

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT
&
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.6130/Del/2012
निर्धारण वर्ष / Assessment Year 2001-02**

Deepak Ahluwalia,
305, Dakha Chamber, 206/38
Nai Wala, Karol Bagh, New Delhi
PAN-ALWPA8762C

.....अपीलार्थी / Appellant

vs

ADIT, Central Circle 1(1),
New Delhi

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Manoj Kumar, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. H.K.Choudhary, CIT DR

सुनवाई की तारीख / Date of Hearing : 28.01.2020	घोषणा की तारीख / Date of Pronouncement: 30.01.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of CIT(A), New Delhi dated 03.09.2012 relating to assessment year 2001-02 against order passed under section 147 read with section 144 of the Act.

2. The learned AR for the assessee, at the outset pointed out that the first issue which needs to be adjudicated is ground of appeal no. 2, which goes to the root of jurisdiction invoked by the AO.

3. Briefly in the facts of the case, notice under section 148 of the Act was issued to the assessee on 24.05.2006. The said notice was sent to the address of the assessee in New Zealand as the assessee was a non-resident. The reasons which were recorded for reopening the assessment were in relation to the sale of property at 1/1 Shanti Niketan, New Delhi, on the basis of the seized document that the assessee had received consideration in cash over and above the consideration declared in the sale deed. The assessee is aggrieved by various facets of recording the reasons for reopening the assessment, the jurisdiction of the AO in invoking the same and recording the reasons for reopening the assessment. The assessee is also aggrieved by non service of the notice issued under section 148 of the Act upon the assessee. Our attention was drawn to the letter filed by the assessee before the AO on 7.2.2008 under which the assessee had intimated the address to the AO. The learned AR for the assessee pointed out that no notice under section 148 of the Act was ever served upon the assessee.

4. The learned DR for the Revenue on the other hand produced the assessment records and pointed out that notice under section 148 of the Act was issued at the address of the assessee. He placed on record the copy of the notice issued u/s 148 of the Act dated 24.5.2006.

5. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal is whether the notice under section 148 of the Act was issued to the assessee or not. So, consequent thereto whether such notice was served upon the assessee or not. The assessee was a non-resident and had no source of income in India, hence was not filing any return of income in India. The AO received certain information with regard to the sale of property jointly by the assessee with other co-owners in India. During the course of search on one of the co-owner, one document was found and seized; according to which the cash consideration was paid over and above the amount declared in the registered sale deed. The Assessing Officer had issued the notice under section 148 of the Act dated 24.5.2006 on the following address of the assessee:-

*“Shri. Deepak Ahluwalia,
P.O. Box No. 6006, II Dawson Street,
Polymouth, New Zealand.”*

6. The assessee claims that his correct address was as under:-

*“Shri. Deepak Ahluwalia,
P.O. Box No. 665, 46 Dawson Street,
Polymouth, New Zealand.”*

7. The assessment records were produced by the learned DR for the Revenue for our perusal. The copy of the notice issued under section 148 of the Act on “P.O. Box No. 6006” is available on record. This is dated 24.5.2006. Thereafter, another letter is issued by the AO dated 7th September, 2007 in which the address of the assessee is mentioned at “P.O. Box No. 665”. In the said letter, it is mentioned that notice under

section 148 of was issued on P.O. Box No. 6006 and the assessee was required to furnish the return of income within 30 days in the prescribed form for the assessment year 2002-03. The AO notes that the said notice had not been complied with. He directs the assessee to furnish the return of income in the prescribed form for assessment year 2001-02. It may be mentioned herein itself that notice under section 148 was issued for assessment year 2001-02.

8. The correct address of the assessee was "P.O. Box No. 665". The AO had admittedly sent notice under section 148 at "P.O. Box No. 6006" and the same cannot be said to be issued / served upon the assessee as the correct address of the assessee was not mentioned in the said notice. Hence, we hold that the initiation of proceedings under section 148 of the Act suffers from infirmity.

9. Another aspect which needs to be kept in mind is that the re-assessment proceedings have been initiated for assessment year 2001-02 whereas the sale transaction has been undertaken on 16th June, 2001 i.e. relating assessment year 2002-03. The copies of the registered sale deeds are available in the case of S.P.S. Ahluwalia vs. ACIT Central Circle-12 in ITA No. 2429/Del/2012 relating to assessment year 2004-05 and in these facts also the initiation of re-assessment proceedings for escapement of income on account of the cash component relating to the sale of the property suffers from infirmity. Hence the initiation of re-assessment proceedings and the consequent order passed there under are both bad and invalid in law.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30th January 2020.

Sd/-
(B.R.R.KUMAR)
लेखा सदस्य/ACCOUNTANT MEMBER
दिल्ली / दिनांक Dated :30th January, 2020
* Amit Kumar *

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष/VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi