

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1415/Del/2020
Assessment Year: 2013-14

Krishna,
H.No.63, Mandir Vali Gali,
Vill. Nanakheri,
New Delhi.

Vs. ITO,
Ward-12(3),
New Delhi.

PAN: CXRPK9194H

(Appellant)

(Respondent)

Assessee by	:	Shri Manjeet Anjani & Shri Pradeep Yadav, CAs
Revenue by	:	Shri Mithalesh Kr. Pandey, Sr. DR
Date of Hearing	:	12.09.2022
Date of Pronouncement	:	19.09.2022

ORDER

This appeal filed by the assessee is directed against the order dated 17.03.2020 of the CIT(A)-44, New Delhi, relating to Assessment Year 2013-14.

2. The grounds raised by the assessee read as under:-

“1. That the appellant denies its liability to be reassessed under section 144/147 at an income of Rs. 8,00,000 and accordingly denies its liability to pay tax, interest demanded thereon.

2. That while holding the assessment to be valid the Ld. CIT(A) omitted to consider that no Notice under, section 148 of the ‘Act’ was served upon the ‘appellant’ and ex-parte assessment was completed without serving any Notice under section 148 of the ‘Act’ till the

completion of assessment which render the Assessment Order void-ab-initio.

3. *That Id. CIT(A) has grossly erred on the facts and in law in presuming the service of notice u/s 148 on the basis of decision of Hon'ble Supreme court, in the case of Pr. CIT V/s I-ven Interactive Ltd (civil Appeal No. 8132 of 2019 arising out of SLP (C) No. 3530.2019). The said case is misplaced by Ld. CIT(A) and is not at all applicable to the case of the assessee. In the case of the assessee notice was never served by speed post or email communication or even by affixture and the notice u/s 148 sent through speed post received back by the AO with the postal remarks- "adhura pata ". Sd. Dated 09.03.2018", and same is case with later dated 24.03.2018 which are placed on file. In absence of service of notice u/s 148, the whole proceeding deserves to be quashed.*

4. *That The Id. CIT(A) has omitted to ask in his remand report about the ground raised by assessee for non-serving of notice u/s 148. And the same was never addressed by either CIT(A) or by AO during the proceeding. The Ld. CIT (A) never either in his remand report or during the proceedings have asked the AO about the basic requirement of re-opening of assessment under section 148 i.e. service of notice. While the appellant have submitted the proof of non-service of notice to the CIT (A) after inspection of the file with AO. The copy of unserved notice under section 148 were also submitted to CIT(A) along with statement filed with CTT(A) dated 15/11/2019.*

5. *That The Id. CIT(A) has grossly erred on facts and in law in upholding the validity of initiation of proceedings u/s 147 of the Act and assessment based on such notice ignoring the fact that the re-assessment proceeding was initiated by the AO, without application of mind, without any tangible material or valid reasons, simply on the basis of his fallacious assumptions, conjectures and surmises. The proceedings so initiated were illegal, bad in law and void-ab-initio.*

6. *That The Ld. CIT(A) has grossly erred in validating the letter dated 01.10.2018, asking for attendance on 05.10.2018 being issued on 06.10.2018, which is a backdated letter. And the same is not valid at all.*

7. *That The Ld. CIT (A) while addressing the point of serving the notice by affixture has omitted to consider the validity of procedure of affixture. This service by affixture is also against the specific Rule*

20(1) of Order V of the CPC. Before action under rule 20 can be taken two conditions must exist, one that the court has reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons ' cannot be served in the ordinary way.

8. That the Ld. CIT (A) erred in denying the claim of assessee of financial aid/gift from relatives on the ground that there is 2 years' time gap between missing complaint and the date of gift given by relatives. The Ld. CIT (A) ignored the financial conditions and circumstances of the appellant at the time of deposit. The money was given as financial aid to the appellant for survival. The relevant FIR copy and the newspaper cutting relevant to justify the conditions were also provided along with the statement via affidavits to the Ld. CIT (A) along with the income sources of the donors."

3. The ld. AR submitted that while holding the assessment to be valid the Ld. CIT(A) omitted to consider that no notice under section 148 of the 'Act' was served upon the assessee and *ex parte* assessment was completed without serving any notice under section 148 of the Act till the completion of assessment which render the assessment order *void ab initio*. The ld. AR further pointed out that the ld. CIT(A) has grossly erred in presuming the service of notice u/s 148 on the basis of decision of the Hon'ble Supreme court, in the case of Pr. CIT V/s I-ven Interactive Ltd (supra) and reliance on the said case is misplaced and these cases are not at all applicable to the present case of the assessee. The ld. AR further submitted that in the case of the assessee notice was never served by speed post or email communication or even by affixture and the notice u/s 148 sent through speed post was received back by the AO with the postal remarks, "*adhura pata*" and the same is the case with letter issued by the AO dated 24.03.2018 which was also available on the assessment record, and which was also received back by the

AO unserved with the similar post remarks. The ld. AR vehemently pointed out that in the absence of service of notice u/s 148, the whole proceeding deserves to be quashed.

4. Replying to the above, the ld. Sr. DR placed relevant assessment record before me and submitted that the notice and letter issued to the assessee have been received back by the AO with the incomplete address remarks. He also shown me the relevant envelopes containing the said notice and letter, copies of which were also placed in the relevant appeal file.

5. It is a well settled proposition that the AO is duty bound and it is mandatory for the AO to issue and serve notice u/s 148 of the Act on the assessee. This is a mandatory requirement which cannot be dispensed with. In the present case, it is a peculiar situation where the notice u/s 148 as well as subsequent correspondence/letter issued to the assessee have been received back by the AO with the remarks: 'incomplete address.' Therefore, I safely presume that no notice u/s 148 of the Act has been service on the assessee before initiating the reassessment proceedings u/s 147 of the Act nd 148 of the Act and the entire reassessment proceedings and reassessment order has become *void ab initio* and bad in law, therefore, the legal grounds No.2 and 3 of the assessee are allowed and the impugned reassessment order dated 29.11.2018 and all subsequent proceedings and orders are hereby quashed. Since I have allowed the legal grounds of the assessee and quashed the impugned reassessment order, other

grounds of the assessee on merits have become academic and the same are not being adjudicated upon.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19.09.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 19th September, 2022.

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi