

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1863/DEL/2019 (A.Y 2010-11)

Satyapal Singh A-88, SF, East of Kailash, New Delhi PAN AYQPS2774M (APPELLANT)	Vs	ITO Ward-43(3) Civic Centre New Delhi (RESPONDENT)
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Appellant by	Sh. Lalita Krishnamurthy, CA
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	26.02.2020
Date of Pronouncement	19.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 31/12/2018 passed by CIT(A)-15, Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

“1. That in view of adjournment letters filed by the assessee from time to time online on the dates fixed for hearing as per impugned ex-parte order issued by Id. CIT(Appeals) without providing reasonable opportunity to the assessee to be heard is bad in law and facts.

2. That the assumption of jurisdiction by the Assessing Officer under section

147 of the Income Tax Act, 1961, is arbitrary, unjust and bad in law and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law.

3. That there was no valid material with the Assessing Officer as contemplated to assume the jurisdiction under section 147 of the Income Tax Act, 1961 and consequently the reassessment so framed mechanically and without application of mind on the basis of such invalid assumption of jurisdiction is bad in law and consequently order of Id. CIT(Appeals) as sustained is not tenable on facts and in law.

4. That the unlawful addition of Rs. 34,25,300/- being the net cash deposited in the bank accounts of the assessee made by the Assessing Officer and sustained by the Id. CIT(Appeals) in his ex-parte order is unjust, unwarranted and unsustainable on facts and in law.”

3. The assessee is an individual and has not filed his return for Assessment Year 2010-11. Information was received by the Revenue that the assessee deposited cash amounting to Rs. 40,50,300/- in his saving bank account. Reasons were recorded and the case was reopen u/s 147/148 of the Income Tax Act, 1961. After taking necessary approval of competent authority, notice u/s 148 of the Act was issued on 31/3/2017 vide speed post and was duly served as mentioned in the assessment order. Subsequently, notices u/s 142 (1) were issued on 6/7/2017, 7/8/2017 and 23/11/2017 and last opportunity was given on 1/12/2017 which was affixed on 4/12/2017 at the last known address of the assessee. However, no compliance was made by the assessee and, therefore, the estimated assessment was completed u/s 144 of the Income Tax Act, 1961 thereby making addition of Rs.34,25,300/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the notice u/s 148 was not served to the assessee. Therefore, the assessment itself is bad in law for which the Ld. AR submitted that the track consignment report from the Indian Portal Website.

6. The Ld. DR submitted that as mentioned in the assessment order, the notice u/s 148 (1) was duly served at the last known address of the assessee by the Revenue. Therefore, service was completed as per the procedure.

7. We have heard the Ld. DR and perused the material available on record. After going through the track report of the consignment number of the speed post, it is found that the track report is not obtained during the assessment proceedings and the same was not obtained during the appellate proceedings as well. The track report on the Indian Post Office Portal shows the position of the consignment for a particular period only and not afterwards. The submissions made by the Ld. AR are not acceptable as the address given by the assessee has been the same on which the notices were issued and notice was not return back. Therefore, service was complete and the plea for non service of Section 148 notice does not survive. Hence, Ground No. 1 to 3 are dismissed.

8. As regards Ground No. 4, the CIT(A) has proceeded on the basis that no evidence was filed. The Ld. AR submitted that the Assessing Officer as well as the CIT(A) has not given a proper hearing to the assessee. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer.

9. The Ld. DR relied upon the assessment order and order of the CIT(A).

10. We have heard both the parties and perused the material available on record. The assessee has not made out the case as to why the assessee has not appeared before the Assessing Officer. Therefore, we are imposing cost of

Rs. 5,000/- which should be paid by the assessee to the Prime Minister's Relief Fund. Since, the assessee was not heard at the time of assessment proceedings, it will be appropriate to remand back this appeal to the file of the Assessing Officer for fresh adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus appeal of the assessee is partly allowed for statistical purpose

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 19th March, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.02.2020
Date on which the typed draft is placed before the dictating Member	28.02.2020
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	19.03.2020
Date on which the final order is uploaded on the website of ITAT	19.03.2020
Date on which the file goes to the Bench Clerk	19.03.2020
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	