

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 4273/Del/2010, A.Y. 2001-02

Sh. Kamal Kishore Sharma, 46/1A/7, East Azad Nagar, Delhi-110051 PAN : AFSPK7338G	Vs.	ITO, Wd. 35(3), N.Delhi
Appellant		Respondent

Appellant by	None
Respondent by	Shri Bhopal Singh, Sr. DR

Date of hearing:	08.06.2023
Date of Pronouncement:	26.06.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 25.11.2009 of CIT(A)-XXVII, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 130/08-09 arising out of an appeal before it against the order dated 10.12.2008 passed u/s 144/147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-35(3), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. Non-appeared for the assessee, the record shows notices were issued to the assessee for today. The same are received back with report that the assessee

has left without address. No further opportunity is justifiable. Ld. DR supported findings of Ld. Tax authorities below.

4. Further, record shows on 24.11.2021, bench had directed Revenue to produce the assessment record to consider the question if mandatory notice u/s 147/148 was served upon the assessee or not. Record is not produced. It was also observed by the Bench on 24.11.2021 that in case record is not produced, adverse view in the matter shall be taken. However, none is present on behalf of the assessee for assistance.

5. The order of Ld. CIT(A) shows that the question of non-service of mandatory notice was examined by the Ld. CIT(A) as it was mentioned in para no. 4.1 that notice u/s 148 of the Act dated 27.03.2008 was issued and served upon the person on 28.03.2008. The assessee did not appear before Ld. AO and the assessment order was passed u/s 144/147 of the Act. At the same time in para no. 5 of the order Ld. CIT(A) mentions that *“the reasons recorded for reopening the case for the assessment u/s 147/148 were not provided to the assessee as he did not respond the notice u/s 148 of the Act dated 27.03.2008”*. Thus there is no categorical finding of Ld. CIT(A) on this issue of no service of mandatory notices. The service of notice u/s 147/148 being question of fact not coming up from the orders of Ld. Tax authorities and as the record is also not made available here inspite of opportunity. It is required to be re-appreciated by Ld. CIT(A) on the basis of examination of record of assessment.

6. Accordingly, the issue with regard to non-service of mandatory notices for re-assessment is restored to the files of Ld. CIT(A). **The appeal of Assessee is allowed for statistical purposes.**

Order pronounced in the open court on 26th June, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- .06.2023

Binita, SR.P.S

Copy forwarded to:

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI