

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

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

I.T.A. No. 7036/DEL/2017 (A.Y 2009-10)

(THROUGH VIDEO CONFERENCING)

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| Maneeta House No. 41, Garhi Shahpur, Govardhanpur, Sector-128, Noida, Uttar Pradesh DHQPM9766R (APPELLANT) | Vs | ITO Ward-2(2) Aayakar Bhawan, Sector-24, Noida (RESPONDENT) |
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| Appellant by | Sh. Amol Sinha, Adv |
| Respondent by | Sh. Gaurav Pundir, Sr. DR |

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| Date of Hearing | 27.07.2021 |
| Date of Pronouncement | 13.08.2021 |

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 25/09/2017 passed by CIT(A)-1, Noida for assessment year 2009-10.

2. The grounds of appeal are as under:-

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in not considering the 1st and 2nd ground of appeal i.e. the A.O. was wrong in initiating reassessment proceedings u/s 147/148 of the Income-tax Act, 1961 (the Act) as the purported notice stated to be sent by the A.O. was never served to the assessee. It is contended that the statutory time limit for service of notice u/s 149(l)(b) of the Act for the AY 2009-10 was 31.03.2016.

No notice was served to the assessee within the statutory time i.e. on or before 31.03.2016 and hence, the reassessment was barred by limitation.

It is stated that the A.O. has issued a corrigendum dated 17/04/2017 to the assessment order dated 28/11/2016 for A.Y. 2009-10. This corrigendum states that the name and address mentioned in the assessment order is not correct and it was corrected by the A.O. by way of this corrigendum. It proves that the A.O. was not having correct name and address of the appellant and the notice u/s 147/148 was never served to the assessee within the statutory time limit for issuing notice u/s 148 of the Act. Hence the re-assessment proceedings are void ab-initio.

2. *That on the facts and in the circumstances of the case, Ld. CIT (A) erred in not considering ground number 3 of appeal before him. The A.O. had imposed interest u/s 234A and 234B amounting to Rs. 16,85,622/- and 17,62,242/- respectively. It was appealed before the Ld. CIT (A) that, as the appellant was not having any taxable income and hence was not liable to file income tax return u/s 139(1) of the Income-tax Act, 1961 (the Act). Accordingly, the appellant was also not liable to pay advance tax u/s 208/210 of the Act. Therefore, the interest imposed by the A.O. is not valid and void ab-initio. The interest imposed should be deleted.*

3. *That on the facts and in the circumstances of the case, Ld. CIT (A) erred in confirming the addition of Rs. 1,12,117/-, as against Rs. 67,11,600/- made by the A.O., holding the fact that the source of investment remained un-explained. Though the Ld. CIT (A) reduced the amount of addition made by the A.O. to 1/6th, being the share of property the appellant hold in family income/assets, but has not accepted the contention of the appellant regarding the source of funds.*

4. *The Ld. CIT (A) erred in rejecting the contention of the appellant that the investment was funded by her husband. The appellant had submitted to the A.O., the source of funds for the investment, which has been accepted by the A.O. as well as the CIT (A), but the CIT (A) has not considered the same relying on the statement of the A.O. in his remand report that the appellant deserve no further relief in the matter except that he was liable for*

consideration of 1/6th of the amount invested in purchase of the immovable property. The Ld. CIT (A) has stated that there is no link between the husband and the wife, qua transfer of money.

In this regard it is stated that the appellant has taken the funds in cash from her husband for this investment. The husband of the appellant was having this money out of his agricultural income and his father had given him cash, being his share of income on compensation received on account of compulsory acquisition of land by NOIDA Authority. This was informed by the appellant to the A.O. In this regard, it is kindly submitted that transfer of cash between spouses do not require any linkage or documentary evidence. Once the source of income has been acknowledged, its distribution between spouses need no questioning.

3. The assessee is a house wife and farmer and did not have any taxable income, hence not filed income tax return or possesses any PAN/GIR No. Notice of demand u/s 156 of the Income Tax Act for Rs. 53,63,315/- along with assessment order u/s 147/144 of the Act was received by the assessee on 1st December, 2016. The Assessing Officer has made addition of Rs. 67,11,600/- in respect of any explained property investment.

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 dated 28/3/2016 along with questionnaire through notices u/s 142(1) dated 5/4/2016, 4/10/2016 & 3/11/2016 were not served to the assessee. The address given in the assessment order was also not adequate/not proper. Therefore, the Assessing Officer was not justified in passing ex-parte order u/s 144 and the matter may be remanded back to the file of the Assessing Officer. The Ld. AR further submitted that the CIT(A) has not dealt with the legal issue of non-service of notices.

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

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has not given the finding in respect of non-service of notice under Section 148 & 142(1) of the Act to the assessee by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the CIT(A) and we direct the CIT(A) to adjudicate these legal grounds. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

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

Order pronounced in the Open Court on this 13th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 13/08/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

