

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'SMC', LUCKNOW  
(THROUGH VIRTUAL HEARING)**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.482/Lkw/2019  
Assessment year:2010-11

Shrinivas Gupta, C-606, Patel Nagar, Bareilly. PAN:BVXPG1066M (Appellant)	Vs.	Income Tax Officer, Ward-2(2), Bareilly. (Respondent)
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Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Shri Ajay Kumar, D.R.
Date of hearing	24/09/2020
Date of pronouncement	25/09/2020

**ORDER**

This is an appeal filed by the assessee against the order of learned CIT(A), Bareilly dated 11/06/2019 pertaining to assessment year 2010-2011. The assessee has taken the following grounds of appeal:

- "1. *Ld. CIT(A) erred in not accepting the plea of the assessee that notice u/s 148 was wrongly issued to the assessee, as he had duly complied AIR notice and explained the source of deposit.*
2. *Ld. CIT(A) erred in not accepting the plea that the order of A.O. is bad in law as the notice issued by him u/s 148 was not served on the assessee.*
3. *Ld. CIT(A) has erred in law as well as on facts in confirming a sum of Rs.12,33,330/- to the income of the assessee under section 69 of the I.T. Act 1961*

*despite the fact that no defect/ any factual error was pointed out by the AO as well as CIT(A) in the documents filed and explanation given by the assessee during the course of assessment and appellate proceedings.*

4. *The Ld. A.O. has not allowed proper opportunity of being heard before passing order u/s 144.*
5. *The order is against the principles of natural justice."*

2. Besides the above grounds of appeal, the assessee has filed petition for admission of additional ground, which for the sake of completeness is reproduced below:

*"6. That the reason to believe were recorded only with a view to verify the source of cash deposit of Rs.14,07,000/- in savings bank account which narration does not amount to requisite satisfaction for forming belief of escapement of income within the meaning of section 147 and due to such a fundamental deficiency in recording of reasons the assessment proceedings got vitiated rendering the assessment order as null and void."*

3. Learned counsel for the assessee, at the outset, submitted that additional ground, filed by the assessee, is purely legal plea which goes to the root of the assessment and for adjudicating the said ground of appeal, the relevant material and information is already available on record and therefore, keeping in view the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT [1998] 229 ITR 383, the same may be admitted and adjudicated. Learned D. R. has no objection to admission of additional ground and therefore, same was admitted and learned Counsel was directed to proceed with additional ground.

4. Learned counsel for the assessee submitted that the assessee was a small time shop keeper and due to bad economic conditions, sold his shop

and stock and deposited an amount of Rs.14,07,000/- in the savings bank account and the assessee, being a small time traders, was not having taxable income and therefore, was not filing any income tax return. It was submitted that the Assessing Officer, on the basis of deposit in the savings bank account, arrived at the conclusion that there is escapement of income and issued notice u/s 148 which is not in accordance with law as has been held by the I.T.A.T. Delhi Bench in the case of Bir Bahadur Singh Sijwali vs. Income Tax Officer [2015] 53 Taxmann.com 366 (Delhi-Trib). Further reliance was placed on an order of Amritsar Bench of the Tribunal in the case of Amrik Singh vs. Income Tax Officer [2016] 159 ITD 329 (Amritsar-Trib). Learned counsel for the assessee submitted that in this case it has been held that the Assessing Officer cannot arrive at a reason to believe merely on the basis of deposits in the bank and he has to specifically record the reason that income has escaped the assessment. Therefore, it was argued that the reason recorded having no nexus with the income escapement are no reason and therefore, the additional ground of appeal may be allowed and appeal of the assessee may be allowed.

5. Learned D. R., on the other hand, objected to the arguments of Learned counsel for the assessee and submitted that the Assessing Officer, before issuing notice u/s 148 and before recording the reasons, issued a non statutory letter dated 06/03/2017 and asked the assessee to explain and in this respect my attention was invited to copy of reasons recorded, placed at paper book page 59 where the Assessing Officer has recorded these facts and therefore, it was argued that in the case laws relied on by Learned counsel for the assessee, the Assessing Officer without issuing any non statutory notice had proceeded to record reasons and had issued notice u/s 148 of the Act and therefore, the case laws are distinguishable.

6. Learned counsel for the assessee, on the other hand, submitted that after receiving reply from the assessee the Assessing Officer did not carry out any further investigation and simply stated that evidence of sale of shop and stock was not enclosed and therefore, he formed opinion regarding escapement of income which is not in accordance with law.

7. I have heard the rival parties and have gone through the material placed on record. I find that the Assessing Officer recorded the reasons on 27/03/2017 after taking into consideration written reply dated 06/03/2017. In the reasons recorded, the Assessing Officer has mentioned that the assessee has not submitted any proof regarding sale of cloth and shop and therefore, he held that the contention of the assessee was not acceptable and only thereafter he proceeded to hold that income has escaped assessment and then issued notice u/s 148 of the Act. In my opinion, the case laws relied on by Learned counsel for the assessee are distinguishable and I am in agreement with the arguments of Learned D. R. and therefore, the additional ground of appeal taken by the assessee is dismissed. The learned AR was however asked to proceed with other ground of appeal.

8. Learned counsel for the assessee submitted that there is another legal issue which the assessee has taken vide ground No. 2 and submitted that the Assessing Officer has not issued notice u/s 148 on the address mentioned in the PAN database and therefore, the notice issued by the Assessing Officer u/s 148 is not maintainable and therefore, consequent assessment is null and void. Learned A.R. in this respect invited my attention to page 52 of the paper book where a copy of notice u/s 148 was placed and wherein the address of the assessee was mentioned as B-220, Rajendra Nagar, Bareilly. Learned counsel for the assessee submitted

that as per PAN database, available with the Department, address of the assessee was C-606, Patel Nagar, Near Balaji Mandir, Bareilly and in this respect my attention was invited to page 58 of the paper book where a copy of PAN database detail was placed. Learned counsel for the assessee submitted that this notice u/s 148 was not at all served upon the assessee and therefore, the consequent proceedings are null and void. Learned counsel for the assessee in this respect relied on the judgment of Hon'ble Supreme Court in the case of Pr. CIT vs. I-Ven Interactive Ltd. [2019] 267 Taxman 471 (SC) wherein the Hon'ble Supreme Court has clearly held that notice u/s 143(2) has to be issued at the address available in the database of the PAN and in this respect our specific attention was invited to para 7 of the order where the Hon'ble Court has made such observations. Learned counsel for the assessee submitted that though the Hon'ble Court has made the findings in respect of notice u/s 143(2) but they are equally applicable to notice u/s 148 also and in this respect our further attention was invited to a decision of Hon'ble Delhi High Court in the case of Veenadevi Karnani vs. Income Tax Officer [2019] 102 Taxmann.com 470 (Delhi) where the Hon'ble High Court, after noting down the requirements of Rule 127 of the I.T. Rules read with section 282 of the I.T. Act, has noted that the communication of notice had to be first made at the address available in the PAN database or address available in income tax return and only in case the notice could not be issued on these addresses, the same can be issued and served on the address available with the banking company or post office etc. Learned counsel for the assessee submitted that the Department did not make any attempt to issue notice to the assessee on the address listed in PAN database despite of the fact that the assessee had mentioned his PAN on the letter dated 06/03/2017 and in this respect our attention was invited to page 32 of the paper book where such copy of letter was placed.

9. Learned D. R., on the other hand, submitted that the assessee was issued notice in which he participated and his counsel also participated and took adjournment and in this respect our attention was invited to the copy of the assessment order wherein the Assessing Officer has noted all these facts. Learned D. R. therefore, submitted that having participated in the proceedings, it cannot be said that the notice u/s 148 was not served upon the assessee whereas the fact remains that the notice was served through registered post.

10. Learned counsel for the assessee, in his rejoinder, submitted that notice u/s 148 mentions the address as B-220, Rajendra Nagar, Bareilly on which the registered post was sent but it was not received by the assessee and instead the assessee had received notice u/s 142(1) which was served on the assessee at the correct address of C-606, Patel Nagar, Near Balaji Mandir, Bareilly and my attention was invited to page 55 of the paper book where on the copy of notice, the address has been rectified by the Department from the old address to the actual address. Learned counsel for the assessee submitted that the assessee had appeared before the Assessing Officer in response to notice u/s 142(1) only and no notice u/s 148 was served upon the assessee. It was submitted that correction made by the Department in the notice u/s 142(1) itself proves that the notice u/s 148 was not served at the address of the assessee and therefore, it was argued that the ground of appeal may be allowed. It was further argued that even if the assessee had participated in the proceedings, section 292BB of the Act cannot come to the help of the assessee as has been held by Hon'ble Allahabad High Court in the case of Pr. CIT vs. Mohd. Rizwan, vide order dated 30.03.2017.

11. I have heard the rival parties and have gone through the material placed on record. The only dispute in this appeal, as argued by both the parties, is as to whether the notice issued u/s 148 of the Act was served upon the assessee or not. In this respect the copy of notice placed at page 52 of the paper book is quite relevant where the address of the assessee has been mentioned as B-220, Rajendra Nagar, Bareilly. The address as per PAN database of the Department, placed at page 58 of the paper book, clearly shows that the address of the assessee is C-606, Patel Nagar, Near Balaji Mandir, Bareilly. The assessee vide reply dated 06/03/2017 has also mentioned the PAN in his reply and therefore, the Assessing Officer should have ensured from the PAN database the correct address of the assessee and should have issued notice u/s 148 on the correct address which has not been done. The Hon'ble Supreme Court in the case of Pr. CIT vs. I-Ven Interactive Ltd. (supra) while reversing the order of Hon'ble High Court in a case involving notice u/s 143(2) has observed as under:

*"7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act*

*are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so."*

The above findings of Hon'ble Supreme Court highlight that notice had to be issued at the address available in PAN database and in the present case the notice u/s 148 has not been issued and served on the address as mentioned in PAN database. The Hon'ble Delhi High Court in the case of Veena Devi Karnani (supra) has also elaborated the test to be followed for issue of notice as per Rule 127 read with section 282 of the Act and has held as under:

*"4. The record bears out the assessee's submissions. The returns for A.Y. 2010-11 were no doubt filed, reflecting her old (Rani Bagh) address. Nevertheless, all successive year returns (A.Y. 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17, all of which are on record) consistently reflect the changed Pitampura address. The Assessing Officer (AO) continued to be the same i.e. ITO Ward 25(2) till November, 2014. In these circumstances the assessee complains that the AO should have done most to exert himself in the course of the law i.e. to ascertain the correct address at which the reassessment notice (issued on 13.12.2013) to be served. Rule 127 of the Income Tax Rules, which prescribes mode of service of notices, summons, requisitions and other communications states as follows:*

*"127.(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or*

*requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).*

*(2) The addresses referred to in sub-rule (1) shall be—*

*(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—*

*(i) the address available in the PAN database of the addressee; or*

*(ii) the address available in the income-tax return to which the communication relates; or*

*(iii) the address available in the last income-tax return furnished by the addressee; or*

*(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:*

*Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:*

*Provided further that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:—*

*(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or*

*(ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or*

*(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or*

*(iv) the address of the assessee as furnished in Form No. 61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or*

*(v) the address of the assessee as furnished in Form No. 61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or*

*(vi) the address of the assessee as available in the records of the Government; or*

*(vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.*

*(b) for communications delivered or transmitted electronically—*

*(i) e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or*

*(ii) the e-mail address available in the last income-tax return furnished by the addressee; or*

*(iii) in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or*

*(iv) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority. "*

*5. Rule 127(2) clearly states that the addresses to which a notice or summons or requisition or order or any other communication may be delivered or transmitted shall be either available in the PAN database of the assessee or the address available in the income tax return to which the communication relates or the address available in the last income tax return filed by the assessee - all these options have to be resorted to by the concerned authority - in this case the AO. Therefore, in the facts of this case when the AO issued the reassessment notice, as he did on 13.12.2013 - he was under a duty to access the available PAN data base of the addressee or the address available in the income tax return to which the communication related or the address available in the last income return filed by the addressee. The returns for A.Y. 2011-12 and 2012-13 had already been filed on 22.02.2012 and 13.12.2012 respectively, reflecting the changed address but with the same PAN and before the same AO. The AO omitted to access the changed PAN database and going by the explanation of the Revenue, he merely mechanically sent notices at the old address. Even after issuing the reassessment notice, all succeeding notice under Section 142(1), were sent to the old address. It was in these circumstances that the reassessment was completed on best judgment basis.*

*6. This Court recollects the decision of the Privy Council in Nazir Ahmed v. King Emperor (1936) 38 BOM LR 987 which had been followed subsequently in several Supreme Court rulings that where the law mandates doing something in a particular manner, that is the only manner permissible in law and no other mode can be considered legal. Therefore, the AO was circumscribed and bound by the express mandate of Rule 127 which is clearly addressed to the authorities of the Revenue vis-a-vis the mode of communication. Given these compulsions, the Revenue's argument is a desperate "fall back" of the last resort i.e. the notice which was never under Section 292-B of the Act is one of despair. It amounts to saying that a notice which was never sent or received is deemed to have been sent and all proceedings despite such lack of notice and despite the Revenue's fragrant violation of law are deemed to be justified. In such circumstances, the argument, i.e. the Revenue's invocation of Section 292-B only needs to be noticed in order to be rejected as countenancing it, would mean that all illegalities are deemed to be*

*tapered over, in its favour. Section 292-B in the opinion of the Court would admit that no controversy with respect to the question of notice or proper service of summons, if at all were issued in the proper manner, known to law. Here clearly that is not the case.*

*7. The narrative of facts and the behaviour of the AO in this case is disturbing to say the least. The AO appears to have completely and mechanically proceeded on the information supplied to him by the bank without caring to address himself to the correct position in law and deduced to ensure that the reassessment notice (which is a matter of moment as far as the assessee is concerned) was issued properly and served at the correct address in the manner known to law. The assessee has relied upon a screenshot of the PAN database at the stage when the petition was filed to say that the Revenue always had the wherewithal to access the correct address, PAN number and all other relevant details including the email ID as well as the bank account. The omissions of the AO deserves, therefore, to be not only adversely noticed but appropriately reflected in his or her confidential reports and appropriate proceedings initiated by the Revenue authorities, which is so directed. The concerned Commissioner, Principal Commissioner or other superior authorities, as the case may be, are directed to file a report in this regard within eight weeks from today."*

In the above decision of Hon'ble Delhi High Court, the Hon'ble Court has clearly held that notice has to be issued either on the address available in PAN database or address available in the income tax return and has clearly held that the Assessing Officer was circumscribed and bound by the express mandate of Rule 127. It has been held in this case that is the notice could not be served on the address available in the PAN data base or at the address mentioned in Income Tax Return only then the notice can be issued on the address mentioned in banking company or post office. No such attempt has been made in this case. In the present case, clearly the notice u/s 148 was not served on the assessee on the address mentioned in PAN database but was straight forwarded issued at another address.

12. I further find that Hon'ble Allahabad High Court in the case of Pr. CIT vs. Mohd. Rizwan (supra) has framed the following two questions besides others, which are reproduced below:

*"(i) Whether notice under Section 148 of Act, 1961 is a procedural step or jurisdictional.*

*(ii) Whether notice issued by an authority having no jurisdiction can attain validity by referring to Section 292BB of Act, 1961 only for the reason that Assessee participated before transferee Assessing Authority."*

The Hon'ble court vide order dated 30/03/2017 has considered the applicability of section 292 BB wherein it has been held that notice issued u/s 147/148 is a jurisdictional step and it cannot be treated to be mere irregularity curable u/s 292 BB of the Act. For the sake of completeness, the findings of Hon'ble High Court from para 45 to 57 are reproduced below:

*"45. When a notice under Section 147/148 issued is a jurisdictional step, it cannot be treated to be mere irregularity curable under Section 292BB. In fact, Section 292BB has no application to a case where no valid notice has been issued by Competent A.O. This is clear from a bare reading of Section 292BB of Act, 1961 which reads as under:-*

***"292BB.** Where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-*

*(a) not served upon him; or*

*(b) not served upon him in time; or*

*(c) served upon him in an improper manner: **Provided** that nothing contained in this section shall apply where the*

*assessee has raised such objection before the completion of such assessment or reassessment."*

*46. The curability permitted under Section 292BB is with regard to service of notice upon Assessee and not with regard to competence of authority who has issued notice.*

*47. A similar question was considered in **Commissioner of Income Tax, Gujarat-II Vs. Kurban Hussain Ibrahimji Mithiborwala 1972 (4) SCC 394** and Court said "Income Tax Officer's jurisdiction to reopen an assessment under Section 34 depends upon issuance of a valid notice. If notice issued by him is invalid for any reason, entire proceedings taken by him would become void for want of jurisdiction." Court then held that notice was invalid as A.O. had no jurisdiction to revise assessment then it cannot be **treated** to be mere irregularity so as to validate proceedings of assessment if the Assessee had participated.*

*48. Similar is the view taken by a Full Bench of this Court in **Laxmi Narain Anand Prakash Vs. Commissioner of Sales Tax, Lucknow AIR 1980 ALL 198.***

*49. The contention of learned counsel for Revenue that participation of Assessee before Jurisdictional A.O. would operate as acquiescence or waiver and will not invalidate proceedings is thoroughly misconceived.*

*50. In **Karnal Improvement Trust, Karnal Vs. Smt. Prakash Wanti and another (1995) 5 SCC 159**, Court said that acquiescence does not confer jurisdiction and erroneous interpretation should not be permitted to perpetuate and perpetrate defeating of legislative animation.*

*51. In **Abdul Qayume Vs. Commissioner of Income Tax 1990 (184) ITR 404**, Court said "an admission or an acquiescence cannot be a foundation for assessment where the income is returned under an erroneous impression or misconception of law."*

*52. It is well settled that a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any jurisdictional authority, something which he lacked inherently.*

*53. Even if, it can be said that Assessee submitted to jurisdiction of A.O., law is that Assessee cannot confer jurisdiction on an authority who did not have the same and we find support from Commissioner of Income Tax Vs. Hari Raj Swarup and sons (1982) 138 ITR 462 (Alld.).*

*54. In Mir Iqbal Husain Vs. State of U.P. 1963 (50) ITR 40, it was held that requirement of valid notice cannot be waived. The mere fact that Assessee filed Return of Income pursuant to invalid notice would not render notice valid or validate subsequent proceedings which are vitiated in law for want of valid notice.*

*55. In Raza Textile Ltd. Vs. Income Tax Officer, Rampur (1973) 87 ITR 539 (SC), Court said that it is incomprehensible to think that a quasi-judicial authority like A.O. can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.*

*56. If an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside order passed by authority or forum having no jurisdiction. This is what was held in State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another AIR 1996 SC 2664.*

*57. In view of above discussion, we have no manner of doubt to answer all the four questions against Revenue and in favour of assessee."*

13. In view of the above judicial precedents and facts and circumstances of the case, Ground No.2 of the appeal is allowed. Since nothing was argued on the merits of the case the same has not been adjudicated.

14. In nutshell, the appeal of the assessee is allowed.

(Order pronounced in the open court on 25/09/2020)

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:25/09/2020

\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
- . Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow