

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'G' : NEW DELHI)**  
**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1209/Del./2019, A.Y. 2013-14**

M/s. Tourism India Management Enterprises (P) Ltd. K-1(24), Chittranjan Park New Delhi-110019 PAN : AAAACT6060C (APPELLANT)	Vs.	DCIT Circle-25(1) New Delhi (RESPONDENT)
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ASSESSEE BY : Dr. Rakesh Gupta, Somil Agarwal, Adv.  
REVENUE BY : Shri N.K.Bansal, Sr. DR

Date of Hearing : 05.09.2019  
Date of Order : 04.12.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant M/s. Tourism India Management Enterprises (P) Ltd., New Delhi (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 09/11/2018 passed by Ld. Commissioner of Income Tax(Appeals)-9, New Delhi qua the Assessment Year 2013-14 on the grounds inter alia that :

1. ***“(a)That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notice u/s 143(2) and further erred in applying the provision of affixture and that too without following the due procedure as laid down under the law. 1(b) That in any case and in any view of the matter, action Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned assessment order, is bad in law and against the facts and circumstances of the case.***
2. ***(a)That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.46,96,422/- (Correct figure is Rs.43,96,422/-) on account of ‘other expenses’ and further erred in rejecting the additional evidences filed by the assessee and that too by recording incorrect facts and findings and without observing the principles of natural justice. 2 (b)That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.46,96,422/- (Correct figure is Rs.43,96,422/-) on account of ‘other expenses’, is bad in law and against the facts and circumstances of the case.***
3. ***(a)That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.78,89,482/- u/s 36(l)(iii) and that too by recoding incorrect facts and findings and without observing the principles of natural justice. 3(b)That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.78,89,482/- u/s 36(l)(iii), is bad in law and against the facts and circumstances of the case.***
4. ***That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the additional evidences filed by the assessee.***
5. ***That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.***
6. ***That the appellant craves the 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. Briefly stated that facts necessary for adjudication of the controversy at hand are : Assessee is into the business of providing

tourism and travel related services, exclusively to inbound tourist traffic from outside India. During the year under assessment, assessee filed return of income declaring income of Rs. 77,37,010/- on 29.09.2012. During scrutiny proceedings, AO stated to have issued statutory notice u/s 143(2) of the Act on 04.09.2014 fixing the next date for hearing on 15.09.2014. Since notice was not returned back nor someone on behalf of the assessee company come forward on 15.09.2014, AO proceeded to serve the notice by way of affixture at the last known address. Questionnaire issued on 26.06.2015 to be complied on 03.07.2015 was also issued, which also remained un-complied. Then, notice u/s 143(2) along with questionnaire dated 13.10.2015 for compliance on 21.10.2015 was issued, but none attended. However, assessee company filed objection dated 21.10.2015 received by AO on 10.12.2015 challenging validity of initiation of assessment proceedings, which were disposed off vide order dated 03.02.2016. Then, AO issued notice dated 09.11.2015, 23.12.2015, 14.01.2016 and 12.02.2016, but none appeared on behalf of the assessee and final notice issued on 25.10.2016 also remained un-served. Consequently, AO proceeded to complete the assessment ex-parte u/s 144 of the Act.

3. Assessing Officer noticed that the assessee has made investment of Rs. 3,20,00,000/- in equity shares of Pvt. Ltd.

Company. On failure of the assessee to file details, AO proceeded to invoke provision contained u/s 14A r/w Rule 8D and thereby made disallowance of Rs. 1,65,000/-. AO also made disallowance of Rs. 43,96,422/- on account of disallowance of other expenses claimed by the assessee. AO also made disallowance of Rs. 78,89,482/- u/s 36(1)(iii) of the Act on account of disallowance of interest and thereby assessed the total income at Rs. 2,01,87,910/-.

4. Assessee carried the matter before the Ld. CIT(A) who has partly allowed the appeal. Feeling aggrieved assessee company has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. At the very outset, the Ld. AR for the assessee contended that first of all, assessee challenges the validity of the assessment order on the ground that notice u/s 143(2) has never been served upon the assessee company in time, which objection was also raised during assessment proceedings. So, first of all, we would proceed to decide the issue :-

*“ as to Whether Statutory notice issued u/s 143(2) was hence served upon the assessee company within the statutory period.”*

7. Undisputedly, notice u/s 143(2) dated 04.09.2014 was issued by the Assessing Officer to the assessee company at the address “M/s. Tourism India Management Enterprises Pvt. Ltd, AN 53 B, Shalimar Bagh, New DelhiDelhi-110052” as is evident from the copy of notice available at page 26 of the paper book. It is also not in dispute that in the copy of acknowledgement of return available at page 1 of the paper book the address of assessee company is mentioned as M/s. Tourism India Management Enterprises (P) Ltd., K-1/24, C.R.Park, Delhi.

8. Likewise, in the computation of total income available at page 2 again address of the assessee is CR Park. It is also not in dispute that when we examine copy of intimation issued u/s 143(1) dated 13.03.2014 available at page 30 of PB and the notice u/s. 142(1) dated 03.08.2008, 21.09.2011, 16.11.2011 and again 16.11.2011 available at pages 40 to 44 the correct address of the assessee is of CR Park is given. Then again in the copy of acknowledgement of return for AY 2011-12 and 2012-13 dated 29.09.2011 and 29.09.2012 correct address was brought to the notice of the revenue.

9. When we examine the issue in controversy as to whether statutory notice u/s 143(2) was served on the assessee within the time, in the backdrop of aforesaid facts and circumstances of the case the revenue itself has come up with self-contradictory pleas as

to service of notice u/s 143(2). Because notice u/s 143(2) dated 04.09.2014 available at page 26 of the paper book, was undisputedly issued at the address of Shalimar Bagh. At the same time, it is also not in dispute that AO mentioned in para 1 of assessment order that notice dated 29.09.2014 was reported to be served by way of affixation dated 29.09.2014 on the correct address of the assessee i.e. C.R.Park. In these circumstances, it is unbelievable that if both the notices issued u/s 143(2) were ever served upon the assessee.

10. Furthermore satisfaction of the Assessing Officer that the assessee cannot be served through ordinary process is altogether missing thereby compelling AO to resort to substitute service by way of affixation . More particularly when correct address was available with AO as mentioned in notice dated 29.09.2014 notice in the ordinary process was required to be issue first. It is proved from the material available on record that the address of the assessee company was never of “Shalimar Bagh” rather all the assessments of preceding years were completed at the address of CR Park on which notice by way of substitute service was issued. When we examine letter dated 20<sup>th</sup> January, 2016 available at page 94, assessee has specifically brought to the notice of Assessing Officer that notice u/s 142(1) was received for the first time on

16.10.2015 and has also submitted before AO that notices u/s 142(1) / 143(2) are time barred having been received by the assessee after 30.09.2014.

11. No doubt, Assessing Officer has disposed of the objection filed by the assessee by passing a separate order dated 03.02.2016 available at page 95 to 99 of the paper book, but when statutory requirements as to service of notice u/s 143(2) has not been completed, merely disposing of the objection does not make the assessment valid, which was otherwise invalid since very beginning.

12. Bare perusal of notice issued u/s 143(2) dated 04.09.2014 and another notice issued by way of affixation dated 29.09.2014 go to prove that this was an exercise undertaken by the Assessing Officer in futility just to bring the entire assessment process within limitation. When it is specific case of the Assessing Officer as mentioned in para 4.5 that original service was valid, the service of notice by way of affixation was just issued as abundant precaution to safeguard the interest of the revenue it goes to prove that mandatory notice u/s 143(2) has never been served upon the assessee within prescribed period. When notice u/s 143(2) dated 04.09.2014 was never served upon the assessee having been sent

on wrong address, there is no question of resorting to service of notice by way of affixation on correct address.

13. When we examine para 3 of the order dated 03.02.2016 passed by the AO vide which objection raised by the assessee were disposed off, it is categorically mentioned that :

*“Moreover, when no confirmation was received from the assessee, the AO issued another notice on 29/09/2014 on the address mentioned at return filed by it i.e. K-124, CHITRANJAN PARK, NEW DELHI-110019. Since, the AO was bound to serve the above notice on or before 30.09.2014 and due to shortage of time the AO was left with no option but to serve the same by way of affixture. The notice was duly affixed through inspector on 29.09.2014.”*

14. We are of the considered view that aforesaid para 3 of the order makes it amply clear that the first notice was issued on wrong address of the assessee and then AO rectified the mistake and to overcome the limitation to get the notice served before the 09.02.2014 rushed to serve the notice dated 29.09.2014 by way of affixation. Issuance of notice on the wrong address never confers any right on the Assessing Officer to get the notice served u/s 143(2) by way of affixation. Because notice by way of affixation is only to be served on the assessee when his correct address is not available or he has refused to accept the service of notice as its not an empty formality.

15. Further more when we examine notice dated 04.09.2014 issued u/s 143(2) available at page 26 and intimation issued u/s

200A dated 26.09.2011 and notice of demand issued u/s 156 of the Income Tax Act dated 21.09.2011 available at page 41 and 42 it is again at the address of the assessee available with the revenue department i.e. K-1/124, CR Park, New Delhi- 110019. In these circumstances it is difficult to comprehend as to how the address of assessee mentioned on notice u/s 143(2) dated 04.09.2014 of Shalimar Bagh has entered into the record. On the one hand, the revenue has claimed that the first notice dated 04.09.2014 was deemed served then it is beyond comprehension as to what was the need for issuance of 2<sup>nd</sup> notice dated 29.09.2014 to served by way of affixation. So the entire exercise goes to prove that notice u/s 143(2) has never been served upon the assessee on or before 03.09.2014.

16. Moreover, when we advert to the procedure laid down in Code of Civil Procedure, 1908 notice by way of affixation can only be issued only when notice issued in the ordinary course could not be served despite reasonable effort and the Assessing Officer was satisfied enough to reach the conclusion that service in the ordinary course cannot be effected in the ordinary course. More over there is no material on the file showing any order passed by Revenue Officer reaching the conclusion that the service in this case cannot

be effected in the ordinary course and as such he has resorted to get the service of assessee effected through substitute service.

17. Furthermore when we examined notice of affixation available at page 27 to 29 of the paper book processing server has not complied with the provisions contained in order V Rule 20 of CPC by effecting the service by affixation in the presence of some independent witness. More particularly when there is no material on record that assessee has evaded the service of summons or has left the place of his last address to some unknown place only then service by way of substitute service can be resorted to. In the instant case, when there is no such material on the record because the first notice was issued on 04.09.2014 on non-existent address of the assessee and then Revenue Officer rushed to serve the notice by way of affixation without recording any satisfaction, the entire assessment proceedings are null and void. Moreover in the instant case when the revenue knew correct address of the assessee since 2008, there is no question of issuing the notice dated 04.09.2014 at the wrong address and suddenly resorted to served the notice by way of affixation at the correct address. It appears that the entire exercise has been completed in haste to meet with the statutory requirement of limitation to serve the notice up till 03.09.2014,

which cannot be treated as a valid service by any stretch of imagination even.

18. The contention of Ld. DR for the revenue that there was no manual interference in issuance of the notices rather it was issued after generating from the system, is not sustainable because notice dated 04.09.2014 available at page 26 is duly signed by the Revenue Officer and is not a system generated notice. The case law cited as **[2008] 301 ITR 69 (Delhi) CIT vs. Madhysy Films P. Ltd.** relied upon by the Ld. DR for the revenue is not applicable to the facts and circumstances of the case because in this case before the Hon'ble Delhi High Court notice was issued on the correct address and consequently presumption of its service was drawn. But in the instant case, notice was never issued on the correct address and as such there is no question of drawing presumption of service of the same on the assessee as the revenue department itself has acknowledged its mistake by abruptly rushing to substitute service of notice by way of affixation by mentioning the correct address which cannot be taken into account as there was no effort whatsoever on the part of revenue department to get the service effected through ordinary course.

19. In view of what has been discussed above we are of the considered view that question framed is answered in affirmative

and consequently assessment framed in this case u/s 143(3) is *void ab initio* for want of issuance of statutory notice u/s 143(2) consequently, assessment is hereby quashed without going into merit of this case.

20. Resultantly Appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on the 4<sup>th</sup> December, 2019.**

**Sd/-**  
**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**  
Dated 04 /12/ 2019  
**\*BR\***

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIALMEMBER**

Copy forwarded to:

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

AR, ITAT  
NEW DELHI

Date of dictation	04.11.2019
Date on which the typed draft is placed before the dictating Member	05.11.2019
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	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	