

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

BEFORE: SHRI SATBEER SINGH, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.302/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Sh.Anil Kumar, H.No.171, Vill.Subhri, PO Rajokheri, Distt. Ambala..	बनाम	The I.T.O., Ward-4, Patiala.
स्थायी लेखा सं./PAN NO: BHQPK0253D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Neeraj Jain, CA
& Shri Y.R. Saini, Adv.

राजस्व की ओर से/ Revenue by : Smt.Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28.07.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10.2021

(Hearing through webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax(Appeals), Patiala [(in short the ‘Ld.CIT(A)] dated 30.12.2018 relating to assessment year 2010-11, passed u/s

250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The effective grounds raised by the assessee are as under:

- “1. That in the facts and circumstances of the case the Ld A.O. has erred in law in making addition of Rs 1,52.27,440/- in the case of assessee on protective basis when whole of the transaction in the bank accounts have been done by Shri Atam Parkash, immigration agent.*
- 2. That in the facts and circumstances of case the Ld CIT(A) has erred in law in confirming the order u/s 144 passed by the assessing officer when notice u/s 148 issued by A.O. was not sent to the assessee on his PAN data base address before the specified date i.e. 31/03/2017.*
- 3. That the finding of Ld CIT(A) is misplaced one that assessee has refused to take the notice. The assessee never resided on the address provided by the Axis Bank in bank account no 195010100222655 where the notice is claimed to have been served/ refused.*
- 4. That the Ld assessing officer has wrongly assumed jurisdiction upon the assessee when the assessee was residing in village Subhri P O Rajokheri. Teh. Barara Distt. Ambala. Notice was never refused by assessee as alleged by Ld. CIT(A) in his order. That report of the assessing officer was never made available to the assessee to make submission factually on its contents. It tantamount to denial of natural Justice.*
- 5. That the assessee made compliance to the notice u/s 142(1) received by him by post in Oct, 2017 and filed*

duly notarised affidavit that Shri Atam Parkash, agent has cheated him and misused his bank accounts on the basis of blank signed cheque books.

6. *The Ld CIT(A) has not adjudicated the judgements submitted in appeal proceedings before him. That the reliance of Ld CIT(A) in the case of Atulbhai Hira Lai Shah Vs DCIT(2016) 73 Taxman.Com 325(SC) is misplaced one as no notice was received by assessee before the specified date i.e. 31/03/2017 on his PAN data base address.*
7. *In the facts and circumstance of the case if the ex-party order/assessment without service of notice u/s 148 upon the assessee is to be held as valid assessment then on cash deposit of Rs 2:67:68,120/- the income of Rs.1,52,27,440/- on peak credits is without any basis. From perusal of bank accounts in the name of assessee operated by the immigration agent it is seen after cash deposit in the bank account amount was immediately transferred to the trading concerns. At the most protective income in the case of assessee shall be worked out @ 5% as provided in section 44AF of the I.T. Act. The income of the assessee will work out to Rs 13,38,406/-.*

3. As is evident from the above grounds the assessee has raised both legal grounds challenging the validity of the assessment framed u/s 147 of the Act as well as on merits challenging the addition made of Rs.1,52,27,440/- on account of cash found deposited in the bank account of the assessee.

4. Brief facts relating to the case are that the Assessing Officer (AO) consequent to information that the assessee had deposited Rs.1,61,35,420/- in his bank account during the

impugned assessment year reopened the case of the assessee recording reasons for the same and by issuing notice u/s 148 of the Act on 29.03.2017. Thereafter notice u/s 142(1) of the Act was also issued to the assessee and since the assessee failed to comply with the notices, summon u/s 131 of the Act was issued to the assessee. The assessee appeared before the AO and stated that he was working as a salesman in the cloth shop receiving salary of Rs.5000/- per month. That he had no relation with the shop mentioned in the address of correspondence mentioned in the bank account of the assessee. He stated that all the bank accounts were opened at the instance of the owner of the shop Shri Atam Parkash who worked as an agent to send people abroad and with whose help he too had gone to South Korea in the year 2009-10. That he was deported from South Korea after staying for more than a year. The assessee stated that all the transactions in the bank account were operated by Shri Atam Parkash since the assessee had deposited all the blank signed cheques to him. The AO ,after recording his satisfaction that Shri Atam Parkash used the bank accounts of the assessee to route his unexplained money, completed the assessment u/s 144/147 of the Act on the assessee on protective basis making an addition of Rs.1,52,27,440/-

treating the deposits as made out of income of the assessee from unexplained sources.

5. Aggrieved by the same, the assessee went in appeal before the Ld.CIT(A) challenging the validity of the assessment framed on the ground that the jurisdictional notice u/s 148 of the Act was not served on him. Ground challenging the merits of the addition made were also raised. The Ld.CIT(A) dismissed all the grounds raised by the assessee and upheld the order of the AO.

6. Aggrieved by the said order of the Ld.CIT(A) the assessee has now come up in appeal before us.

7. Taking up first the legal grounds raised in Ground No.2,3,4 & 6 the solitary argument raised before us was that the assessment framed u/s 147 of the Act was invalid in the absence of service of notice u/s 148 of the Act. Ld.Counsel for the assessee pointed out that the notice was neither served through speed post, nor by affixture or for that matter by notice server as stated by the Ld.CIT(A).

8. The Revenue, on the other hand, relied upon the order of the CIT(A) that the notice had been served through Speed Post and Affixture at the address of the assessee mentioned

in the PAN Database and even the notice server had attempted services of the notice which the assessee had refused to take. He drew our attention to the relevant findings of the Ld.CIT(A) in this regard at page 3 of his order as under:

“The appellant's first averment is with regards to the non-service of notice u/s 148 of the Act and that assessment made is void ab- initio. I have called for the record in the instant case and the notice u/s 148 has been served through Speed Post and by affixture at the address of the appellant as per the PAN database. Moreover, the Ld.ao attempted to serve the notice u/s 148 through Notice server at the village address of the appellant and the Notice server's report duly reported by the Ld. AO in the Assessment order is that the appellant refused to take service of the notice. Within the context of the case, the same is in my considered opinion a valid service of the notice. The case laws cited by the Ld AR can be distinguished on facts. Reliance is also placed on the decision of the Hon'ble Apex Court in the case of Atulbhai Hiralal Shah vs. Deputy Commissioner of Income Tax (2016) 73taxmann.com 325(SC) which has held that service of notice on the address as per the PAN database is valid service. The Ld AO has further in my considered view dealt with the objections of the appellant with regards to the non-service of notice in para 7 of the order.”

9. To verify the fact of service of notice the assessment records were called for. From the records it was noticed that the Sr. DR had sought information of service of notice from the concerned AO vide letter dated 08.02.2021. In response to the same due reply was filed by the AO to the Sr.DR vide

letter dated 01.03.2021.

10. On going through the assessment records alongwith the contents of the letter of the AO placing on record the necessary facts relating to the service of notice, the facts which emanate are that;

i) the notice u/s 148 of the Act was issued to the assessee on 29.03.2017 by Speed Post at the address M/s Fashion Shoppee, SCO 13, Main Bazar Tripari, Patiala;

ii) This notice was received back unserved with the comments "*no such person in this address on 31.03.2017*".

iii) The PAN Database address was also asked for by the Sr.DR from the AO which was duly supplied by the AO and a perusal of which reveals that there were two addresses mentioned therein with the office address being M/s Fashion Shop, SCO 323, Main Bazar Tripari, Patiala-147001 and residence address being village Subhri, PO Rajokheri, Ambala, Haryana-133201;

iv) The assessment record did not reveal any notice served at the residential address mentioned in the PAN Database and this fact is corroborated by the AO in his letter addressed to the Sr.DR, ITAT;

iv) The assessment record does not reveal any notice served by affixture on the assessee, though a letter

addressed to the assessee by the ITO, Ward-4, Patiala dated 24.10.2017 mentions notice u/s 148 of the Act being sent at the office address of Patiala by Speed Post and also by an affixture;

v) the assessment record reveals a letter addressed by the ITO, Ward-4, Patiala to the assessee dated 07.07.2017 apprising the assessee of the fact of service of notice u/s 148 of the Act dated 29.03.2017 vide which he was requested to file income tax return within 30 days which had not been filed and asking him to comply with the same. The said letter has a noting by the notice server stating that "*the assessee had refused to take the notice*".

11. The facts which emanate from the assessment records therefore are that notice u/s 148 of the Act served by Speed Post was returned back unserved, there is no evidence of service of notice by affixture and the notice server had only carried a letter addressed to the assessee which he had refused to take and no notice u/s 148 of the Act was served by the notice server.

12. Therefore, it is clear that there was no valid service of notice u/s 148 of the Act in the present case. The finding of the Ld.CIT(A) that the notices served through Speed Post and affixture were at the address as per PAN Database and, therefore, tantamounted to valid service, is of no assistance

to the Revenue since admittedly the PAN Database also contains the residential address of the assessee and no attempt at all was made by the Revenue to service the notice at the residential address when the notice could not be served at the office address. Therefore, the facts on record demonstrate that there was no valid service of notice in the present case on the assessee even at the PAN Database available.

13. Notice u/s 148 of the Act being a jurisdictional notice essential for assuming jurisdiction to frame assessment u/s 147 of the Act, in the absence of service of the same, the assessment framed, we hold, is without jurisdiction and, hence void abinitio.

The grounds of appeal raised by the assessee in this regard are, therefore allowed in above terms.

14. Since the assessment order itself has been set aside as being void abinitio the grounds raised on merits are merely academic. But even otherwise we find that the addition on account of cash deposits of Rs.1.52 crores had been made on protective basis, with the substantive addition having been made in the hands of Shri Atam Parkash. And

the ITO had informed the Sr. DR., on a specific query raised regarding the status of the assessment framed in the case of Shri Atam Parkash whether any appeal had been filed, that no appeal had been filed by Shri Atam Parkash against the assessment completed in his case for the impugned assessment year. In view of the same, since the substantive addition stood confirmed in the case of Shri Atam Parkash, the addition made on protective basis in the case of the assessee does not survive.

12. In effect the appeal of the assessee is allowed.

Order pronounced on 4th October, 2021.

Sd/-
(SATBEER SINGH)
न्यायकि सदस्य/Judicial Member
दिनांक /Dated: 4th October, 2021
रती

Sd/-
(ANNAPURNA GUPTA)
लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar