

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' : NEW DELHI
(Through Video Conferencing)

BEFORE MR. JUSTICE P.P. BHATT, HON'BLE PRESIDENT AND
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT

ITA No.1282/Del/2016
Assessment Year : 2007-08

Income Tax Officer,
Ward 40(3),
Room No.1711, Civic Centre,
Block E-2, Minto Road,
New Delhi – 110 002.

(Appellant)

Vs. Smt. Madhu Gupta,
Flat No.100, Milan Apartment,
West Enclave,
Pitampura,
Delhi.
PAN : AEQPG8724F.
(Respondent)

Appellant by : Shri Saras Kumar, Senior DR.
Respondent by : Shri S. Krishnan, Advocate.

Date of hearing : 02.06.2020
Date of pronouncement : 21.08.2020

ORDER

PER G.S. PANNU, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-14, New Delhi dated 2nd December, 2015 which, in turn, has arisen from the order passed by the Assessing Officer dated 20th March, 2014, pertaining to assessment year 2007-08.

2. In this appeal, the Revenue has raised the following Grounds of Appeal :-

“On the facts and circumstances of the case, the Ld.CIT(A) erred in :-

1. Quashing the assessment proceedings made u/s 147/144 of the act by ignoring the fact that the notice was issued and deemed served upon assessee, as the notice was not received by the AO, on the same address which was provided by the assessee in her PAN application, which is the only address recognized by the ITD system. He also overlooked the fact that it is the duty of the assessee to cause to make change of address in her PAN data.

2. Not appreciating the fact that in the absence of any explanation, the AO had rightly treated the income of Rs.7.09 crores as income from undisclosed sources.

3. The applicant craves the right to add, alter or amend any ground of the appeal before or during the course of the appeal."

3. The respondent-assessee before us is an individual, in whose case, the Assessing Officer issued notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2007-08 and assessed the income at ₹7.09 crores. Pertinently, the said income was treated by the Assessing Officer as an income escaping assessment within the meaning of Section 147/148 of the Act on the basis of the information received from the Investigation Wing with regard to the transactions of land in various villages of Haryana, whereby the assessee was found to have entered into sale transactions of land of the value of ₹7.09 crores. The present appeal of the Revenue is primarily against the decision of the learned CIT(A), whereby it has been held that the initiation of the impugned assessment proceedings under Section 147/148 of the Act by the Assessing Officer is bad in law. The decision of the learned CIT(A) is based on his finding that the notice under Section 148 of the Act for initiation of assessment/reassessment proceedings under Section 147 was never served on the assessee. Notably, the assessment order has been passed by the Assessing Officer under Section 148 read with Section 144 of the Act, and paragraph 4 of the assessment order

reveals that even in the course of assessment proceedings, no appearance was made by the assessee or any authorized person on her behalf. Be that as it may, at the outset, we confine ourselves to the captioned grievance of the Revenue whereby the aforesaid finding of the learned CIT(A) is sought to be assailed.

4. Section 147 of the Act empowers an Assessing Officer to bring to tax any income chargeable to tax which has escaped assessment for any assessment year, subject to the provisions of Section 148 to 153 of the Act. Bereft of other details, it would suffice for us to notice that Section 148 of the Act mandates that before making the assessment, reassessment or recomputation under Section 147 of the Act "*the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income*". The aforesaid provision has been referred to by the CIT(A) to say that in the present case, the mandatory requirement of service of notice under Section 148 of the Act on the assessee was not complied with. The say of the learned DR before us is that the notice was issued by the Assessing Officer on the address known to the Department and in the absence of the same having been received back unserved, it was deemed to have been served. In this manner, the learned DR has sought to assail the findings of the CIT(A).

5. On the contrary, the learned representative for the respondent-assessee pointed out that this is a case of no service of notice on the assessee inasmuch as the statutory notice of Section 148 of the Act was sent to the wrong address of the assessee, while the correct address was known to the Department. It was, therefore, contended that the CIT(A) made no mistake in treating the impugned assessment proceedings as bad in law. The learned counsel further referred to the detailed discussion made by the CIT(A) in the impugned order to point

out that the finding of the CIT(A) was based on the submissions put forth by the assessee and also the CIT(A)'s inspection of the original assessment records produced by the Assessing Officer during appellate proceedings.

6. We have carefully considered the rival submissions. The statutory requirement of issuance and service of notice under Section 148 of the Act as mandated is *sine qua non* for a valid assessment. In the instant case, as the relevant discussion in the orders of authorities below reveal that the respondent-assessee is a regular income tax assessee. In the Paper Book filed before us, which contains documents available on the record of the Department, it is revealed that in assessment year 2007-08, assessee filed a return of income on 27th March, 2008, a copy of which is placed at page 32 of the Paper Book. Similarly, for assessment year 2008-09, return of income was filed on 27th March, 2009, a copy of which is placed at page 33. For assessment year 2009-10 also, the return of income was filed by the assessee on 29th January, 2010, a copy of which is placed at page 34. A common feature in all these returns was that the assessee stated the address of Milan Apartments, Pitampura, Delhi. We shall advert to the relevance of the aforesaid address later in the order. Similarly, pages 35, 36 & 37 of the Paper Book are copies of the returns of income filed by the assessee for assessment year 2010-11, 2011-12 and 2012-13 respectively.

7. Notably, on 29th November, 2010, the Assessing Officer received the information from the Investigation Wing regarding transactions of sale of land located at Maidawas, Gurgaon, Haryana undertaken by the assessee on 25th September, 2006 for a consideration of ₹7.09 crores. Based on the said information, the Assessing Officer proceeded to initiate proceedings under Section 147/148 of the Act by issuing notice

under Section 148 of the Act dated 25th March, 2013. In the course of the hearing before us, our reference was also invited to page 58 of the Paper Book wherein a copy of averments made to the CIT(A) after inspection of assessment records, has been placed, wherein it is contended that on 13th August, 2012, a letter was issued to the assessee seeking information about income tax returns for assessment year 2005-06 to 2013-14 at the address "*501, Hawa Singh Block, Asiad Games Village, New Delhi-110049*". It is further averred therein that such letter was returned unserved with the postal remark of "addressee left". A copy of the notice issued under Section 148 of the Act dated 25th March, 2013, placed at page 47 of the Paper Book reveals that the same is addressed to the assessee at the address "*501, Hawa Singh Block, Asiad Games Village, New Delhi-110049*". In order to complete the factual matrix, it is also pertinent to note from the material before us that for assessment year 2013-14, assessee filed the return of income on 24th July, 2013 depicting the Milan Apartments, Pitampura, Delhi, address as for assessment years 2007-08 to 2012-13.

8. Another pertinent aspect is that the notices to the assessee issued under Section 148 of the Act as well as other notices referred to in paragraph 4 of the assessment order issued in the course of impugned assessment proceedings, were issued at Asiad Village address by the ITO, Ward-23(1). The impugned assessment order under Section 148 read with Section 147 of the Act dated 20th March, 2014 has also been passed by the ITO, Ward-22(1), which was again sent to the Asiad Games Village address.

9. Ostensibly, in the returns of income filed by the assessee for assessment year 2007-08 to 2013-14, as chronologized in the earlier paragraphs, were filed prior to the issuance of notice under Section

148 of the Act depicting Milan Apartments address. The Permanent Account Number of the assessee being 'AEQPG8724F' was also depicted on each of the returns and the returns were filed with Income Tax Officer, Ward-25(1), New Delhi. The finding of the CIT(A), which is in challenge before us, is as under :-

"it is clear and evident that in this case the statutory notices were sent on the wrong address of the assessee and no service of the same were made. On the other hand the Ld.AR has proved that the appellant is regular income tax assessee and she is filing her IT returns regularly with the ITO 25(1), New Delhi. On inspection of the original assessment records produced by the Id. AO it has been observed that there was no service of the notice u/s 148 of the Act."

10. We find that the learned CIT(A) has arrived at the aforesaid finding after obtaining a remand report from the Assessing Officer as well as inspecting the original assessment records produced by the Assessing Officer before him. The factual matrix noted by us in the earlier paragraphs clearly supports the finding arrived at by the CIT(A) inasmuch as the notice under Section 148 of the Act dated 25th March, 2013 was not correctly addressed and therefore, assessee could not respond and an ex-parte assessment order was passed under Section 144 read with Section 148 of the Act. Curiously, the copy of the notice dated 25th March, 2013, placed at page 47 of the Paper Book reveals a handwritten Office Note by the Notice Server stating that the assessee is not available at the Asiad Games Village address because the assessee is said to have moved out from the said premises. Even at this stage, we find no tangible action on the part of the Assessing Officer to ascertain the correct whereabouts of the assessee. In fact, the correspondence placed at pages 41 to 51 reveal that it is only after passing of the impugned assessment order on 20th March, 2014 (at the

old address), that the Assessing Officer, i.e., ITO, Ward-22(1) wrote to the Special Cell asking for the profile data of the assessee; and, this exercise lead to the revelation of the correct address and the assessment jurisdiction of the assessee. It is clear that such an action was very much belated on the part of the Assessing Officer. The Assessing Officer, at the time of issuance of notice under Section 148 of the Act, was expected to be vigilant and duty-bound to access the correct address and jurisdiction of the assessee instead of mechanically sending the notice at the old address of the assessee. At least, when the Assessing Officer was informed by the Notice Server [by way of Office Note dated 25th March, 2013 (supra)], the Assessing Officer ought to have taken appropriate course of action. The said omission on the part of the Assessing Officer culminated in imparting illegality and voidness to the entire proceedings initiated by way of notice under Section 148 of the Act dated 25th March, 2014, which have been rightly treated by the learned CIT(A) as bad in law. In this view of the matter, we are unable to find any fault with the aforesaid finding of the CIT(A), which is not only borne out of record, but is also consistent with the legal position.

11. In this view of the matter, we hereby affirm the order of learned CIT(A) and Revenue fails in this appeal.

In the result, the appeal of the Revenue is dismissed.

Order pronounced on 21st August, 2020.

Sd/-

(JUSTICE P.P. BHATT)
PRESIDENT

Sd/-

(G.S. PANNU)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **Income Tax Officer, Ward 40(3),
Room No.1711, Civic Centre,
Block E-2, Minto Road, New Delhi – 110 002.**
2. Respondent : **Smt. Madhu Gupta,
Flat No.100, Milan Apartment, West Enclave,
Pitampura, Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar