

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 6482/Del/2014
(Assessment Year: 2004-05)

DCIT, Central Circle-1, New Delhi.	Vs.	Himachal Futuristic Communications Ltd, 8, Commercial Complex, Masjid Moth, Gr. Kailash-II, New Delhi – 110 048. PAN: AAACH4041D
(Appellant)		(Respondent)

ITA NO 5817/Del/2014
(Assessment Year: 2004-05)

Himachal Futuristic Communications Ltd, 8, Commercial Complex, Masjid Moth, Gr. Kailash-II, New Delhi – 110 048. PAN: AAACH4041D	Vs.	DCIT, Central Circle-1, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Rakesh Joshi, C. A.;
Department by:	Shri Najmi [CIT] – D.R.;
Date of Hearing :	09/08/2021
Date of pronouncement :	08/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the cross appeals filed by the assessee as well as the learned assessing officer for assessment year 2004 – 05 against the order passed by the Commissioner of income tax appeals – III, New Delhi dated 5/9/2014.

The appeal of the assessee is with respect to the rejection of the grounds of appeal before the learned CIT – A respect to non-service of notice u/s 148 of the income tax act. The assessee has challenged the same in ITA number 5817 del 2014.

2. Assessee has raised following grounds of appeal:-

ITA. No. 5817/Del/2014 (By the assessee) :

“ 1. (a) That on the facts and in the circumstances of the case, Ld. CIT (A) erred in rejecting appellant’s ground of appeal that the Ld. Assessing Officer (A.O.) was wrong in initiating reassessment proceedings u/s 148 of the Income-tax Act, 1961 (the Act) as the purported notice u/s 148 of the Act stated to have been sent by him on 28.03.2011 was never served upon and delivered to the assessee. The notice was wrongly addressed, as is evident from the records of the Income tax Department itself. A notice wrongly addressed was incapable of delivery to the assessee, which, in any case was not delivered to the assessee within the statutory time and hence the same was *void ab-initio*. All consequential action of the A.O. were bad in law.

The provisions of section 148(1) of the Act state as under:

“Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish ”

Hence, it is clear in the Act that the A.O. shall serve on the assessee a notice u/s 148 before making reassessment, which is possible only when the notice is correctly addressed and served on the assessee. It is also contended that the statutory time limit u/s 149(1)(b) of the Act for sending and delivery of notice u/s 148 of the Act for the AY 2004-05 was 31.03.2011 and any subsequent notice issued and served after the expiry of statutory period cannot validate the earlier notice which was not correctly addressed and never delivered to the assessee. Hence, the reassessment was barred by limitation

The assessee never had any office at 5th floor, Hindi Bhawan, 11, Vishnu Digambar Marg, New Delhi at which the notice was addressed and sent by the Department, nor stationed any of its employees at the above address at which the impugned notice u/s 148 of the Act was sent by the Department. It has no address at 5th floor, Hindi Bhawan, 11, Vishnu Digambar Marg, New Delhi neither as per A.O.’s record nor as per PAN database.

(b) That the Ld. CIT (A) was wrong in stating that notice u/s 148, which was bearing a wrong address, was valid. This goes to mean that the Assessing Officer can issue a notice to the assessee at any place, and serve at that place which the assessee do not know and whether the place belonging to him or not.

(c) The Ld. CIT (A) has overlooked the provisions of the Act which specifically say that service of notice is a condition precedent to initiate the proceedings u/s 147/148 of the Act.

(d) The Ld. CIT(A) has not decided this ground of appeal on merit and shielded the A.O. ignoring the specific mandatory provisions of the law. To justify his inference, the CIT- (A) has given reference of some case laws which are totally

irrelevant to this case. The jurisdictional High Court in the matter of CIT Vs Rajesh Kumar Sharma (2009) 311 ITR 0235 (Delhi) has correctly decided the matter in line with the provisions of the law.

2. The Ld. CIT(A) was wrong in confirming addition of Rs.52,72,500/- on account of purchases of software from Washington Ltd., Pune stating that, based on the information from DDI-Unit (1), Pune, the A.O. had reason to believe that income of assessee had escaped assessment by Rs.52,72,500/-. The statement of Mr. Sanjay Sonawani, Director of Washington Software before the Deputy Director of Income-tax (Investigation), Pune was unilateral statement which was relied upon by the A.O. The A.O. had not provided opportunity to the assessee to cross examine Sh. Sanjay Sonawani, whose statement was relied upon by him to form reason to believe for reassessment and made the addition.

3. The appellant craves leave to add or to amend the grounds of appeal before the appellant is heard and the appeal is disposed off. “

3. The learned assessing officer has filed appeal against the same order of the learned CIT – A in ITA number six 482/Del/2014 wherein several additions/disallowances made by the learned assessing officer were deleted.

4. In appeal filed by ld. Dy. CIT, Central Circle–25, New Delhi, in ITA. No. 6482 (Del) of 2014 for Assessment Year 2004-05 against the order passed by the Commissioner of Income Tax (Appeals)–III, New Delhi, dated 5.09.2014. By this appeal order the ld. CIT (Appeals) has partly allowed the appeal of the assessee. Against this, the ld. AO has preferred appeal on the following grounds:-

“1. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the interest income of Rs. 1,31,54,754/- which was not reflected as income.*

2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of bad debts claims of Rs. 31,97,84,172/- without adjudicating the issue on merit.*

3. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 8,54,00,000/- made on account of guarantee obligation without adjudicating the issue on merit.*

4. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 68,25,56,586/- made on account of bogus purchase and deciding the issue relying upon facts of subsequent assessment years.*

5. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 6,29,25,000/- made on account of unexplained expenditure and deciding the issue relying upon facts of*

subsequent assessment years.

6. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in admitting the additional evidence without confronting with the AO and simply relying on assertion of the assessee that necessary stock register, sale bills/vouchers invoices, transport evidences etc. with respect to bogus purchases were produced before the AO without verifying the case records whereas in fact no such evidence was produced before the AO.*
 7. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*
 8. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*
5. Briefly stated the fact shows that the assessee is a company engaged in manufacturing indigenous telecom equipments of India. It is also manufacturing transmission equipments. It has also fabric optical plant. It filed its return of income on 31.10.2004 at a loss of Rs. 188,89,38,039/-. The assessment order under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 27.12.2004 at a loss of Rs. 178,59,17,887/-. Search took place on the group of companies on 10.05.2007. Notice under Section 153A of the Act was issued on 25.02.2009 where assessee filed return declaring the original loss of Rs. 188,89,38,039/-. The assessment under Section 153A was completed on 29.12.2009 at a loss of Rs. 130,15,17,361/-. Order under Section 154 of the Act was also issued on 30th December, 2010 where the loss of the assessee was reduced to Rs. 128/- crores. Subsequently, the Assessing Officer noted that by reason of failure on the part of the assessee to disclose fully and truly on behalf of the assessee there is an escapement of income and, therefore, notice under Section 148 was issued on 28th of March, 2011 through Speed Post. Notice under Section 142(1) of the Act was also issued. Assessee in response to notice dated 12.08.2011, which was issued under Section 142(1) of the Act submitted that the Assessing Officer is issuing notices wrongly at 5th Floor, Hindi Bhawan, 11-Vishnu Digambar Marg, New Delhi, whereas the address of the assessee is 8-Masjid Moth, Greater Kailash-II, New Delhi. It was also stated that the address stated by the Assessing Officer is never the address of the assessee. Assessee further stated that the notice under Section 148 of the Act dated 28th March, 2011 was never received by the assessee. Assessing Officer rejected the explanation of the assessee and stated that the notice issued at 5th Floor, Hindi Bhawan, 11-Vishnu Digambar Marg, New Delhi, was duly served upon the assessee as the same notice has never come back. It was further held that notice under Section 142(1) of the Act was also never returned back. However, the fact remains that notice under Section 142(1) of the Act dated 12.08.2011 was served upon the assessee through Inspector,

which was received by the assessee company under the proper signature and seal of the company. The assessee filed a protest letter. However, same were rejected. The assessment proceedings continued and later on huge additions were made in the hands of the company. Accordingly, an order was passed under Section 153A read with Section 147 read with Section 143(3) of the Act on 30th December, 2011 determining total loss of the assessee at Rs.11,97,13,922/-.

6. Assessee preferred appeal before the Id. CIT (Appeals) where assessee submitted that the notice under Section 148 of the Act was not served on the assessee. It also challenged various additions. The Id. CIT (Appeals) disposed of ground No. 1 with respect to non-service of the notice under Section 148 of the Act. He held that the order under Section 153A, 147 and 143(3) of the Act have been passed after giving assessee the due opportunity of hearing and, therefore, no prejudice is caused. He further relying upon several judicial precedents holding that notice under Section 148 of the Act was valid. With respect to the additions made in the hands of the assessee, he deleted all the additions and order was passed on 5.09.2014.
7. The Revenue aggrieved with the order of the CIT (Appeals) preferred this appeal before us for the several disallowances deleted and assessee is aggrieved with the order of the learned CIT – A the argument of the assessee raised in the grounds of appeal that no proper notice u/s 148 of the income tax act was served on the assessee.
8. We first come to the appeal of assessee which is on jurisdictional issue
9. At the time of hearing, the Id. AR raised an issue that service of the notice has been challenged by the assessee before the Id. CIT (Appeals) which has been decided against the assessee and, therefore, assessee is raising the grounds of appeal which is a legal issue that the notice under Section 147 of the Act was never served to the assessee. He referred to the order of the Id. Assessing Officer and CIT (Appeals). He also referred to the paper book filed wherein the notice was issued at the address of 5th Floor, Hindi Bhawan, 11–Vishnu Digambar Marg, New Delhi. He submitted that there is no evidence with the Assessing Officer that assessee ever existed at this address. He further stated that in any of the return of income filed by the assessee as well as the address as per PAN data or in any of the correspondence the address of the assessee, the address at which the notices are issued is never at of the address on which notices have been served i.e. 5th Floor, Hindi Bhawan, 11–Vishnu Digambar Marg, New Delhi address. He, therefore, submitted that the notice issued under Section 148 of the Act was never served on the assessee. His contention was that in absence of any notice issued to the assessee under Section 148 of the Act the assessment proceedings do not survive

and, therefore, is liable to be quashed. He further submitted a detailed synopsis of several decisions including the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Chetan Gupta (2015) 282 ITR 613 (Del.), wherein an identical issue was decided.

10. The ld. DR relied upon the order of the Assessing Officer as well as the ld. CIT (Appeals) stating that when the assessee has been granted opportunity of hearing the notice issued to the assessee non-service of proper notice u/s 148 of the act does not make any difference. It was further stated that the purpose of serving a notice is to grant an opportunity of hearing to the assessee which has been duly made by the learned assessing officer.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities and find that as per ground No. 1 the ld. CIT (Appeals) has decided this issue against the assessee that the issue of notice at 5th Floor, Hindi Bhawan, 11-Vishnu Digambar Marg, New Delhi, does not prejudice the case of the assessee, because assessee has been given due opportunity of hearing. Further on 2nd June, 2011 a notice under Section 142(1) of the Act was also issued at the same address. On 17th June, 2011 another notice under Section 142(1) of the Act was issued at the same address. Allegedly as per the contention of the assessee all these three notices are served at the address which never belonged to the assessee in any of the official communication such as return of income, PAN data base or in any of the communications. Further notice under Section 142(1) of the Act was issued on 12th August, 2011, which was also received back by the ld. Assessing Officer by the Postal authorities. However, the Assessing Officer deputed an Inspector, who went to the office of the assessee, which is at 8-Masjid Moth, Greater Kailash-II, New Delhi. Same was received by the assessee. Thus, apparently the assessee did not receive any notice under Section 148 of the Act. Assessee objected to the Assessing Officer by letter dated 30th September, 2011 stating that no notice under Section 148 was issued to the assessee. Such notice could have been issued at the correct address of the assessee in correct manner for assessment year 2004-05 till 31.03.2011. The notice dated 28th March, 2011 was issued prior to 31st of March, 2011. However, it has never served to the assessee as it was issued at the incorrect address. Neither the ld. Assessing Officer during the assessment proceedings, or before the ld. CIT (Appeals) or before us could show that the address mentioned in the notice under Section 148 of the Act was the address of the assessee. The communication dated 30th August, 2011 of the assessee to the Assessing Officer clearly states the above facts which are taken care of by the Assessing Officer, but could not be rebutted. The assessee has also produced before us the return of income filed by the assessee to show that at all

the relevant time the address mentioned in the 148 notice was never the address of the assessee. It also relied on several judicial precedents. The ld. CIT (Appeals) has held that though notices are not served under Section 148 of the Act at the correct address, but when the assessee gets an opportunity of explaining the issues in the assessment as well as proper opportunity of hearing is granted, no prejudice is caused to the assessee. Therefore, according to him even if the notice has not been served at the right address, an assessment order cannot be quashed. We find that the notice issued under Section 148 of the Act for re-assessment proceedings is not a mere procedural requirement. It is a condition precedent to the validity of re-assessment. If no notice is issued or if the notice issued shows to be invalid then the proceedings of the assessment would be illegal and void. On identical facts and circumstances the Hon'ble Delhi High Court, after considering several judicial precedents has upheld so in the case of CIT Vs. Chetan Gupta in ITA. No. 2 of 2014 dated 15.09.2015 for assessment year 2001-02. The Revenue could not show us any evidence that notice is invalidly served on the assessee. In view of the above facts, we uphold the argument of the ld. AR that when no valid notice was served to the assessee, the assessment cannot be upheld, hence we quash the re-assessment order passed by the Assessing Officer.

12. Even otherwise, on the merits of the case, the identical issues have been decided by us, in the appeals of the assessee for several years i.e. assessment years 2002-03 to 2008-09. Both the parties also submitted that on the merits all the additions are deleted by the ld. CIT (Appeals) and those are identical to the issues in the case of the assessee for all those years.
13. We have already decided the appeals of the assessee for all these years in TA No. 5741/Del/2013, ITA No. 6225/Del/2013, ITA No. 6226/Del/2013, ITA No. 765/Del/2014, ITA No. 766/Del/2014, ITA No. 816/Del/2014, ITA No. 817/Del/2014, ITA No. 2252/Del/2014, ITA No. 2253/Del/2014 dated 26/10/2021 wherein we have confirmed the order of the ld. CIT (Appeals) wherein all these disallowances were deleted. Therefore, even on the merits of the case, the appeal of the ld. Assessing Officer deserves to be dismissed.
14. Accordingly, the appeal of the ld. Assessing Officer is dismissed and appeal of the assessee is allowed.

Order pronounced in the open court on 08/11/2021.

-Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 08/11/2021.

MEHTA

Copy forwarded to :

1. Appellants;
2. Respondents
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi