आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.62/Ind/2018
Assessment Year: 2009-10

Sanjeev Patni
Indore
PAN:AFTPP6237Q : Appellant

V/s
ACIT- 3(1)
Indore : Respondent

ITANo.189/Ind/2018
Assessment Year: 20109-10

ACIT- 3(1)
Indore : Appellant

V/s
Sanjeev Patni
Indore
PAN:AFTPP6237Q : Respondent

Revenue by	Shri Rajib Jain, CIT-DR
Respondent by	Shri Ashish Goyal & N.D. Patwa, ARs
Date of Hearing	08.06.2021
Date of Pronouncement	01.09.2021

O R D E R

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Assessee & Cross Appeal by the Revenue for Assessment Year 2009-10 are directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT]-I Indore dated 13.11.2017 which are arising out of the order u/s 144 r.w.s. 147 of the Income Tax Act 1961(In short the 'Act') dated 23.03.2016 framed by ACIT-3(1), Indore.

The Assessee has raised following grounds of appeal in ITA No.62/Ind/2018:

> *Ground no. 1 :- On facts and circumstances of the case and in law, the learned Commissioner d in not holding that the reassessment proceedings of the Appellant were illegal as the initiated by the learned Assessing Officer without satisfying the mandatory jurisdictional condition set out in section 147 of the Income Tax Act. 1961.*
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> *Ground no. 2 :- On facts and circumstances of the case and in law, the learned Commissioner (appeals) erred in not quashing the reassessment proceedings as illegal and void as the same were without issuing mandatory notice U/S 143 (2) of the Income Tax Act. 1961.*
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> *Ground no. 3 :- On facts and circumstances of the case and in law, the learned Commissioner al erred in sustaining the disallowance made by the learned Assessing Officer of Appellant's for house rent allowance U/S 10 (13A) of the Income Tax Act, 1961 of Rs. 3,40,000/- from his – salary income.*
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> *Ground no. 4 :- On facts and circumstances of the case and in law, the learned Commissioner (appeals) erred in sustaining the disallowance made by the learned Assessing Officer of loss claimed by e Appellant under the head 'short term capital gains' of Rs. 53,37,250/- from sale of shares.*
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> *Ground no. 5 :- On facts and circumstances of the case and in law, the learned Commissioner Appeals) erred in sustaining to the extent of Rs. 4,05,223/- the addition made by the learned Assessing Officer U/S 69 of*

the Income Tax Act, 1961 towards alleged unexplained cash credits in Appellant's bank counts.

Ground no. 6 :- On facts and circumstances of the case and in law, both the learned Commissioner (Appeals) and the learned Assessing Officer erred. in passing their respective orders without granting the Appellant an adequate opportunity of being heard.

The orders passed by them are in contravention of the principles of natural justice and hence, bad in law. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal.

The Revenue has raised following grounds of appeal in ITA No.189Ind/2018:

1. Whether on the facts and in the circumstances of the case} Ld. CIT(A) was justified in holding the amount of Rs. 1}30}S6A74/- as Long Term Capital Gains and restricting the addition of Rs. 1,64,64,619/- to Rs. 4,05,223/- in view of findings of the assessing officer.

2. Whether on the facts and in the circumstances of the case Ld. CIT(A) was justified in treating the sum of Rs.1,30,56,474/- as proceeds liable to Long Term Capital Gains instead of Short Term Capital Gains without offering any opportunity to assessing officer and relying only on computation given by assessee for holding period.

3. Whether on the facts and in the circumstances of the case} Ld. CIT(A) was justified in restricting the addition of Rs. 1,64,64,619/- based on credits in bank accounts to Rs. 4,05,223/- only without giving any opportunity to the assessing officer regarding nature and source of deposits in the bank accounts.

4. Whether on the facts and in the circumstances of the case} Ld. CIT(A) in justified even when principles of natural justice have not been followed While deleting addition at SL. No.1, 2 & 3 above.

ITA No.62/Ind/2018 (Assessee's appeal)

At the outset, learned Counsel for the assessee submitted that in the appeal filed by the assessee, the assessee has raised the legal ground as ground no.2 with regard to challenging the reassessment proceedings as illegal and void as the same were without issuing mandatory notice U/S 143 (2) of the Income Tax Act. 1961. Since this ground no.2 being legal in nature goes to the root of the matter, we have heard it at first.

2. Facts with regard to this legal ground are that the address of the assessee as filed in Return of Income u/s. 139 for the assessment year 2009-10 is 49-B Chandra Nagar, A.B Road Indore-452008 where his family resides. The return was filed on 18.09.2009. The notice u/s 148 was sent at "**7-B Chandra Nagar"**. This was the address in which assessee used to reside before 2003 for a very brief period of time. The notice u/s 148 was actually delivered to "49-B Chandra Nagar" and signed by the father of assessee since this was within 200 meters radius and in same compound. Further, the Reasons recorded by the Assessing Officer u/s 148 dated 25.03.2015 addressed to 7-B Chandra Nagar also state that "Mr Sanjeev Patni is residing in E1102, Matri Elegance, Bannerghatta Road, Bangalore" and his principal place of employment is at Bangalore only. In reply to

the notice u/s 148, it was stated that Income tax return already filed for A.Y. 2009-10 may be considered as in response to compliance u/s 148, thereby, reconfirming the address also. Copy of reason reads as under:

> *"In continuation of proceedings, further the notice u/s. 142(1) for producing the books of account and other related documents registers, vouchers etc. in justification of income for the year under consideration i.e. A.Y. 2009-10 disclosed in the return filed in compliance of notice u/s. 148, fixing date of compliance on 29/06/2015 was issued on 25/06/2015 by speed post which was received back on 26/06/2015 with the remarks as "not available on the given address".*

In the Remand Report, it is stated that the notice u/s. 143(2) dated 25.06.2015 was issued and was returned unserved. The remand report at last 5th line onwards, reads as under:

> *"In continuation of the proceedings the notice u/s. 143(2) and 142(1) dated 25/06/2015 issued on the same address on which notice u/s. 148 was already served. The notice so issued u/s. 143(2) and 142(1) was not served and returned back with postal remark "**दिए पते पर नहीं**" (copy of envelop with postal remark enclosed)."*

The address mentioned in the envelope is **7-B Chandra Nagar, A.B Road Indore. PB 28.** The Assessing Officer, in the Assessment Order has stated that only notice u/s. 142(1) was issued on 25.06.2015 whereas in the Remand Report, he states that in the same envelope, notice u/s. 143(2) was also there. Further, in the remand report only, there is mention that since

the notice dt. 25.06.2015 was unserved, another notice u/s. 143(2) was issued. Same is mentioned at last line onwards as under:

> *"Therefore notice u/s. 143(2) was again issued on the address mentioned on the latest return filed for A.Y. 2014-15 i.e. 49-B, Chandra Nagar, A.B. Road, Indore being last known address affixture was made by the ITI of this office (copy of affixture report of ITI is enclosed)."*

It is mentioned in the remand report that the notice u/s. 143(2) dt. 06.07.2015 was served by affixture. It was alleged that since the door was locked, notice was affixed and two witnesses have signed.

3. Being aggrieved, the assessee challenged the legality of the reassessment proceedings before the ld. CIT(A) claiming that the notice u/s 143(2) of the I.T. Act was not served on the assessee. But, the ld. CIT(A) confirmed the action of the Assessing Officer. Being aggrieved, the assessee is before this Tribunal.

4. Before us, the ld. Counsel for the assessee submitted that the mandatory notice u/s 143(2) was not served on the assessee and hence the entire reassessment proceedings completed by the Assessing Officer are null and void. Ld. Counsel for the assessee submitted that at the note of inspector, nowhere the details of Inspector or witness, their names, address, father's name or any

other identification is placed. It is a settled proposition of law that service by affixture is a permissible mode of service, but a detailed procedure as given under Rule 17 & 19 of the Order V of 1908 of Code of Civil Procedure is applicable which indicate that notice by affixture can be resorted only as a last resort, after exhausting all other modes of service. Notice by affixture can be resorted only if Defendant refuses to sign the acknowledgement, or where the serving officer, after using *all due and reasonable diligence*, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and *there is no likelihood of his being found at the residence* within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made. Further, it is the responsibility of the serving officer to affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and also to return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy explaining the circumstances under which he did

so with the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. But, in the present case, still due process of law as above was not followed. In fact, notice on the address (49-B, Chandra Nagar) was never sent through post and the Inspector's note is not supported by any affidavit under Rule 19. His report could have been accepted only if he would have given affidavit. The assessee also applied to the Assessing Officer for cross-examination of the Inspector and witness but the same was not done by the Assessing Officer. Further, the facts related to affixture of notice cannot be true in the light of the affidavit from Shri Rajiv Patni (brother of assessee) wherein he submitted that no notice was served on through affixure. Therefore, the service of notice by affixture is not a valid service in the present case and thus, the reassessment proceedings are bad-in-law and deserve to be quashed.

5. Per contra, ld. CIT-DR relied on the orders of the Revenue Authorities and submitted that the Assessing Officer made all possible efforts to serve the notice on the assessee including affixure, therefore, the notice was rightly served on the assessee.

6. We have heard rival contentions of both the parties and perused material available on record. We find that the notice u/s 148 was sent at "***7-B Chandra Nagar"***. This was the address in which assessee used to reside before 2003 for a very brief period of time. The reasons recorded by the Assessing Officer u/s 148 dated 25.03.2015 addressed to 7-B Chandra Nagar state that **"**Mr Sanjeev Patni is residing in E1102, Matri Elegance, Bannerghatta Road, Bangalore**"** and his principal place of employment is at Bangalore only. Thus, even though the return of income was filed from Indore address, the Assessing Officer was well aware that the assessee was residing at Bangalore. In reply to the notice u/s 148, it was stated that Income tax return already filed for A.Y. 2009-10 may be considered as the return in response to compliance u/s 148, thereby, reconfirming the address also. We find that in the assessment order, there is no mention of any notice u/s. 143(2) being issued to assessee. After referring to the return filed u/s. 148 and mentioning that the copy of reasons were provided, it was stated that the notice u/s. 142(1) for producing the books of account and other related documents registers, vouchers etc. in justification of income for the year under consideration i.e. A.Y. 2009-10 disclosed in the

return filed in compliance of notice u/s. 148, fixing date of compliance on 29/06/2015 was issued on 25/06/2015 by speed post which was received back on 26/06/2015 with the remarks as "not available on the given address". From the perusal of note sheet, we find that that no mention is made of any notice issued in the year 2015 particularly of notice u/s. 143(2). Further, in the Remand Report, it was stated that the notice u/s. 143(2) was issued dated 25.06.2015 and was returned unserved. But, in the Assessment Order, the Assessing Officer stated that only notice u/s. 142(1) was issued on 25.06.2015 whereas in the Remand Report, he stateed that in the same envelope, notice u/s. 143(2) was also there. Such notice u/s. 143(2) was never brought on record. Further, in the remand report only, there is mention that since the notice dt. 25.06.2015 was unserved, another notice u/s. 143(2) was issued and in this notice also, there was no dispatch no., thus, if this notice was actually issued, it should have been given a dispatch no. It is also mentioned in the remand report that the notice u/s. 143(2) dt. 06.07.2015 was served by affixture. A note on affixture by the Inspector is put on notice u/s. 143(2) wherein it was alleged that since the door was locked, notice was affixed and two witnesses have signed. We find that

nowhere on the note of inspector, the details of Inspector or witness, their names, address, father's name or any other identification is placed. Further, the assessee also applied to the Assessing Officer for details of the witness and cross-examination of Inspector and the Witness. But, the Assessing Officer did nothing in this regard. We find that it is a settled proposition of law that service by affixture is a permissible mode of service, but a detailed procedure as given under Rule 17 of the Order V of 1908 of Code of Civil Procedure is applicable as under:

> *"17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."*
> *Further, under Rule 19 it is provided that:*
> *"19. Examination of serving officer*
> *Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit."*

7. From perusal of the above, it is clear that notice by affixture can be resorted only as a last resort, after exhausting all other modes of service. Notice by affixture can be resorted only if:

> *1.(a) Defendant refuses to sign the acknowledgement, or*
> *2.(b) where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made.*
> *3. It is the responsibility of the serving officer to:*
> *(i) affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain,*
> *(ii) return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating*
> *(a)that he has so affixed the copy,*
> *(b) the circumstances under which he did so,*
> *(c)the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.*

8. Thus, in the present case, assuming that the Inspector did the service, still due process of law as above was not followed. If when he visited, the house was locked, he should have exercised due diligence to verify as to when the assessee will return. In fact, notice on this address was never sent through post. Why service of notice on Bangalore address was never tried. How inspector was sure that there is no likelihood of assessee being found at the residence within a reasonable time. Also, circumstances under which he had to do service by affixture were not mentioned. Also, the name and address of the witness were not

mentioned. Also, the Inspector's note is required to be supported by any affidavit of inspector under Rule 19. His report could have been accepted only if: -

> *(a) he has given affidavit; or*
> *(b) if he has not given affidavit, only after examination of serving officer (Inspector) on oath.*

Further, in any case, the Court may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit. The assessee applied to the Assessing Officer for cross-examination of the Inspector and witness. But, the same was not done by the Assessing Officer. Therefore, we are of the view that the service of notice by affixture is not a valid service in the present case as service by affixture is substituted service and since it is not direct or personal service upon the defendant, to bind him by such mode of service, the mere formality of affixture is not sufficient. The Assessing Officer failed to complied with the requisite procedure as laid down in the procedure for service of summons/notice and, therefore, the procedure laid down therein cannot be surpassed because the intention of the legislature behind these provisions is that strict compliance of the procedure laid down therein has to be made. The expression 'after using all

due and reasonable diligence' appearing in rule 17 has been considered in many cases and it has been held that unless a real and substantial effort has been made to find the defendant after proper enquiries, the Serving Officer cannot be deemed to have exercised 'due and reasonable diligence'. Before taking advantage of rule 17, he must make diligent search for the person to be served. Another requirement of rule 17 is that the Serving Officer should state that he has affixed the copy of summons as per this rule; the circumstances under which he did so; the name and address of the person by whom the house or premises were identified; in whose premises the copy of the summon was affixed and these facts should also be verified by an affidavit of the Serving Officer. This view is supported by the ratio laid down in case of World Wide Exports (P.) Ltd. [2004] 91 ITD 519 (DEL). We find that the facts related to affixture of notice cannot be true in light of the affidavit from Shri Rajiv Patni (brother of assessee) which states as under:

a. *They reside in 49B Chandra Nagar, A.B Road Indore since past 17 years with his family members comprising of parents, wife, son and daughter-in-law.*
b. *Also affirmed that his brother's address was Bangalore address. His brother used this address as correspondence address for sake of convenience.*
c. *Due to old age and medical reasons, the father was always at home along with one family member and the house was never locked.*

d. *It is not possible that any notice remain unserved with the remark that no one was available at home.*

e. *In the Month of July 2015, it is not possible that any notice may be affixed by any income tax representative as many activities were going on in the house regarding wedding of Siddharth Patni (Son of Rajiv Patni).*

Thus, the fact that no notice was affixed and remained unserved was confirmed through the above affidavit. Further, we are of the view that the Inspector had to resort to service of notice by affixture after purportedly exhausting all modes of service, but nowhere in the assessment order and in the note sheet or in the Inspector's note, any details of service through Inspector was mentioned. This view is supported by the ratio laid down in case of Sanjay Badani (2014) 50 taxmann.com 457 (ITAT, Mumbai) wherein it was held as under:

> *"We have to decide whether there was service of notice u/s.143(2) much less a proper service as per Rule 17 of Order V of CPC, which requires that before service of notice by affixture, notice server/service officer must make diligent search for person to be served and, he, therefore must take pain to find him and also to make mention of his efforts in report. The serving officer should also state in his report the circumstances under which he did so and the name and address of the person by whom house or premises were identified and in whose premises copy of summon was affixed, otherwise such service could not be accepted to be a legally valid service of notice u/s.143(2)."*

9. In case of CIT v. Ramendra Nath Ghosh [1971] 82 ITR 888 (SC), the Hon'ble Apex Court held as under:

> "*The contention of the assessees was that at the relevant time they had no place of business. The report of the serving officer did not mention the names and addresses of the person who identified the*

> *place of business of the assessees. That officer did not mention in his report nor in the affidavit filed by him that he personally knew the place of business of the assessee. Hence, the service of notice must be held to be not in accordance with the law. The possibility of his having gone to a wrong place could not be ruled out. Hence, it was not possible to hold that the assessees had been given a proper opportunity to put forward their case as required by section 33B.*"

In the present case also, the serving officer could not state in his report the any name and address of the witnesses who have identified the house of the assessee and in whose presence the notice was affixed. Further, the affidavit in assessment records is missing thus in contravention of Rule 20 of Order V of CPC 1908. We find that in case of Jagannath Prasad [1977] 110 ITR 27 (ALL.), the Hon'ble Allahabad High Court held as under:

> *"the report given by the process server was to the effect that he had made enquiries at a number of places but could not find out the assessee. After this report the ITO passed an order for affixture. From the mere fact that the process server could not find out the assessee it would not lead to the conclusion that the assessee was keeping out of the way for the purpose of avoiding service or that for any other reason the notice could not be served. The report did not indicate that more than one attempt was made by the process server. On the contrary, it indicated that on a single attempt he enquired at a number of places but could not find out the assessee. This could not constitute sufficient material for the satisfaction of the ITO that the conditions requisite for the application of Order V, rule 20, existed. The order of the ITO directing service by affixture was based on no relevant material on the record and, as such, had to be struck down. Accordingly, notices of demand and order of attachment of property were quashed."*

In present case also, there was only single attempt by the inspector and the reason enumerated was that door was locked. Thus the findings of above case are squarely applicable in

assessee's case. In view of the above judicial pronouncements, we are of the view that the Notice by affixture needs to be done in accordance with procedure laid down in by Order V, rule 17-20 of CPC. Our observations are also supported by the ratio laid down in the following judicial pronouncements:

> *Naveen Chande [2010] 323 ITR 49 (Punjab & Haryana);*
> *Kishan Chand [2010] 328 ITR 173 (PUNJ. & HAR);*
> *CIT v. Shital Prasad Kharag Prasad[2006] 280 ITR 541/[2005] 147 Taxman 441; and*
> *RAM SINGH MATHUR [2007] 112 TTJ 989 (DELHI) (ITAT Delhi Bench).*

10. We further find that this Tribunal vide order dated 20.5.2021 in the case of M/s. Swastik Coal Corporation P. Ltd., Indore in ITA No. for the A.Y. 477/Ind/2013 (A.Y. 2005-06) has decided the identical issue of service of notice u/s 143(2) of the I.T. Act and the ratio laid down in this decision is applicable to the facts of the present case. The relevant portion of the order of the Tribunal passed on 25.5.2021 (supra) is reproduced hereunder:

> *"However, before arguing the matter on merit, the Ld. Counsel appearing for the assessee raised preliminary objection in regard to the serving of notice u/s 143(2) of the Act dated 31.08.2009 while initiating the assessment proceedings. The assessee company filed its return of income on 30.09.2008. It is submitted by the Ld. Counsel appearing for the assessee that the impugned assessment order u/s 143(2) of the Act was claimed to have been passed after due process of the law by serving notice in due time in terms of proviso to Section 143(2) but the same has not been served in terms of the procedure laid down by the provision under section 282 of the Act. In that view of the matter, it was ultimately contended by the Ld. AR that the impugned order is bad in law and is liable to be quashed.*

2. On the contrary Ld. DR contended that the notice dated 03.09.2009 u/s 143(3) of the Act was duly discharged through speed post followed by another notice by the notice servers namely Shri Prem N. Joshi on 4.9.2009. The proof of the two services are on record before the revenue and duly submitted before the Ld. Tribunal and therefore, according to the Ld. DR it has been assumed that the notice served was entered in the scrutiny pendency register. Hence, the plea of the order being passed without due process of law is not tenable.

3. We have heard the rival submissions made by the respective parties on the ground of maintainability of the assessment proceedings. We have also perused the available records. The case of the assessee is this that the notice u/s 143(2) and 142(1) of the Act was received for the first time in 21.7.2010 by and under the notice dated 14.07.2010 fixing the date of hearing on 12.8.2010. Such fact was brought to the notice of Ld. A.O by and under a letter dated 12.8.2010 issued by the assessee as appears at page 55 of the paper book submitted before us. Such objection was also filed on 03.09.2010 owing to non availability of Ld. A.O. In fact certified true copy of the assessment proceedings was also obtained from ACIT-5(1), Indore who issued the alleged first notice issued u/s 143(2) of the Act. It appears that the said revenue officer himself admitted that said first notice u/s 143(2) of the Act was not served on time before 30.09.2009, as it reflects at page 54 being the memo dated 30.09.2010 under the signature of ACIT-5(1), Indore written to the appellant company. It was further contended by the said Revenue Officer that the notice u/s 143(2) of the Act for the assessment proceedings for the relevant Assessment Year was sent by speed post on 03.09.2010 vide dispatch No.1221/03.09.2009 as well as through notice server by the Office of the Ld. ACIT-5(1), Indore and claimed to have been duly served upon the very next day i.e. 04.09.2010. This memo dated 30.09.2010 was issued while replying the objection as it is evident from page 55 of the paper book submitted before us. The assessee raised his objection on 12.08.2010 challenging the veracity of the proceeding since the notice under Section 143(2) and 143(1) of the Act both dated 14.07.2010 for Assessment Year 2008-09 was received only on 17.07.2010. It was contended by the assessee that the same ought to have been served u/s 143(2) of the Act before 30.09.2009. It is relevant to mention that the proviso to Clause II sub section (2) of Section 143 speaks as follows:-

"provided that no notice under this sub-section shall be served upon the assessee after the expiry of six months from the end of financial year in which return is furnished".

Therefore, admittedly the notice issued is beyond the period as stipulated under proviso of Section 143(2) of the Act and the entire proceedings was, thus, prayed to be dropped by the appellant. It is surprised to note that the photo copy of the Speed Post envelope dispatch No.1221 was placed on record by the revenue. With our limited understanding, w failed to follow that if the said envelope containing the notice is sent to the assessee and received by them then as to how the same could reach the sender i.e. the office of the concerned Revenue Officer and this could be kept in the file. Secondly the notice which has been claimed to have been served upon the assessee through office server the acknowledgement whereof speak about the details of the person receiving the same. In fact the notice server Shri Prem N Joshi failed to prove on record the Name/designation/identification of the person to whom the same was delivered. It was contended by the appellant that the signature of the impugned notice does not belong to any of the officer/Director or employee of the company. It is relevant to note that this fact has not been controverted by the revenue. No such evidence indicating receiving notice genuinely on behalf of the assessee is forthcoming from the revenue in order to substantiate that the service has actually been affected. The Ld. DR has not been able to satisfy us on this aspect. In that event we do not hesitate to conclude that the provision of service of notice as stipulated under Section 282 of the Act as if it is a summon issued by a court under the code of civil procedure, 1908 (5 of 1908) has not been complied with in its true spirit, in the absence of disclosure of identification of the person to whom the service was ultimately effected. The Ld. A.O failed to bring any material on record to show that the notice u/s 143(2) of the Act was served on the assessee within the stipulated period i.e. 30.09.2009 before the expiry of 6 months from the end of the financial year in which the return is furnished. Thus, it cannot be held to be a valid service of notice on the assessee. In this regard we have considered the judgment relied upon by the Ld. AR some of which are discussed herein below:-

The Hon'ble Delhi High Court in the case of M.L. Narang/ R.L. Narang reported in (1981) 6 Taxmann 61

(Delhi). In this particular case Revenue has failed to show that the services was effected on 3.2.1969 either on the assessee concerned or in any other employees, relatives or any other authorised representatives. There was nothing on record to show the identity of the person on whom the service was effected and thus it was held that the service was not effected on the assessee concerned on 3.02.1969.

On an identical situation the Hon,ble High Court of Allahabad in the case of Dr. Y.D. Singh, B.R.D. Medical College reported in (2012) 20 taxmann.com 174(All.), observed at para 5 that "it was claimed that the said notice was served on Shri Murli Dhar Vaish" – no such claim made by the Department that it was served on certain specific person. Later the server Inspector did not state any specific person on whom he made the delivery. It was further observed that personal service would not be a valid service of notice, if it has not been made either on the person mentioned there or an agent duly authorised to receive notice as provided under Section 282 of the Act. Finally, since there have been no entry in the order sheet regarding the issuance and service of notice u/s 143(2) of the Act, the contention of the assessee that no such service was ever issued what is to say of service of the same on the assessee or on his authorised representative has been accepted by the court.

In another judgment the Hon'ble Tribunal, Lucknow Benches in the case of Nripendra Mishra reported in (2009) 121 TTJ 701 (Lucknow) held in para 11 that "In fact the revenue had not proved the identity of person. Thus the revenue had not proved on record that the notice under section 143(2) was served upon the agent of the assessee. In such circumstances, the assessment order passed by the Assessing Officer had to be annulled" .

4. Thus, taking into consideration of the entire aspect of the matter we are of the considered view that unless there is service of notice in accordance with provision under Section 282 of the Act separately specifying mode of service of notice, it cannot be treated as valid service of notice. In the case in hand the Revenue has failed to show, that service of notice under Section 143(2) of the Act effected within the stipulated time under the provisions of Section 143(2) of the Act on the assessee or on any of their employees/ relatives or any authorized representatives particularly in adherence to provision under Section 282 of the Act either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908 (5 of 908).

> *In that view of the matter the service of notice under Section 143(2) of the Act, in our considered opinion is no service. Since the initiation of the proceeding is not in adherence to the prescribed rules, the entire proceeding is vitiated and hence quashed. Consequently, all action taken there under is bad. The impugned addition, made by the Revenue is, thus, hereby deleted.*
>
> *5. In the result appeal of the assessee is allowed.*"

11. In view of the above facts in the light of the aforesaid judicial pronouncements, we are of the view that the reassessment proceedings, so initiated, are bad in law as the Assessing Officer failed to serve the notice u/s 143(2) of the I.T. Act on the assessee. Accordingly, we quash the assessment order framed u/s 144 r.w.s. 147 of the IT Act for A.Y.2009-10.

12. Since we have quashed the assessment order itself, we are refraining ourselves to decide other grounds on merits raised in the appeal filed by the assessee and Revenue becoming now academic in nature as the same would not serve any purpose. Thus, since the assessment order is quashed, the grounds raised in the appeal of the assessee stand allowed whereas the grounds raised in the appeal of the Revenue stand dismissed.

13. In the result, the assessee's appeal i.e. ITA No. 62/Ind/2018 is allowed whereas the appeal filed by the Revenue i.e. ITA No.189/Ind/2018 is dismissed.

Order pronounced as per Rule 34 of ITAT Rules, 1963 on 01.09.2021.

Sd/-	Sd/-
(RAJPAL YADAV)	(MANISH BORAD)
VICE PRESIDENT	ACCOUNTANT MEMBER

दिनांक /Dated : 01.09.2021
!vyas!

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore