INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
(Through Video Conferencing)

BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1849/Del/2012

Asstt. Year: 2004-05

Shri Sudhir Kumar Tyagi, (Prop. Sudhir Associates) M-06, Laxmi Nagar, Delhi.	Vs.	Commissioner of Income Tax, XXVIII, New Delhi
(Appellant)		**(Respondent)**

Assessee by:	Shri Rajiv Saxena, Advocate, Ms. Sumanglam Saxena, Advocate
Department by :	Shri Saras Kumar, Sr. DR
Date of Hearing	23/06/2020
Date of pronouncement	27/08/2020

O R D E R

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 19.3.2010 passed by the Ld. Commissioner of Income Tax

(Appeals)-XXVIII, New Delhi (CIT{A}) for Assessment Year 2004-05.

2.0 The brief facts of the case are that the return of income was filed for the year under consideration at an income of Rs. 12,60,309/-. The original assessment was completed at an income of Rs. 48,10,310/- after making an addition of Rs. 35,00,000/- pertaining to earnest money said to be received towards sale of land and disallowance on account of personal use of vehicle amounting to Rs. 50,000/-. Aggrieved with this order, the assessee had approached the Ld. First Appellate Authority. Ld. CIT (A) set aside the assessment order. Thereafter, a notice u/s 148 of the Income Tax Act, 1961 (hereinafter called 'the Act') was issued to the assessee. Reason for invoking the reassessment provisions was that the assessee had allegedly not satisfactorily explained the amount of Rs. 35,00,000/-. The assessee submitted before the Assessing Officer (AO) that the same was earnest money received against sale of land. However, the AO did not accept the assessee's contention and was of the opinion that the transaction of Rs. 35,00,000/- was not genuine as the creditworthiness of the purchaser was not established. The AO

proceeded to make an addition of Rs. 35,00,000/- on this account. Apart from this, the AO also made an addition of Rs. 80,355/- being 1/10th of vehicle related expenses. The reassessment was completed at Rs. 48,40,664/-. Aggrieved by the reassessment order, the assessee approached the Ld. First Appellate Authority who dismissed the assessee's appeal.

2.1 Now the assessee is before this Tribunal challenging the dismissal of his appeal by the Ld. CIT (A) by raising the following grounds of appeal: -

1. *The Learned Commissioner of Income Tax (Appeals) – XXVIII has erred in conforming demand of Rs. 17,25,049/- without considering the facts of the case. The submissions made by the Appellant have arbitrarily been rejected.*

2. *That the Learned Hon'ble Commissioner has failed to observe that there was no implication of tax on the earnest money. Therefore the order has been framed in violation of the principles of natural justice without giving to the Appellant a fair, proper and meaningful opportunity.*

3. *That the Learned Hon'ble Officer failed to observe that total facts were present in front of the Assessing Officer during Assessment proceedings. Hence there were no unexplained income so observed.*

4. *That the Learned Hon'ble Officer failed to observe that the Appellant has paid full taxes and interest due on returned income and there is no tax evasion so observed in previous records of the Appellant. This part has not been taken into consideration while confirming the assessment order.*

5. *That the action of Learned Hon'ble Officer should not be sustained on grounds of justice.*

2.2 Vide application dated 26.2.2020 the assessee has also raised additional grounds of appeal which are as under:-

Ground No. 7
That both the lower authorities have failed to ignore that once the income which had alleged to be escaped assessment was already assessed and subject mater of appeal reassessment proceedings of such income is bad in law

Ground No. 8

That the impugned assessment framed by the learned Assistant Commissioner of Income Tax, Circle-38(1), New Delhi, is without jurisdiction in as much as the statutory notice dated 19.12.2018 u/s 143(2) of the Income Tax Act had firstly been issued beyond the statutory period as provided under the Income Tax Act,1961 and in any case, such notice was not served on the assessee and hence the assessment framed is unsustainable in law.

Ground No. 8.1

That the learned Commissioner of Income Tax (Appeals) has grossly erred both in laws and on facts in failing to appreciate that proceedings u/s 147 of the Act had been initiated in the case of the appellant without satisfying the statutory preconditions as envisaged under section 147 of the Act, and hence initiation of the reassessment proceedings is bad in law.

Ground No. 8.2

That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in failing to appreciate that proceedings u/s 147 of the Act had been initiated without

any fresh tangible material and for collateral purposes which is impermissible in law.

3.0 At the outset, the Ld. AR submitted that the additional grounds being sought to be raised by the assessee vide application dated 26.2.2020 should be admitted as they essentially raise a legal ground which is at the very foundation of the entire reassessment proceedings. It was prayed that the additional grounds being raised should be admitted and adjudicated.

4.0 Per contra, the Ld. DR opposed the prayer for admission of additional grounds and submitted that since they had not been incorporated in the original appeal memo, filed initially they should be dismissed.

5.0 Having heard both the parties on the issue of admitting additional grounds of appeal, it is seen that the additional grounds being sought to be admitted are essentially legal grounds and in terms of the judgment of the Hon'ble Apex Court in the case of National Thermal Power Corporation Limited vs. CIT reported in 229 ITR 383, the assessee can raise an additional ground, which is purely legal, in nature at any

stage of the proceedings. Respectfully following the same, we admit the additional grounds and permit the Ld. AR to argue the same.

6.0 The Ld. AR submitted that the assessee was challenging the assumption of jurisdiction u/s 147 of the Act in as much as the statutory notice dated 19.12.2008 issued u/s 143(2) of the Act had been issued beyond the statutory period and the same was not served on the assesssee. It was submitted that such issuance and the failure to serve the notice on the assessee makes the reassessment order unsustainable in law. The Ld. AR argued at length and emphasised that the non-service of the notice was a defect which was incurable and, therefore, the reassessment framed was liable to be quashed.

7.0 Per contra, the Ld. DR submitted that the Ld. CIT (A) has given his detailed observations and findings on the issue of service of notice and that since the assessee had responded to the notice issued u/s 148 of the Act, the assessee was not put at any disadvantage due to some technical error in service of notice u/s 143(2) of the Act.

8.0 We have heard the rival submissions and have also perused the material on record. A perusal of the impugned order shows that Ld. CIT (A) has observed in Para 11.4 of the impugned order that failure to serve a notice u/s 143(2) after reopening the assessment u/s 147, or delay in service of notice u/s 143(2), is not fatal to the proceedings u/s 147. With these observations, the Ld. CIT (A) has held that the assessee's argument that the assessment order u/s 147 should be annulled as notice u/s 143(2) has not been served within the stipulated time is not legally tenable. A perusal of the remand report submitted by the AO before the Ld. CIT (A) on the issuance of notice shows that notice u/s 143 (2) was issued on 12.12.2008 fixing the case on 19.12.2008. This notice was sent through the Notice Server. The Notice Server reported that he had visited the assessee's place mentioned on the return of income on 12.12.2008 and had reported that the person available at the address of the assessee had refused to take the notice. The Notice Server again visited the said address on 15.12.2008 and found that the assessee was not available at the given address. The Notice Service again visited on

17.12.2008 and reported that repeatedly nobody replied. Thereafter, the AO directed the Inspector of Income Tax to get the notice served through affixture which was so done on 19.12.2008. It is also seen that section 143(2) as prevailing at that time required that a notice should be served within 12 months from the end of the assessment year in which the return is furnished. Assessee's letter dated 29.6.2007 stated that the return filed earlier by him should be treated as the return filed in response to the notice u/s 148. Thus, the notice u/s 143(2) should have been served latest by 30.6.2008. However, as per records, the notice was first issued only on 12.12.2008. Thus, undisputedly the notice u/s 143(2) of the Act had been issued beyond the prescribed statutory limit. Hon'ble High Court of Delhi in the case of CIT vs. Chetan Gupta reported to 382 ITR 613 has held that in order to complete reassessment u/s 148, the issue of notice to the assessee and service of such notice upon the assessee are jurisdictional requirements that must be mandatorily complied with. The Hon'ble Delhi High Court held that they are not mere procedural requirements. Thus, it goes without saying that

issuance of notice beyond the prescribed statutory time limit cannot be considered to be a proper service of notice. Even under the 1922 Act, the service of notice within the mandatory period was held to be the foundation for assumption for jurisdiction for reassessment proceedings. In the present case, it remains undisputed that that statutory notice u/s 143(2) was issued beyond the statutory time limit for issuing such notice and, therefore, in view of the settled law we have no option but to hold that the impugned reassessment u/s 147 of the Act becomes unsustainable. Accordingly, we decide the additional grounds raised by the assessee in his favour and while setting aside the order of the Ld. CIT (A) we quash the reassessment framed u/s 147 read with section 144 of the Act.

9.0 Since we have quashed the reassessment proceedings, the grounds raised by the assessee on the merits of the addition need no adjudication.

10.0 In the final result the appeal of the assessee stands allowed.

Order pronounced on 27th August, 2020.

sd/-	**sd/-**
(PRASHANT MAHARISHI)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27/08/2020

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi