

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 671 & 672/(Asr)/2019
Assessment Year: 2008-09**

Brijinderpal Singh Bhullar
H. No. 2382, Sector 71,
S.A.S. Nagar, Mohali

[PAN: EFLPB 2067E]

(Appellant)

Vs. The Income Tax Officer,
Ward-1(3), Bathinda

(Respondent)

Appellant by : Sh. P. N. Arora, Adv.
Respondent by : Sh. Trilochan Singh PS Khalsa, DR

Date of Hearing: 24.12.2021
Date of Pronouncement: 21.02.2022

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals)-1, Amritsar Camp at Bhatinda, dated 22.08.2019, which in turn arises from the respective orders passed by the A.O u/s 147/144 of Income Tax Act, 1961 (for short 'Act'), dated 18.03.2014 AND u/s 271(1)(c) of the Act, dated 27.08.2014. We shall first take up the appeal filed by the

assessee against the quantum assessment. The assessee has assailed the impugned order on the following grounds of appeal before us :

- “1. That the Ld. CIT(A) erred on facts and law in confirming the assessment of income at Rs. 32,00,000/-, being the Long Term Capital Gains, without providing any proper opportunity of hearing to the assessee to submit the information regarding cost of acquisition.
 2. That the Ld. CIT(A) erred on facts and law in rejecting the grounds of appeal of the assessee that the reassessment proceedings initiated u/s 147/148 by the AO were void ab-initio because the notice u/s 148 was not served on the assessee.
 3. That the Ld. CIT(A) erred on facts and law in rejecting the grounds of appeal of the assessee that the reassessment proceedings initiated u/s 147/148 by the AO were void ab-initio because the reasons recorded by the AO to issue notice u/s 148 are reasons to suspect and not reasons to believe.
 4. That the Ld. CIT(A) erred on facts and law in confirming the taxability of Rs. 32,00,000/- as Long Term Capital Gain without allowing the benefit of cost of acquisition.
 5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of.”
2. Succinctly stated, on 27.04.2007, the Defence Services Co-operative House Building Society Ltd., Mohali (“Society”, for short) of which the assessee is a member, had entered into a tripartite Joint Development Agreement (“JDA”, for short) with M/s Hash Builders Private Limited AND M/s Tata Housing Development Company Ltd. (“THDC”, for short). As per the tripartite agreement, it was agreed amongst the parties that the society which was owner of 27.3 Acres of land shall transfer its land to THDC., in lieu of monetary consideration and consideration in kind. As per the JDA, the assessee being a member of the society would receive an amount of

Rs. 80 lac as monetary consideration, and further, as consideration in kind, one flat admeasuring 2250 sq. ft. worth Rs. 1,01,25,000/-. Out of the aforesaid monetary consideration of Rs. 80 lac (supra) the assessee had during the year under consideration received an amount of Rs. 32 lac through cheques. On the basis of the aforesaid information, the A.O, formed a belief that as the assessee in lieu of his share in the transfer of the above mentioned land was in receipt of a monetary consideration of Rs. 80 lac (supra) a/w consideration in kind, i.e, one furnished flat admeasuring 250 sq. ft worth Rs. 1,01,25,000/-, therefore, his income of Rs. 1,81,25,000/- on account of Long Term Capital Gain ("LTCCG", for short) had escaped assessment, reopened his case u/s 147 of the Act. Observing, that the Notice u/s 148 of the Act, dated 06.06.2012 could not be served upon the assessee because as per the report of the notice server of the department the assessee had left India and his present whereabouts were not available, the A.O served the same by way of affixture at the last known address of the assessee, i.e, by affixing a copy of the notice on the main gate of his residential house situated at Village : Bhaika Dayalpura, Tehsil : Rampura Phul, District : Bhatinda, i.e, the address where the assessee was known to have last resided. As the assessee failed to comply with the notice u/s 148 and did not file his return of income, therefore, the A.O issued a notice u/s 142(1) of the Act, dated 12.09.2013, but the same too could not be served upon the assessee, because, as per the report of the notice server the assessee had left India after selling his residential house and agricultural land a/w other assets and was permanently settled in Canada. Another notice issued by the A.O u/s 142(1), dated 05.03.2014

is stated to have been served upon him by affixture, i.e, affixing a copy of the same on the gate of his residential house situated at Village: Bhaika Dayalpura, Tehsil : Rampura Phul, District :Bhatinda. However, the aforesaid notice u/s 142(1) too remained uncomplished. Observing, that the assessee despite having been afforded sufficient opportunities had failed to comply with the notices that were issued to him, the A.O therein proceeded with the assessment on an ex-parte basis u/s 144 of the Act, i.e, on the basis of the material/information available on record.

3. Observing, that the assessee a/w all other members had allotment rights in the identified demarcated parcel of land in the society, which in lieu of the JDA were irrevocably and unequivocally granted and assigned in perpetuity in favour of THDC, the A.O was of the view that the same did tantamount to extinguishment of the rights that were vested with the owner qua the aforesaid property in question. Backed by his aforesaid observations, the A.O was of the view that as the total consideration of Rs. 1,81,25,000/- (supra) had accrued to the assessee during the year under consideration, therefore, the LTCG therein arising to him, i.e, as provided in Sec. 45 r.w Sec. 48 of the Act was liable to be brought to tax in his hands. On the basis of his aforesaid deliberations, the A.O vide his order passed u/ss. 144/147 of the Act, dated 18.03.2014 assessed the income (LTCG) of the assessee at Rs. 1,81,25,000/-. The A.O while culminating the assessment, observed, that involving identical facts, an addition that was made in the case of Sh. Bikramjit Singh Gill C/o Gill Sons & Associates,

Bathinda had been upheld by the Tribunal vide its order passed in ITA No. 406(Asr)/2013, dated 11.09.2013.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), the assessee challenged the validity of the assessment order passed by the A.O u/ss. 144/147 of the Act, dated 18.03.2014, inter alia, on the ground, that the same was passed without validly effecting service of notice issued u/s 148, i.e, as per the mode contemplated in Sec. 282 of the Act. Observing, that service of the notice u/s 148 by the A.O was well within the four corners of law, the CIT(A) upheld the same, observing as under :

“As mentioned in the assessment order, the notice u/s 148 was issued on 6.6.2012 but as per the report of the notice server, the notice could not be served upon the assessee because the assessee had left India and his present whereabouts were not available. Accordingly the notice /s 148 was got served by affixture at the last known address of the assessee in as much as the copy of the notice was affixed on the main gate of te residential house situated in Village : Bhaika Dayalpura, Tehsil : Rampura Phul, District : Bhatinda in which the assessee last resided. This is proper service of notice by the AO u/s 148 of the act in the circumstances that the present whereabouts of the assessee were not known. Therefore the ground of appeal is dismissed.”

Qua the merits of the case, the CIT(A) observing that the Hon'ble Apex Court in the case of CIT Vs. Balbir Singh Maini (2017) 86 taxmann.com 94 and in the case of C.S Atwal Vs. CIT, Ludhiana (2015) 59 taxmann.com 359, had held, that capital gain was chargeable as per law on the amount of Rs. 32 lac or the amount actually received by the assessee during the year under consideration from the developer qua the sale deeds that have been executed, and as and when any amount was received by the

assessee from the developer, the capital gain was therein to be charged thereon in accordance with law, thus, directed the A.O to charge capital gains in conformity with the aforesaid directions/observations. Also, the CIT(A) directed the A.O to verify whether one furnished flat admeasuring 2250 sq. ft worth Rs. 1,01,25,000/- was received by the assessee as per the JDA, dated 25.02.2007, and directed, that the same be charged to capital gain tax only when the same was so received, and not otherwise. Accordingly, the CIT(A) in terms of his aforesaid observations partly allowed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the very outset of the hearing of the appeal, it was submitted by the Id. Authorised Representative ("A.R", for short) for the assessee, that as the A.O had framed the impugned assessment u/ss. 144/147, dated 18.03.2014 without validly serving notice u/s 148 of the Act, therefore, the same could not be sustained and was liable to be quashed on the said count itself. Elaborating on his aforesaid contention, it was submitted by the Id. A.R, that as could be gathered from the assessment records the alleged service of notice u/s 148, dated 06.06.2012 suffered from certain serious infirmities, viz. (i). that though the notice server in his report had categorically stated that the assessee was residing in Canada, the A.O despite being in knowledge of the said fact had failed to even attempt any service of notice as per Order V – Rule 25 of the Code of Civil Procedure (5 of 1908) r.w. Sec. 282 of the Act; (ii). that the A.O prior to framing of the assessment u/ss. 144 r.w.s 147, dated

18.03.2014 had not made any efforts at all for locating the whereabouts of the assessee; and (iii). that even otherwise the service of notice by affixture on the gate of the residential house, which admittedly to the knowledge of the A.O had been sold by the assessee prior to his shifting abroad was invalid in the eyes of law. Backed by his aforesaid multi facet contentions qua the absence of a valid service of the notice u/s 148 on the assessee, the Id. A.R had assailed the validity of the assessment order passed by the A.O u/s 144 r.w.s 147 of the Act, dated 18.03.2014. It was submitted by the Id. A.R, that as a valid service of notice u/s 148 was a sine qua non for framing of the reassessment, therefore, the same not having been so done by the A.O in the present case, rendered the assessment framed by him u/s 144 r.w.s 147, dated 18.03.2014 as invalid.

6. Per contra, the Id. Departmental representative ("D.R", for short) supported the orders of the lower authorities. It was submitted by the Id. D.R, that as the A.O had validly effected the service of the Notice u/s 148 by taking recourse to substituted service under Order V – Rule 20 of the Code of Civil Procedure (5 of 1908), therefore, no infirmity did emerge from the assessment framed by him u/s 144 r.w.s 147, dated 18.03.2014.

7. We have heard the Id. Authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Before adverting to the sustainability of the contentions advanced by the Id. A.R, we shall first cull out the relevant provisions of

the Act which shall have a material bearing on the adjudication of the controversy in hand. As per the mandate of Section 148 of the Act, the A.O, before making an assessment, reassessment or re-computation under Sec.147, shall serve on the assessee a notice requiring him to furnish within the stipulated time period as may be specified in the notice, a return of his income for the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. Admittedly, the assumption of jurisdiction for framing of an assessment or reassessment under Sec.147 of the Act presupposes a valid service on the assessee of a notice issued under Sec.148 of the Act. For the sake of clarity Sec. 148 (relevant extract) is culled out as under :

“148 (1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [***], as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.”

(emphasis supplied by us)

Further, the time limit within which a notice u/s 148 shall be issued by the A.O is prescribed in Sec. 149 of the Act. For the sake of clarity Sec. 149 (relevant extract) is culled out as under :

“149(1) No notice under section 148 shall be issued for the relevant assessment year,—

[(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) [or clause (c)];

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;]

[(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.]

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.]”

Insofar the mode and manner of service of a notice issued under Sec. 148 of the Act is concerned, the same can be traced in Sec. 282 of the Act and Rule 127 of the Income-tax Rules, 1962, which reads as under :

“282 (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as communication”) may be made by delivering or transmitting a copy thereof, to the person therein named:

(a) by post or by such courier services as may be approved by the Board;
or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

Explanation - For the purposes of this section, the expressions “electronic mail” and “electronic mail message” shall have the meanings as assigned

to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000).”

Further, Rule 127 of the Income Tax Rules, 1962 contemplates the address (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any further communication under the Act may be delivered for the purpose of sub-section (1) of Sec. 282, and the same reads as under:

“Service of notice, summons, requisition, order and other communication.”

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 (5) 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 items (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 items (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) email address available in the income-tax return furnished by the addressee to which the communication relates; or
- (ii) the email address available in the last income-tax return furnished by the addressee; or
- (iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs: or
- (iv) any email address made available by the addressee to the income tax authority or any person authorised by such income-tax authority.

- (3) The Principal Director General of Income-tax (Systems) or the Director, Gene of Income-tax (Systems) shall specify the procedure, formats and Standard, for ensuring secure transmission of electronic communication and shall also responsible for formulating and implementing appropriate security, and retrieval policies in relation to such communication.]”

As provided in Sec. 282 of the Act, the service of a summon or requisition or order or any other communication under the Act, inter alia, may also be

carried out in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons.

8. As is discernible from the records, we find that the Notice u/s 148, dated 06.06.2012, which the A.O had earlier sought to serve through notice server was returned back with the following report (translated version):

"Sir, I had gone to Village Bhaika Dayalpura. On enquiry it is learnt that Shri. B.R.S Bhullar s/o. Shri. M.S Bhullar had shifted to Canada. As his whereabouts are not available, therefore, the notice could not be served. Report is filed for your perusal.

*Sd/-
(Kulwant Singh)
Notice server
Date : 14.06.2012"*

(emphasis supplied by us)

Backed by the aforesaid facts, the A.O observing that the assessee, viz. Sh. B.P.S Bhullar was avoiding the service of notice, thus, issued another Notice u/s 148, dated 03.09.2012, and vide his order of affixture under Order V- Rule 20 of the Code of Civil Procedure, 1908 (5 of 1908), directed S/sh. M.L Tuteja, Inspector and Kulwant Singh, Notice Server to serve the notice by affixture at the last known address of the assessee. Order passed by the A.O under Order V - Rule 20 of Code of Civil Procedure, 1908 (5 of 1908) is culled out as under:

**"Order of Affixture Under [V] Rule 20
Of Code of Civil Procedure 1908
[V of 1908]**

"Whereas I am satisfied there is a reason to believe that Shri. B.P.S Bhullar S/o. Capt, M.S Bhullar, VPO Bhaika Dayalpura, The. Rampura, Distt.

Bathinda is avoiding the service of notice U/s 148 of the Income-tax Act, 1961 issued for the A/Y 2008-09 and the service of notices is not possible in ordinary way, I, therefore, direct that the said notice be serve by affixture by affixing a copy thereof on the notice board of this office and also upon some conspicuous part of the business premises/residential house in which the assessee is known to have carried out his business/residence, as per procedure laid down under order V – Rule 20 of the code of C.P.C 1908 (v of 1908). Therefore, I direct Sh. M.L Tuteja, Inspector and Sh. Kulwant Singh, Notice Server of this office to serve the notice by affixture on the last known address of the assessee."

(emphasis supplied by us)

We find that pursuant to the aforesaid order of the A.O a fresh Notice u/s 148, dated 03.09.2012 was affixed at the residential house of the assessee, i.e at VPO Bhaika Dayalpura, Teh. Rampura, District Bathinda. The report of the notice server as regards service of the aforesaid notice, is as under (translated version):

"Sir, I had gone to Village Bhaika Dayaplura. The assessee is residing in Canada. I have in the presence of Shri. M.L Tuteja, Inspector of Income-tax affixed the notice u/s 148 at his old residential house. Report is being filed herewith.

<p>Sd/- Makhan Singh, Dayalpura (Witness)</p>	<p>Sd/- Kulwant Singh (Notice Server) 17.09.2012</p>	<p>(Affixed by Sh. Kulwant Singh in my presence) Sd/- (M.L Tuteja), Inspector 17.09.2012"</p>
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9. In the backdrop of the aforesaid facts r.w the mandate of law, we shall now advert to the validity of the Notice u/s 148, dated 03.09.2012, that was got served by the A.O by taking recourse to substituted service, i.e, Order V – Rule 20 of the Code of Civil Procedure (V of 1908). Before proceeding any further, we may herein observe, that as gathered by Shri.

Kulwant Singh, Notice server of the I.Tax department on two occasions, i.e, vide his reports dated 14.06.2012 on 17.09.2012 which were returned by him to the A.O, the assessee, i.e Shri. B.P.S Bhullar had shifted and was residing abroad, i.e, in Canada. Backed by the aforesaid fact, which we may herein observe was well within the knowledge of the A.O, we shall test the validity of the Notice u/s 148, dated 03.09.2012 that is claimed by the A.O to have been served on the assessee by taking recourse to substituted service as contemplated in Order V- Rule 20 of the Code of Civil Procedure (V of 1908).

10. As observed by us hereinabove, as per Sec. 282(1)(b) of the Act, service of a notice or summon or requisition or order or any other communication under this Act can, inter alia, be made in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons. Admittedly, substituted service as provided in Order V- Rule 20 is one of the recognized mode of service of notice or summon or requisition or order or any other communication under the Act. However, as observed by us hereinabove, as the assessee had shifted and was residing abroad, i.e, in Canada, therefore, it was due to his unavailability in India that the Notice u/s 148 could not be served upon him. But then, a perusal of the order passed by the A.O under Order V – Rule 20 of the Code of Civil Procedure (5 of 1908) reveals, that he despite being well aware of the fact that the assessee had way back shifted and was residing in Canada, however, taken recourse to substituted service, for the reason, that he was satisfied there was a reason to believe

that Shri. B.P.S Bhullar S/o. Capt, M.S Bhullar, VPO Bhaika Dayalpura, Teh. Rampura, Distt. Bathinda was avoiding the service of notice U/s 148 of the Income-tax Act, 1961 issued for the A/Y 2008-09. We are unable to comprehend that now when the assessee well to the knowledge of the A.O had shifted and was residing abroad, i.e, in Canada, then, on what basis he could be held to have avoided service of notice? In our considered view, the very basis and reasoning of the A.O, on the basis of which he had ordered a substituted service of notice is misconceived and based on wrong inferences. Be that as it may, we may herein observe, that now when the assessee was well within the knowledge of the A.O residing abroad, i.e, in Canada, then, the service of the notice u/s 148 ought to have been made on him by taking recourse to Order V – Rule 25 of the Code of Civil Procedure (5 of 1908), which carves out the method of service of notices where the assessee resides out of India and has no agent in India. For the sake of clarity, Order V – Rule 25 of the Code of Civil Procedure (5 of 1908) is culled out as under :

“ 25. Service where defendant resides out of India and has no agent :-

Where the defendant resides out of India and has no agent in India empowered to accept service , the summons shall be addressed to the defendant at the place where he is residing and sent to him {by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the court is situate :

[Provided that where any such defendant [resides in Bangladesh or Pakistan], the summons , together with a copy thereof, may be sent for service on the defendant, to any court in that country (not being the High Court) having jurisdiction in the place where the defendant resides :

Provided further that where any such defendant is a public officer [in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf].”

At this stage, we may herein observe, that though it is observed by the A.O that the whereabouts of the assessee were not available, but then, neither there is anything discernible from the records nor brought to our notice during the course of the hearing of the appeal, which would reveal that the A.O despite using all reasonable and due diligence could not get the foreign address of the assessee. On the contrary, the reason for ordering substituted serve, as per the A.O, was that he had a reason to believe that the assessee was avoiding the service of notice u/s 148 of the Act, which as observed by us hereinabove is an observation beyond comprehension. In sum and substance, it is not the case of the A.O that he had taken recourse to substituted service as contemplated in Order V- Rule 20 of the Code of Civil Procedure, 1908 (5 of 1908), for the reason, that the whereabouts of the assessee in Canada, despite using all reasonable and due diligence could not be gathered by him.

11. Backed by the aforesaid facts, we are of the considered view, that the A.O despite being in knowledge of the fact that the assessee had shifted and was residing abroad, i.e, in Canada, had however grossly erred in taking recourse to substituted service of the Notice u/s 148, i.e, by getting the same affixed at his old residential house in India, which

residential house he had himself observed in the assessment order was sold by the assessee prior to his shifting abroad, i.e, to Canada. The observations of the A.O, as recorded in the assessment order, therein revealing beyond doubt his knowledge that the assessee had sold his old residential house at Village Bhaika Dayalpura, Tehsil Rampura Phul, District : Bathinda, are culled out as under :

"Since no compliance of notice u/s 148 was made by the assessee by filing his return of income within the time allowed, a notice u/s 142(1) of the Act was issued on 23.07.2013; but the same could not be served upon the assessee because as per the report of the Notice Server of this office, the assessee had left India after selling out his residential house & agriculture land."

(emphasis supplied by us)

In the backdrop of the aforesaid factual position, we are unable to comprehend that as to what purpose the service of Notice u/s 148 by affixture on the main gate of the assessee's residential house (which as observed by the A.O was no more owned by the assessee and had been sold by him prior to shifting abroad) would have served. As observed by us hereinabove, the service of Notice u/s 148 by ordering a substituted service, as contemplated in Order V-Rule 20 of the Code of Civil Procedure, 1908 (5 of 1908), in the absence of using of all reasonable and due diligence for locating the whereabouts of the assessee, not being as per the mandate of law cannot be subscribed on our part. Our aforesaid view that service of notice in case of an assessee residing abroad, by affixing the same on the main door of his local residence in India is not a valid service, is supported by the judgment of the Hon'ble High Court of

Allahabad in the case of CIT Vs. Habibullah (1985) 21 Taxman 392 (All). In the said case, it was observed by the Hon'ble High Court that as the assessee had shifted and was residing in London for the past two years, and there was no possibility of his coming back in the near future, the service of a notice on him by the Income-tax department by affixation at the main door of his local residence in India was not a valid service. Also, a similar view had been arrived at by the Hon'ble High Court of Madras in the case of Myitkyiha Trading Depot Vs. Dy. Tahsildar (1957) 32 ITR 393 (Mad). In the said case, the proceedings u/s 34 were initiated for re-assessment of the assessee which was an unregistered firm that had its business mainly in Rangoon, and only a branch office at Madras. The Madras branch was thereafter closed and the partners left for Burma. Notice was thereafter served by the department by affixing it on the house in which the respective wives of the partners resided, and the reassessment was framed vide an ex-parte order. On appeal, the Hon'ble High Court held that the service by affixture did not constitute due service of the notice issued u/s 34 of the Act. At this stage, we may herein observe, that the assessment in the case of the assessee before us had been framed by the A.O vide his order passed u/s 144/147 of the Act, dated 18.03.2014, but despite having sufficient time of over 1½ years from the date of issuance of Notice u/s 148, dated 03.09.2012, he had, however, failed to use all reasonable and due diligence for locating the whereabouts of the assessee.

12. It would also be relevant and pertinent to point out, that the fact, that the assessee was not validly served with the Notice(s) u/s 148/142(1) during his absence from India, and had learnt about the impugned proceedings only when the department had attached his bank account for recovery of demand arising from the impugned assessment, had been accepted by the CIT(A), Bhatinda, vide his order passed in Appeal No. 493/IT/CIT/BTI/2018-19; dated 14.05.2019, i.e, while quashing the penalty u/s 271(1)(b) of the Act that was imposed on him for non-compliance of the notices issued u/ss. 148/142(1) of the Act. Before parting, we may also observe, that though the A.O had initiated the reassessment proceedings and assumed jurisdiction on the basis of Notice u/s 148, dated 06.06.2012, however, he had thereafter issued another Notice u/s 148, dated 03.09.2012, and had carried out the impugned service of the said latter notice, while for the Notice u/s 148, dated 06.06.2012 on the basis of which he had assumed jurisdiction by recording the requisite 'reasons to believe' was never served upon the assessee. Be that as it may, we are of the considered view, that as the A.O had framed the impugned assessment u/s 144 r.w.s 147, dated 18.03.2014 without effecting a valid service of Notice u/s 148 upon the assessee prior to the framing of the assessment, therefore, the same cannot be sustained and is liable to be vacated. We, thus, in terms of our aforesaid observations quash the assessment framed by the A.O vide his order passed u/s 144 r.w.s 147, dated 18.03.2014 for want of valid assumption of jurisdiction on his part. The **Ground of appeal No. 2** is allowed in terms of our aforesaid observations.

13. As we have quashed the assessment framed by the A.O u/s 144 r.w.s 147, dated 18.03.2014 for want of valid assumption of jurisdiction on his part for the reasons discussed hereinabove, therefore, we refrain from adverting to the other contentions advanced by the Id. A.R on the basis of which the validity of the assessment had been assailed by him before us, as well as those raised by him qua the merits of the addition, which, thus, are left open. The **Grounds of appeal Nos. 1, 3 & 4** are disposed off in terms of our aforesaid observations.

14. The **Ground of appeal No. 5** being general in nature is dismissed as not pressed.

15. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA No. 672/Asr/2019

A.Y 2008-09

16. We shall now take up the appeal filed by the assessee against the order of the CIT(A) sustaining the penalty imposed by the A.O u/s 271(1)(c) of the Act. The assessee has assailed the impugned order on the following grounds before us :

- "1. *That the Ld. CIT(A) erred on facts and law in confirming the penalty imposed by the AO u/s 271(1)(c) to the extent of alleged concealed income amounting to Rs. 32,00,000/-.*
2. *That the Ld. CIT(A) erred on facts and law in confirming the penalty u/s 271(1)(c) to the extent of Rs. 32,00,000/-, being the alleged concealed income, despite the fact that show cause notice for imposing penalty u/s 271(1)(c) was not served on the assessee and the penalty was imposed without providing proper opportunity of hearing.*

3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of."*

17. As the quantum assessment order passed by the A.O u/s 144 r.w.s 147, dated 18.03.2014 had been quashed by us for want of valid assumption of jurisdiction by the A.O for framing the impugned assessment, therefore, the penalty imposed on the assessee u/s 271(1)(c) cannot survive on a standalone basis and has to meet the same fate. As such, the penalty of Rs. 41,07,130/- imposed on the assessee u/s 271(1)(c) of the Act is vacated.

18. Accordingly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

19. Resultantly, both the appeals filed by the assessee, i.e, ITA No. 672/Asr/2019 and ITA No. 671/Asr/2019 are allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(Dr. M.L. Meena)
Accountant Member

Sd/-
(Ravish Sood)
Judicial Member

Date: 21.02.2022

**GP/Sr./PS*

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True copy

By Order