

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'SMC' : NEW DELHI)  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA NO. 87/DEL/2019

(A.Y. 2010-11)

NCR OVERSEAS P. LTD., 74, POORVI MARG, VASANT VIHAR, NEW DELHI - 110 057 (PAN: AACCN8553C)	VS.	ACIT, CIRCLE 17(2), NEW DELHI
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Assessee By	Sh. L.K. Pavnani, Adv. & Sh. V.P. Chawla, Adv.
Revenue By	Ms. Ekta Vishnoi, Sr. DR.

**ORDER**

Assessee has filed this appeal against the impugned order dated 08.10.2018 passed by Ld. CIT(A)-6, Delhi on the following grounds:-

- 1(a). That the Ld. CIT(A) erred on facts and in law in not holding that the impugned assessment order dated 29.9.2017 passed u/s. 144/147 of the I.T. Act is void, illegal and bad in law for want of proper service of notice u/s. 148 of the Act which fact the impugned order itself indicates.
- (b) That the Ld. CIT(A) has failed to appreciate that in the absence of proper service of notice u/s. 148 of the Act, the AO could not assumed jurisdiction to pass the

assessment order u/s. 147 of the Act and the impugned order was liable to be annulled.

- c) That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in not holding that recourse to other mode of service of notice as provided u/s. 282 of the Act ought to have been taken by the Department and failure to exercise such jurisdiction renders the assessment proceedings invalid and consequent assessment order passed is also invalid.
  - d) That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in holding that due to lack of diligence on the part of the appellant, service of notice could not be held improper.
2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not allowing the appellant's application filed under Ruled 46A of the Income Tax Rules, 1962 for admission of additional evidences which were duly been confronted to the AO and further erred in not adjudicating and deciding on the merit of the case.
  3. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of

hearing and all the above grounds are without prejudice to each other.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel for the assessee stated that the AO has completed the assessment u/s. 147/144 of the Income Tax Act, 1961 (In short "Act") by passing an exarte order 24.09.2017 without giving the opportunity to the assessee to substantiate his case. He further stated notice u/s. 148 of the Act was not served upon the assessee. He further stated that Ld. CIT(A) not allowed the assessee's application filed under Rule 46A of the Income Tax Rules, 1962 for admission of additional evidences. He filed a Paper Book containing pages 1-129. He requested that in the interest of justice the issues in dispute may be set aside to the file of the AO for fresh adjudication and appreciation of all the evidences filed by the assessee for substantiating the claim of the assessee.

4. On the contrary, Ld. DR stated that the assessee remain non-cooperative before the AO as well as before the Ld. CIT(A). He further stated that assessee has not filed any evidence before the AO which are now available with the assessee, therefore, Ld. CIT(A) has rightly rejected the application under Rule 46A and accordingly, requested that the appeal of the assessee may be dismissed.

5. I have heard both the parties and perused the records especially the order of the revenue authorities including the Assessee's Paper Book containing pages 1-129 in which assessee he has attached the copy of synopsis; copy of application dated 17.3.2018 for issue of certified copy of assessment order; copy of application under Rule 46A; copy of letter dated 0-5.7.2018; copy of remand report dated 6.7.2018; copy of another remand report dated 11.9.2018; copies of rejoinders dated 12.9.2018 and 25.9.2018 and copy of written submissions dated 12.9.2018. I further note that AO has completed the assessment u/s. 147/144 of the Income Tax Act, 1961 by passing an exparte order 24.09.2017 without giving sufficient opportunity to the assessee to substantiate its case. I further note that Ld. CIT(A) has not allowed the assessee's application filed under Rule 46A of the Income Tax Rules, 1962 for admission of additional evidences. It is also noted that assessee remain non-cooperative before the AO. Keeping in view of the facts and circumstances of the case and in the interest of justice the issues in dispute require fresh adjudication at the level of the Assessing Officer. Therefore, I remit back the issues in dispute to the files of the Assessing Officer for hearing on **09.12.2019 at 10.00 AM** with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and consider all the evidences to be filed by the Assessee. Assessee is also directed through his Counsel to appear before the Assessing Officer on **09.12.2019 at 10.00 AM** for hearing to substantiate its case. It is made clear that no notice for hearing will be

issued by the Assessing Officer, as the date of hearing has already been pronounced. Assessee is at liberty to file any evidences for substantiating its claim before the AO and fully cooperate in the assessment proceedings before the AO and did not take any unnecessary adjournment.

6. In the result, the Appeal of the Assessee is allowed for statistical purposes.

Order pronounced on this 26<sup>th</sup> day of September, 2019.

Sd/-

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated the 26<sup>th</sup> day of September, 2019  
SRB

Copy forwarded to:-

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

AR, ITAT