

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.286/Agra/2016
(ASSESSMENT YEAR: 2006-07)**

Shree Govind DevjiBiogenic (P) Ltd., B-11, Hari World Commercial Complex,42/2, Sanjay Place, Agra PAN: AAHCS8659P (Appellant)	Vs.	Income Tax Officer-4(4), Agra (Respondent)
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Appellant by	Shri Anurag Sinha, AR
Respondent by	Shri Sunil Bajpai, CIT-DR

Date of Hearing	06-01-2020
Date of Pronouncement	07-01-2020

ORDER

Per LALIET KUMAR, J.M.:

This appeal of assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Agra, dated 31-03-2016 for the AY.2006-07 on the following Grounds:

“1. BECAUSE, upon due consideration of the facts and in the overall circumstances of the case the Ld.CIT(A) has fallen in error in passing ex-parte order without due consideration of the legal position and evidences available on assessment records.

2. *BECAUSE, the appellant denies his liability to be assessed in terms of notice dated 30.03.2013 issued to him under section 148 of the Act.*

3. *BECAUSE, authorities below failed to appreciate that there is no valid initiation of proceedings under section 147 owing to the 'reasons recorded', before issuing notice and the Notice not being in conformity with law in this regard, consequently the assessment order (passed in pursuance thereof) is void-ab-initio.*

4. *BECAUSE, on the facts and in the circumstances of the case, 'AO' was unjustified in issuing notice under section 148 of the Act without there being any independent application of his own mind. Jurisdiction under section 148 cannot be assumed on the 'borrowed satisfaction' of any person other than the 'AO' issuing notice under section 148.*

5. *BECAUSE, on the facts and in the circumstances of the case the 'AO' was unjustified in assuming jurisdiction under section 148 without there being any material much less corroborative and reliable material to substantiate the recorded reasons at the time of recording reasons.*

6. *BECAUSE, the issuance of notice under section 148 is illegal and without jurisdiction as the same was not preceded by the sanction from competent authority as was required by section 151 of the Act.*

7. *BECAUSE, the ld 'CIT(A)' failed to appreciate the detailed objection of the 'appellant' and got guided by irrelevant considerations while holding proceedings to be validly initiated. Action of the ld 'CIT(A)' is wrong, illegal and perverse.*

WHOLLY WITHOUT PREJUDICE TO THE ABOVE

8. *BECAUSE, from the initiation of proceedings till its conclusion the learned 'AO' had not been able to convert the reasons recorded into evidence required for making the addition. The proceedings came to be commenced on the suspicion and concluded with the suspicion of the authorities below.*

9. *BECAUSE, on the facts and in the circumstances of the case, the learned authorities below erred in making and confirming addition of Rs.20,00,000/- plus Rs.1,00,000/- towards estimated commission aggregating to Rs.21,00,000/-. The addition is bad on facts and in law.*

10. *BECAUSE, while making and sustaining the addition the authorities below have failed to consider that assessee has well explained the genuineness of the*

transaction by furnishing enough documentary evidences proving the existence of the Company and receipt of amount from the subscriber Companies.

11. BECAUSE, on the facts and in the circumstances of the case the learned authorities below erred in making and confirming the addition ignoring the factual and legal position that in re-assessment proceeding the onus is on the revenue to prove that there was income, which escaped assessment. The 'AO' from the initiation of his proceedings till its conclusion has not been able to discharge the onus which lay on him in terms of section 147 of the Act.

12. BECAUSE, while making the assessment the authorities below made various observations/conclusions which are contrary to facts available on records. While making the addition submission made and evidences filed have been rejected arbitrarily.

13. BECAUSE, the 'appellant' denies levy of interest under section 234B.

14. BECAUSE, in relation to the 'grounds of appeal' as have been taken hereinbefore, the 'appellant' refer and rely upon the averments made in the statement of fact accompanying the memo of appeal.

15. BECAUSE, the order appealed against is contrary to the facts, law and principles of natural justices

The 'appellant' reserves his right to add, delete, modify, alter or substitute any or all the grounds of appeal".

2. At the outset, Ld.AR had submitted that the notices for appeal hearing were not received by the assessee and the Ld.CIT(A) had decided the appeal, without ensuring the due service of notices on the assessee. For that purposes, our attention was drawn to para 3 of the CIT(A)'s order, which was to the following effect:

"3. Notice for hearing of the assessee's appeal was issued on 11.12.2015 fixing the date of hearing on 22.12.2015, however, the same was returned un-served by postal authorities with the remarks 'left'. Another notice dated 17-12-2015 was issued fixing date of hearing on 06.01.2016. This notice was sought to be served

through AO, from whose office it was reported that 'office was closed and from the neighbours it is informed that the premises are locked for quite some time'. Therefore, the AO sent back the un-served notice to this office accordingly. Another notice dated 18.01.2016 was issued from this office for service through the AO, which the AO got it served on 21.01.2016 upon Sri R.M.Singhal. However, none attended on fixed date of hearing on 03.02.2016. In view of appellant's repeated non compliance, another notice dated 04.02.2016 giving final opportunity to the assessee and fixing date of hearing on 12.02.2016 was issued. However, even the said notice was returned by postal authorities with the remarks 'left'. Another notice dated 24.02.2016 was issued fixing date of hearing on 29.02.2016 and the said notice was also returned by the postal authorities with the same remarks, 'left'. In view of the repeated non compliance, last and final opportunity was provided to the assessee vice notice dated 21.03.2016 was issued fixing 29.03.2016 as the date of hearing. However, the said notice too was returned by the postal authorities with the remarks that there was no such firm at the given address. Under the circumstances, I have no alternate, but to decide the case on the basis of material available on record."

3. It was submitted that since the matter had been decided by the Ld.CIT(A) *ex-parte*, without ensuring the due service and participation by the assessee, therefore, it would be in the interest of justice that if the matter is remitted back to the file of CIT(A) for deciding the issue afresh for hearing, duly giving an opportunity of being heard to the assessee, and to file the documents as may be necessary to decide the issue.

4. Per contra, Ld.DR had submitted that the address given by the assessee was the same address as mentioned in Form-35 as well as in Form-36. The presumption of Section 27 of the General Clauses Act is required to be invoked against the assessee as the notices were sent at the correct

address by the Ld.CIT(A) and for the non-co-operation and non-presence of the assessee before the CIT(A), the only reports available with the CIT(A) is to decide the appeal on the basis of the material available with the CIT(A) and there was no error in deciding the matter.

5. We have heard rival contentions and perused the material available on record. Undoubtedly, due service of notice on assessee is clear from para 3 of the order. We may notice that even the notice sent by the Tribunal to the assessee on 29-05-2017 and 11-07-2019 were returned un-served with the remarks that -*'despite none was available to receive the notice'* this clearly shows that there is issue in service of notices to the assessee at the address given by the assessee before the Tribunal as well as before the CIT(A). Nonetheless the purposes of adjudication of appeal is to decide the appeal on merits, after granting due opportunity of being heard to assessee and considering the documents. In the present case, needful has not been done and as such the order passed by the Ld.CIT(A) was passed without affording a reasonable opportunity to the assessee. In view of the above, we deem it fit and appropriate to remit the issue back to the file of CIT(A) for deciding the same afresh, on the basis of the material available on record and as well as by affording a fair and reasonable opportunity of being heard to the

assessee and to give a chance to assessee to file the documents if any, required. We may also like to mention that both the parties have agreed that it is justified, if time bound direction to be issued to the CIT(A) to decide the matter preferably i.e., on or before 31-05-2020. In the light of the above, we expect that the CIT(A) to decide the matter on or before 31-05-2020, in accordance with law.

Needless to say, we have not adjudicated any other ground, all the grounds are required to be adjudicated by the Commissioner appeal, in the remand proceedings without being influenced by the observation made by us in the present appeal.

6. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 07-01-2020

Sd/-

(Dr. M.L. MEENA)
ACCOUNTANT MEMBER

TNMM

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private Secretary
ITAT AGRA