for the assessee and stated that AO has served the assessee according to law and stated that the case law cited by the Ld. Counsel for

the Assessee are not applicable in the case of the assessee. Therefore, he requested that the appeal of the assessee may be dismissed.

5. We have heard both the parties and perused the records especially the orders passed by the revenue authorities alongwith the arguments advanced by both the parties and the case laws cited before us and the Paper Book filed by the Assessee. We find considerable cogency in the contention of the Ld. Counsel of the assessee that the assessment was completed without service of statutory notice issued u/s. 143(2) of the At within the limitation period because the first notice u/s. 143(2) of the Act dated 16.9.2018 of hearing dated 22.9.2018 which was earlier sent by speed post and returned undelivered and is claimed to be served by affixture on 24.9.2008 at E-82, Mayur Vihar, Phase-II, Delhi – 110 091 is an invalid service as the company as per its return of income specified its address as 311 D-5, Avadh Complex, Laxmi Nagar, Delhi – 110 092; because the service of the second notice dated 24.9.2008 of hearing dated 30.9.2008 is claimed to be served at WB-12-B, Gali No. 1, School Block, Shakar Pur, Delhi – 110 092. However, the address as admitted by the AO was based on the address provided by the assessee in the power of attorney filed for the AY 2006-07; because it was claimed that the notice was sent through the process server and as the company was not found at the given address the notice was ultimately served by affixture on 25.9.2008. However, this claim is prima facie incorrect as the address 'WB-12B, Gali No. 1, School Block, Shakarpur, Delhi – 110 092' was communicated by the assessee on 10.11.2008 and copy of letter

dated 10.11.2008 and order sheet of the assessment record for the AY 2006-07 evidencing that the Power of Attorney was submitted on 20.11.2008, which is at Paper Book at page no. 26-27. It is noted that all the communications addressed to the company, including service of notices from CIT(A) office are regularly served upon the company at this very address. In view of this conclusive evidences the service of notice dated 24.9.2009 which is claimed to be served on 25.9.2008 when address itself was furnished on 10.11.2008 prima facie appears to be not genuine. However, the service of the third notice dated 25.9.2008 of hearing dated 29.9.2018 which is claimed to be served by affixture on 25.9.2008 at 311, D-5, Avadh Complex Laxmi Nagar, Delhi – 110 092 (ITR address) is also not relevant for the reason that once the service of the second notice dated 24.9.2008 was completed by affixture on 25.9.2008 at the address WB-12B, Gali No. 1, School Block, Shakar Pur, Delhi – 110 092' provided by the assessee, what was the reason for issuing another notice on 25.9.2008 and making another service on 25.9.2008. It is also noted that AO has not provided copy of the affixture report and the notice dated 25.9.2008. Keeping in view of the above discussions, it is established that none of the three notice claimed to be served within the limitation were served upon the assessee and the appeal of the assessee company deserves to be succeed on this ground and accordingly, the additions in dispute are deleted. Our aforesaid view is fortified by the following decisions:-

i) Hon'ble Punjab and Haryana High Court decision in the case of CIT vs. Kishand Chand reported in 328 ITR 173 wherein it was held that "the revenue was unable to show that there was any refusal of the assessee to accept service. On the other hand, the Tribunal had categorically held that no other mode was adopted and steps for service of notice were taken about a week before the time was expiring. In view of the finding of the Tribunal, there was no proper service.

ii) ITAT, Delhi decision in the case of Ess Aar Exports vs. ITO reported in 94 ITD 484 wherein it has been held that while affecting the service through affixture, local witness ought to have been associated in order to identify the address of affixture.

iii) CIT vs. Chandra Agencies (Delhi) 202 Taxman 106 wherein it has been held that the service of notice through affixture was not proper when the correct address was available with the AO.

iv) CIT vs. Ramendra Nath Ghosh (SC) (1971) 82 ITR 888 (SC) wherein the Hon'ble Supreme Court of India has held that service of notice must be in accordance of law. Otherwise assessee could not be said to have given proper opportunity to put forward the case.

v) ACIT vs. Hotel Blue Moon (SC) 324 ITR 372 (2010) wherein it has been held that it is mandatory to issue notice u/s. 143(2).

vi) ITAT, Delhi decision in Mico Steels (P) Ltd. Vs. ITO in ITA No. 1669/Del/2014 dated 30.8.2016. The Tribunal has held as under:-

> 7. We have heard both the parties and perused the relevant records available with us. We find that Ld. CIT(A) has adjudicated the issue as under:-
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> *"4.6 I have examined the affidavit filed by Sh. Prem Chabbra, director of the appellant company. The affidavit does not speak as to what was the address of the appellant company & how and in what manner the notices served by AO through affixture were not received by assessee. The affidavit filed shows that the Director only contended that notices dated 16.9.2002 and 28.10.2002 were never affixed at the business premises.*
>
> *4.6.1 In the present case appellant company filled return of income on 31-10-2001 & therefore, the statutory notices u/s 143(2) was required to be served by AO within 12 months from the end of the month in which the return was filled. Therefore, the AO was required to serve*

the notice u/s 143(2) on or -before 31-10-2002. The first notice sent by AO dated 16-09-2002 was received back unserved. Therefore, the AO served another notice u/s 143(2) through affixture on 26-09-2002 and also on 28-10-2002 to which no compliance was made by the assessee company. It has no where been denied by the assessee company that the address on which the notice served through affixture by AO was not the address of the assessee company which proves that notices were duly served on assessee company and assessee company intentionally did not comply to the notices issued by the then AO which were serve through affixture, and as such the AO was compelled to pass an ex-parte order uls. 144 of the Income Tax Act. The appellant never stated that the address to which original notice was sent by registered post is a wrong address. It might have come back unserved for several reasons. It may be due to assessee or due to fault of the Postal department. Thus, notice sent by registered 'post to the last known address is valid even if it has come back unserved. The appellant might have refused to receive it.

4.6.2 I have also examined the order sheet of AO dated 24-12-2009 which clearly

stipulates that the notices u/s 143(2)(ii) have been validly served to the assessee within the stipulated time limit for the previous year under consideration. I have also examined the services made through affixture for notices u/s 143(2)(ii) for service of notice dated 16-09-2002 served through affixture on 26-09-2002 & notice dated 28-10-2002 served through affixture on 28-10-2002. These notices have been served through affixture at address G-4A, Gupta Apartments, 138, Kalkaji New Delhi-19, and these. have duly been served through process server. Service of these notices have duly been confirmed by the Inspector of the ward and the service through affixture if has also been duly validated by the then AO. Therefore, I do not find that there was any default in service of notice u/s 143(2)(ii) by the AO which was validly served on the assessee.

4.6.3 It is also observed that similar ground was raised by the appellant in appeal filled before my predecessor which was disposed by him vide order dated 21-10-2004 observing as under:

"5.4 I have considered the submission of the Appellant and have perused the assessment record. I find the submissions of the Appellant are devoid of merits. The Income Tax Officer

sent the notice by registered post, which is a permissible mode of service. The Appellant has not denied the fact of dispatch of notice by registered post; rather the Appellant has accepted this fact. The Income Tax Officer, through not required, served the notice by affixture non only once but twice. I, therefore, reject this ground of appeal. "

4.6.4 After considering the averments made by the AO in the assessment order, Submission made by the appellant, remand report of the AO & rejoinder filed by the appellant and after examining the notices served through affixture, I do not find any substance in the submissions made by the appellant, as these notices have been found duly served through affixture which were within the statutory period of limitation and therefore, the assessment was rightly completed by the AO, which are found in accordance with law.

The issue of notice and the jurisdiction are only procedural lapses that should not hamper the applicability of other sections of the Act leading to actual taxability. The Hon'ble ITAT in the case of City Garden vs. ITO (2012) 21 Taxman.com 373 (Jodh) held that,

"Any grievance in relation to the jurisdiction of the AO proceeding to assess any person, is not appellable and, in fact not justiciable, being only a defect of procedure not invalidating the end action; the Act not treating the allocation of functions to various

authorities as one of the substance but as one of procedure."

Even if the appellant did not received the first notice, the appellant got ample opportunities to explain the disallowances.

In view of these observations, this ground of appeal is dismissed."

7.1 For the sake of clarity, we are reproducing hereunder the Section 282 of the I.T. Act, 1961:-

*[**Service of notice generally.***

***282.** (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—*

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

7.2 We further reproduce herebelow the Order V Rule 17 of the CPC:

17. Procedure when defendant refuses to accept service, or cannot be found.- *Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service 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 there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides*

or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the copy was affixed.

7.3 We further reproduce herebelow the Order V Rule 20 of the CPC:

20. Substituted service.- (1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.

(1A) Where the court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to

have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service—Service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed—Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

7.4 After carefully perusing the assessment order, finding of the Ld. CIT(A) as aforesaid, grounds of appeal raised by the Assessee, Section 282 of the I.T. Act, 1961, Order V Rule 17 CPC and Order V Rule 20 CPC, we find that in this case no notice u/s. 143(2) of the Income Tax Act, 1961 was served upon the assessee within the time permitted by proviso to section 143(2) of the Act and secondly the notice u/s. 143(2) of the I.T. Act is not addressed to the "the principal Officer" as required by section 282 of the Act. In this case the return for AY 2001-02 was filed on 31.10.2001 and the period of limitation for service of notice u/s 143(2) expired on 31.10.2002, hence, such notice had to be mandatorily served by 31.10.2002; however, admittedly, the first notice was issued on 16.09.2002; the said notice was sent

by Regd. Post and admittedly the same returned back unserved on 21.9.2002 without any postal remark. According to A.O., another notice was issued and served through Process Server and Inspector on 26.9.2002; but there is no entry in the order sheet to this effect. According to A.O., another notice was issued and served through process server and inspector on 28.10.2002; but there is no entry in the order sheet to this effect also; the next notice was dated 7.7.2003 which is beyond statutory period. In view of the above discussions, we are of the considered view that Revenue has failed to establish that it has followed the procedure as laid down under Section 282 of the Income Tax Act, 1961; under order V Rule 17 & 20 of the CPC, hence, the Service of Notice is illegal and void ab inito. Our view is fully supported by the following judgments:-

a) **CIT vs. Ramendra Nath Ghosh 82 ITR 888 SC - the Hon'ble Supreme Court held as under:-**

"The contention of the assesses was that at the relevant time they had no place of business. The report of the serving office did not mention the names and addresses of the person who identified the place of business of the assesses. That officer did

not mention in his report nor in the affidavit filed by him that he personally knew the place of business of the assessee. Hence, the service of notice must be held to be not in accordance with the law. The possibility of his having gone to a wrong place could not be ruled out. Hence, it was not possible to hold that the assesses had been given a proper opportunity to put forward their case as required by section 33 B.

The question whether the assessee had been served in accordance with law or not was essentially a question of fact. The Act provides for an appeal against the order under section 33B. Normally, the assessee should have gone up in appeal against the order under section 33B. They should not have been allowed to invoke the extraordinary jurisdiction of the High Court. It could not be said that the High Court had no jurisdiction to entertain the writ petitions though it should not have exercised its discretion in favour of the assessee in view of the adequate alternative remedy they had. - *(Note: the case was decided in favour of assessee)*

b) **Hon'ble Punjab and Haryana High Court in the case of CIT vs. Naveen Chander reported in [2010] 323 ITR 49 (P&H)** has dealt with similar and identical issue and hence, by referring the Order V, Rule 20 of the Code of Civil Procedure decided the Appeal in favour of the assessee. The relevant portion of the judgment is as under:-

"2. The basic controversy raised is as to whether the assessee-respondent was served under section

158BD of the Act at his last known address on July 23, 2001, by way of affixture. The Tribunal considered the aforesaid issue as a "fundamental" controversy because it was necessary to establish that such a notice was served to confer jurisdiction. The Tribunal placed reliance on the provisions of Order V, rule 17 of the Code of Civil. Procedure, 1908 (for brevity "the Code") and has concluded on principle that where notice of service is claimed to have been served by affixation under Order V, rules 17, 18 and 19 of the Code then it becomes necessary to examine whether such service has been made in accordance with the procedure, as it is mandatory. The first requirement is to ensure that the place is properly identified and, secondly, the report is authenticated by independent persons to avoid any attempt by the process server to prepare the report sitting in his office. The Tribunal has referred to the report dated July 23, 2001, issued by the process server. According to the report of the Inspector/notice server dated July 23, 2001, the notice was affixed on the main door of shop No. 33, Anajmandi, Mullanpur. There was no evidence of any local person having been associated with in identifying the place of business of the assessee-respondent and the report is not witnessed by any person at all. It has been found to be flagrant violation of rule 17 of Order V of the Code which lays down a procedure to serve notice by affixture. The conclusion is recorded in paragraphs 13 and 14 of the order which reads thus:

"13. So, however, in the report of the inspector/notice server, who claimed to have affixed the notice, there

is no evidence of any independent local person having been associated with the identification of the place of business of the assessee. in fact such report is not witnessed by any person at all. Evidently, it is in clear violation of the mandate of rule 17 of Order V of the Civil Procedure Code, which lays down the procedure to serve notice by affixture. It mandates that the serving officer shall affix the notice on the outer door or some other conspicuous part of the house in which the person ordinarily resides or carries on business or personally works for gain and shall thereafter report that he has so affixed the copy, the circumstances under which he did so and, the name and address of the person by whom the house was identified and in whose presence the copy was affixed. The impugned report of the Inspector/notice server is bereft of any such lawful requirements enshrined in the Code of Civil Procedure. in fact it would not be out of place to observe that there is no assertion even by the inspector/notice server that they had personally checked the business place of the assessee and were in a position to identify the same. For all the above reasons, an inference which cannot escape, is that there has been no valid service of notice issued under section 158BD upon the assessee.

14. Before concluding, we observe that having regard to the report of the inspector/notice server dated March 27, 2001, the requirements of the Code of Civil Procedure have not been fulfilled and, therefore, in view of the aforesaid discussion and the case law referred to, we are of the view that there has been no

valid service of notice issued under section 158BO on the assessee. Since there has been no proper service of notice on the assessee, it has to be held that the impugned assessment proceedings resulting in the order dated June 27, 2003, are bad in law. The same is hereby set aside. The Assessing Officer can issue afresh notice, if so authorized under the law."

3. It is thus obvious that finding with regard to service of notice to confer jurisdiction is absent.

4. The only argument raised by Mr. Yivek Sethi, learned counsel for the Revenue-appellant is that there are signatures of the assessee in the order sheet entry dated May 19, 2003, which acknowledges the fact that he had duly noted the notice under section 158BO of the Act. However, on close scrutiny, we find that the claim made by the Revenue in the grounds of appeal and in the questions of law that there is order sheet entry dated May 19, 2003, showing that the assessee had noted the factum of notice under section 158BD of the Act is without any substance. The Tribunal had taken the view that registered AD letter was received back unserved and thereafter service was sought to be effected affixation which was required to be done in accordance with the procedure laid down by Order V, rule 20 of the Code. These are necessarily findings of fact coupled with the finding on law that requirement of Order V, rule 20 of the Code were not complied with. Therefore, we find that no question of law much less a substantive question of law would arise for

determination of this court. Accordingly, the appeal fails and the same is dismissed."

7.5 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we cancel the orders of the authorities below and allow the Appeal of the Assessee.

8. In the result, the Appeal filed by the Assessee stands allowed.

6. In the result, the Appeal of the Assessee is allowed.

Order pronounced on this 9th day of July, 2019.

Sd/-	**Sd/-**
(B.R.R. KUMAR)	**(H.S. SIDHU)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 09th day of July, 2019
SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A), New Delhi.
5. CIT(ITAT), New Delhi

AR, ITAT