IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, S.M.C.

आ.अ.सं/.I.T.A No. 518/Del/2020
निर्धारणवर्ष /Assessment Year : 2011-12

Abhinav Sehgal, **26/28, Old Rajinder Nagar,** **New Delhi – 110 060.**	**बनाम** **Vs.**	**ITO** **Ward : 50 (3)** **New Delhi.**
PAN No. AZXPS2065D		
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

निर्धारितीकीओरसे **/ Assessee by :**	**Shri Gurdeep Singh, Advocate;**
राजस्वकीओरसे **/ Department by :**	**Shri Om Prakash, Sr. D. R.;**

सुनवाईकीतारीख/ Date of hearing:	27.05.2022
उद्घोषणाकीतारीख/ Pronouncement on:	14.06.2022

आदेश / O R D E R

PER C. N. PRASAD, J.M. :

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-42, New Delhi [hereinafter referred to CIT (Appeals)] dated 30.11.2019 for assessment year 2011-12.

2. The assessee challenged the order of the Ld. CIT (Appeals) on various grounds including the non-service of notice issued under Section 148 of the Income Tax Act, 1961 (the Act) and various other grounds on merits of the additions/disallowances.

3. The Ld. Counsel for the assessee, at the outset, submits that no notice under Section 148 of the Act was served on the assessee and, therefore, in the absence of service of notice u/s 148, the reopening of the assessment is *void ab intito* and bad in law. The ld. Counsel for the assessee submits that there is no proof of service of notice under Section 148 of the Act on the record. The ld. Counsel for the assessee further submits that during the course of first appellate proceedings, the ld. CIT (Aappeals) sought remand report from the Assessing Officer vide letter dated 10.06.2019, 8.07.2019, 11.09.2019 and 7.11.2019, but no report was submitted by the Assessing Officer for the best reasons known to him. The ld. Counsel, therefore, submits that in the absence of service of mandatory notice the whole assessment proceedings vitiated in law and consequently the reassessment order passed under Section 144 read with Section 147 of the Act is bad in law. The ld. Counsel placed reliance on the following judgements:-

1. CIT Vs. Chetan Gupta
   (I.T. Appeal No. 72 of 2014 High Court of Delhi;
2. R. K. Upadhayaya (1987)
   3 SCC 96 (SC);
3. ACIT & Anr. Vs. Hotel Blue Moon (2010)
   321 ITR 362 (SC);
4. Shri Inderjeet Vs. ITO, Delhi ITAT
   (I.T. Appeal No. 2740/Del/2018);

5. Ashok Kumar, Ghaziabad Vs. ITO, Delhi ITAT
(I.T. Appeal Nos. 1384 & 2647/Del/2018);

6. Amrik Singh Vs. ITO
159 I.T.D. 329 (Amritsar).

4. The Ld. DR could not controvert the submissions of the assessee with evidence, even though the original record was present while the appeal was taken up for hearing.

5. Heard rival submissions perused the orders of the authorities below. On perusal of the assessment order it is observed that notice u/s 148 was said to have been issued on 28.03.2018. Similarly notice u/s 142(1) was said to have been issued on 9.10.2018 fixing the date of compliance as 15.10.2018 and again on 22.11.2018 fixing the date of compliance as 28.11.2018 along with questionnaire. The AO recorded a finding that assessee has failed to make any compliance and, therefore, proceeded to complete the assessment under Section 147 read with section 144 of the Act on 11.12.2018 determining the income of the assessee at Rs.12,58,253/-.

6. On appeal the Ld. CIT(A) sustained the same. Before the ld. CIT(A) the assessee contended that notice u/s 148 was not served. However, the Ld. CIT(A) simply rejected the objections raised by the assessee stating that assumption of jurisdiction u/s 147 and issue of notice u/s 148 has no force as the AO has very specifically mentioned in the

assessment order that the said notice was served on the assessee. The Ld. CIT(A) proceeded to adjudicate the appeal on merits and decided against the assessee. It is the contention of the Ld. Counsel for the assessee that no notice u/s 148 has been served which submission has not been controverted by the Ld. DR with evidences.

7. In the case of CIT Vs. Eshaan Holdings (P) Ltd. 345 ITR 541 the Hon'ble Delhi High Court held as under:-

> *"Notice under Section 148 of the Income Tax Act, 1961 (for short, the 'Act') was issued by the Assessing Officer on 29.1.2004 It was sent at 438, Mount Kailash Towers, East of Kailash, New Delhi (hereinafter referred to as the 'old address'). By that time, the assessee had shifted from the said address to N-118, Panchsheel Park, New Delhi (hereinafter referred to as the 'new address'). Return for the assessment year 2003-04 was also filed on 28,11.2003, i.e. before the issue of the aforesaid notice on 29.1.2004, showing the new address. However, not a single communication was sent at that address and further steps for serving the notice under Section 148 of the Act were also taken showing the old address.*
>
> *Commissioner of Income Tax (Appeal), in these circumstances, held that no valid notice was served upon the assessee under Section 148 of the Act. The entire discussion in this behalf, in appeal, is summarized by the ITAT in para 8 of its order, relevant portion whereof makes the following reading:-*
>
> *We have carefully considered the matter. We have also perused the record produced by the department. In our humble opinion, the CIT (A) has taken the correct view of the matter in holding that there was no valid service of notice under section 148 and hence the reassessment proceedings are null and void. The first notice issued on 29.1.2004 by speed-post was said to have been served on the old address at East of Kailash. There is no proof of service on record. Even otherwise, this is not valid service because the assessee had already filed its return for the assessment year 2003-04 on 28.11.2003 and in this return the address shown was Panchsheel Park. Thus, the record of the department already contained the new address of the assessee. Before issuing the notice under section 148 it was expected of the Assessing Officer to have checked up if there was any*

change of address, because valid service of a notice of reopening the assessment is a jurisdictional matter and this is a condition precedent for a valid reassessment. The contention of the learned counsel for the assessee that the Act does not provide for a formal intimation of the change of address and therefore the only place where one would find if there has been a change in the address is the return of income (for later years) contains force.

So far as the presumption to be drawn under sec. 27 of the General Clauses Act is concerned, it can be drawn only if the notice is properly addressed which is not the case here. As already noted, it was sent to the old address. Further, in the letter dated 20.11.2004 written to the Assessing Officer the assessee has denied service of the notice under section 148. Hence even if s scope for drawing a presumption, the assessee has come before the Assessing Officer and denied service. The notice served by affixture is also not valid service because it was done at the old address, which is not the last-known address, as the new address has already been intimated to the department in the return of income filed for the assessment year 2003-04 and that is the last-known address.

Ld. Counsel for the Revenue argued that no doubt in the return filed on 28.11.2003 for the assessment year 2003-04, on the first page new address is given, the assessee had also shown the old address in the annexure to the said return showing computation of assessable income. However, learned counsel for the assessee had explained that the assessee had sold and disposed of the old premises at East of Kailash by a sale deed and even given the possession to the purchaser on 3.9.2003. Affidavit to that effect is filed along with the copy of the sale deed.

After hearing the arguments at length and going through various documents, we gather the impression that it may be a case of bona fide mistake on the part of the Assessing Officer However, a valuable right accrued to the respondent and, furthermore, when we find that the tax effect is only Rs.4,13,210/- (as per the CBDT circular, appeals with tax effect upto Rs.4,00,000/- are not to be filed). Going by these considerations, we are of the opinion that the aforesaid findings need no interference in the present appeal.

Dismissed."

8. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Chetan Gupta (382 ITR 613), wherein the Hon'ble High

Court held that where notice u/s 148 was not served on the assessee in accordance with law the reassessment made consequent thereto was without jurisdiction and liable to be quashed. In the case on hand as the Revenue could not prove the service of notice u/s 148 on the assessee in accordance with law the re-assessment made u/s 147 read with section 144 pursuant to such notice is *void ab initio* and bad in law. Hence, the reassessment order dated 11.12.2018 made u/s 144 read with section 147 is quashed. Since the appeal of the assessee is allowed on preliminary ground I am not going into other legal grounds and grounds taken on merits as they become only academic at this stage.

9. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on : 14/06/2022.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 14/06/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	13.06.2022
Date on which the typed draft is placed before the dictating member	13.06.2022
Date on which the typed draft is placed before the other member	14.06.2022
Date on which the approved draft comes to the Sr. PS/ PS	14.06.2022
Date on which the fair order is placed before the dictating member for pronouncement	14.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	14.06.2022
Date on which the final order is uploaded on the website of ITAT	14.06.2022
Date on which the file goes to the Bench Clerk	14.06.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	