

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

**Before Shri Saktijit Dey, Hon'ble Vice President
&**

Dr. B. R. R. Kumar, Accountant Member

ITA No. 30/Del/2020 : Asstt. Year: 2010-11

ITO, Ward-26(2), New Delhi	Vs	M/s Vibyor IT Consultant P. Ltd., H-71, 2 nd floor, DDA Site, Rajinder Nagar, New Delhi 110060
(APPELLANT)		(RESPONDENT)
PAN No. AADCS 6304 B		

**Assessee by : Sh. R.S. Ahuja, CA
Sh. Sushil Wadva, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 10.10.2023	Date of Pronouncement: 21.12.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the Revenue against the order of Ld. CIT(A)-28, Delhi dated 04.10.2019.

2. The Revenue has raised the following grounds of appeal are as under:-

1. On the facts and circumstances of the case the CIT(A) erred in holding that the reassessment proceeding are not validly initiated as the notice u/s 148 was sent at the old address without appreciating the judgement given by the Hon'ble Apex court has held in case of Principal Commissioner of Income-tax, Mumbai v, I-Ven Interactive Ltd (2019) 110 taxmann.com 332 (SC) that Scrutiny notice issued to assessee under section 143(2) at address available as per PAN database was justified ad change in address had not been initmeated to Assessing Officer and without appreciating the fact that the assessee appeared in the reassessment proceeding.

2. On the facts and circumstances of the case the CIT(A) erred in Rs. 3,21,44,750/- made u/s 68 without appreciating that the assessee deliberately made submitted the name and addresses of Creditors at the fag-end of assessment proceeding so that inquiry could not be done and without appreciating the fact that CIT(A) has coterminous powers with the AO and if the AO has not conducted any inquiry then it is the duty of the CIT(A) to conduct inquiries as held by the jurisdictional Delhi High Court in cases of ITO, Ward-18(4), New Delhi Vs M/s Yadu Steels & Power Pvt. Ltd. ITA No. 25/Del/2014 and Commissioner of Income -tax-II V. Jansampark Advertising & marketing (P.) Ltd (2015) 56 taxmann.com 286 (Delhi).

3. On the facts and circumstances of the case the CIT(A) erred in Rs. 3,21,44,750/- made u/s 68 despite the fact that while forwarding the comments of the AO on validity of reassessment proceeding that AddI.CIT had specifically requested the CIT(A) to conducted the Remand Proceeding vide letter dated 09.09.2019 (Copy enclosed) making the order perverse.

4. On the facts and circumstances of the case, the CIT(A) order of the Ld. CIT(A) is perverse as the Ld. CIT(A) neither conducted inquiry directly as per the binding judgments of the Hon'ble Jurisdictional High Court not remanded the matter to the AO for inquiry despite specific request.

3. Owing to the information received from the Investigation Wing, the case of the assessee was reopened u/s. 148. The AO in the Assessment Order held that, notice u/s. 148 was served upon the assessee, however, the assessee has neither filed any return of income nor attended the assessment proceedings. The notices issued u/s. 142(1) have been received back un-served. Owing to non-comply by the assessee, the assessment has been completed based on the information and material available on record.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A).

5. The Id. CIT(A) concluded that the notice u/s. 148 has not been served to the assessee and hence, the assessment proceedings are *void ab initio*.

6. Aggrieved, the assessee filed appeal before the ITAT.

7. Heard the arguments of both the parties and perused order of the Id.CIT(A) and the remand report available on record.

8. We find the notice u/s. 148 dated 30.03.2017 was issued and sent to the old address "2822 Gali no. 18 Kailash Nagar, New Delhi 110031". The date of filing of the ITRs and the address mentioned in the ITR are as under:-,

ITR for AY 2010-11 filed on 23.11.2010 with Old Address
ITR for AY 2011-12 filed on 30.09.2011 with New Address
ITR for AY 2012-13 filed on 28.05.2013 with New Address
ITR for AY 2013-14 filed on 11.09.2013 with New Address
ITR for AY 2014-15 filed on 30.03.2015 with New Address
ITR for AY 2015-16 filed on 07.02.2017 with New Address

9. On going through the copy of the ITRs filed before us as well as before the Id. CIT(A), we hold that the notice issued to old address on 30.03.2017 instead availability of the new address from 30.09.2011 cannot held to be valid, hence, we decline to interfere with the reasoned order of the Id. CIT(A) on this issue.

10. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 21/12/2023.

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 21/12/2023

NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, DELHI