

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1721/Del/2020
(Assessment Year : 2011-12)

Javed Ahmad Wangnoo Bharat Durani & Associates CA, 207, FF, Yatri Bhawan- II, Durga Nag, Dalgate, Srinagar, Jammu and Kashmir -190 001 PAN : AAIPW 2111 Q (APPELLANT)	Vs	ITO Ward – 54(1) New Delhi (RESPONDENT)
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Assessee by	Shri Upinder Bhatt, C.A.
Revenue by	SHri Om Prakash, Sr. D.R.

Date of hearing:	06.06.2022
Date of Pronouncement:	10.06.2022

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) - 23, New Delhi, dated 07.08.2020 for Assessment Year 2011-12.

2. The assessee has raised the following grounds in this appeal:

1. *“That the learned Income Tax Officer has erred both in law and on facts in initiating proceedings under section 147 of the Act and*

completing assessment under section 144 of the Act without satisfying the statutory pre-conditions under the Act and as such, both the initiation of the proceedings and completion of assessment are without jurisdiction and thus, deserve to be quashed as such.

2. *That the learned Income Tax Officer, Ward-54(1), New Delhi has erred both in law and on fact in computing the total Additional unexplained income of the appellant at Rs. 13,72,180/- in an ex parte order of assessment dated 17-12-2018 U/s 147/148 and 144 of the IT Act.*
3. *The Leaned AO has assume profit 100 percent instead of calculating 8 percent of Turnover u/s section 44AD (Presumptive income) which is in contravention to the provisions of Income tax act 1961. In not adopting the profit rate a s per the provision of section and considering 100 percent unexplained income As Taxable income that is arbitrarily and against the law.*
4. *The assessee craves to add or delete any ground/additional ground at the time of hearing.”*

3. **With regard to Ground No.1** the Leaned Counsel of the assessee submitted that the AO has passed reassessment order u/s 147 of the Act without satisfying the statutory pre-conditions provided by the Act therefore initiation of the proceedings and completion of assessment are without jurisdiction and thus, deserve to be quashed. The Learned Counsel drawn our attention towards assessment order page 2 submitted that the notice u/s 148 of the Act have not been served on the assessee and the same was returned back although the other notices send by the assessee on the same address were properly served on the assessee. The Learned AR submitted that since notice u/s 148 of the Act have not been served on the assessee within the

prescribed time limit, therefore, the reassessment order may kindly be quashed.

4. Replying to the above, the Learned Senior DR strongly opposed to the legal grounds of the assessee and submitted as per decision of Hon'ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. order dated 18th October, 2019 in SLP (C) No.3530/2019 in a situation when the notice u/s 148 has been sent within the prescribed period to the address available in the record of the Department then assessee may avoid actual service of notice till the period prescribed which expired to get benefit of limitation period but in this situation it has to be presumed that the notice has been served on the assessee properly. The Learned Senior DR submitted that assessee required to approach the Department within application informing the change of address in the departmental data base of PAN, therefore, in the present case, legal contention of assessee is not tenable.

5. Placing rejoinder to the above, the Learned Counsel submitted that the proposition rendered by Hon'ble Supreme Court do not apply to the present case as the assessee is not alleging non-service of notice u/s 148 of the Act on account of change in address but the assessee is admitting that the assessee is received subsequent notice u/s 148 of the Act on the same address to which notice u/s 148 of the Act was sent by the AO

which was not served and returned back to the AO, therefore, in a situation where notice u/s 148 of the Act has not been issued and served on the assessee within the prescribed time limit then reassessment proceedings and reassessment order deserves to be quashed.

6. On careful consideration of the rival submissions, I am of the considered view that in the present case, the sole legal contention of the assessee is that no notice u/s 148 of the Act has been served on the assessee within the prescribed time limit on the address given by assessee to the Department. It is also contention of the Learned Counsel of the assessee that subsequent notices u/s 148 of the Act were also issued to the same address which were served on the assessee therefore proposition rendered by Hon'ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. (supra) does not apply to the present case. On careful consideration of fact and circumstances of both the cases, I am of the respectful opinion that in the present case proposition rendered by Hon'ble Supreme Court in the case of I Ven Interactive Ltd. (supra) is not applicable as the assessee is not claiming non-service of notice on account of change of address but he is claiming that the AO did not comply the mandatory condition to serve notice u/s 148 of the Act to the assessee before passing reassessment order u/s 147 of the Act.

7. The Assessing Officer at page 2 of the assessment order himself noted that notice u/s 148 of the Act have not been served on the assessee and the same was returned back. The Learned Counsel of the assessee has placed vehement reliance on the decision of Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs. Chetan Gupta wherein it was held that u/s 148 of the Act, the issue of notice to the assessee and service of such notice upon the assessee are jurisdictional requirements that must be mandatorily complied with. The Lordship speaking for jurisdictional High Court clearly held that the issue and service of notice u/s 148 of the Act are not mere procedural requirements and reassessment proceedings finalized by an AO without effecting proper service of notice on the assessee u/s 148(1) of the Act are invalid and liable to be quashed.

8. In view of the foregoing discussion respectfully following the proposition rendered by Hon'ble Jurisdictional High Court of Delhi in case of Chetan Gupta (supra), I am compelled to hold that the Assessing Officer has initiated reassessment proceedings and has passed reassessment order without complying with the mandatory requirement of issue and service of notice on the assessee u/s 148 of the Act. Therefore, reassessment proceedings and reassessment order deserve to be quashed and I hold so. Accordingly, legal ground No.1 of assessee is allowed.

9. Since by the earlier part of this order, I have quashed reassessment order and all consequent proceedings and orders therefore grounds of assessee on merit are not adjudicated upon.

10. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 10.06.2022

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Date:- 10.06.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI