

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

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No.4166/Del/2017

Assessment Year: 2007-08

ITO, Ward 5, Hisar	Vs.	The Virat Co-op House Building Society Ltd. Alia The Hisar Virat Co-op Building Society Ltd., H. No. 110A, Sector 15, Hisar
PAN :AAEAT0472C		
(Appellant)		(Respondent)

Assessee by	Shri Kuldip Khera, CA
Department by	Shri Anuj Garg, Sr. DR

Date of hearing	02.11.2023
Date of pronouncement	30.01.2024

ORDER

PER CHALLA NAGENDRA PRASAD, JM

This appeal is by the Revenue against the order of learned
CIT (Appeals), Hisar dated 18.04.2017 for the assessment year 2007-
08.

2. The Revenue in its appeal has raised the following grounds of appeal:

i) The Ld. CIT(A) has erred in appreciating the facts involved in the case, the notice u/s. 148 of the Act was sent to the assessee society through Regd. Post on 28.03.2014 and affixture of notice was carried out by the inspector of this office, which is valid service well before the time-barring dated 31.03.2014.

ii) The Ld. CIT(A) has failed to appreciate that the assessee society had himself admitted that he had received the notice u/s 142(1) dated 15.05.2014, which was sent on the same address on which the notice u/s. 148 was sent dated 28.02.2014 and affixture made on 28.03.2014. Thus, the reason for deletion of addition by the Ld. CIT(A) on the ground that no inquiry was conducted out by the Inspector, does not hold any merit.

iii) The Ld. CIT(A) held that no efforts was made by the Inspector of this office to trace the assessee and without enquiring the whereabouts of the assessee the notice was affixed on the building. But, the Ld. CIT(A) erred on law, as there is no provision under the Act which makes its necessary to conduct enquiry before making the affixture notice.

iv) The Ld. CIT(A) has failed to appreciate that the assessee has filed reply dated 29.12.2014 well before the completion of assessment proceedings and admitted that the notice u/s 142(1) dated 15.05.2014 was received by him. So, the assessee society was well aware about the assessment proceedings u/s 147 of the Act.”

3. Learned Departmental Representative at the outset submits that the assessment made under Section 144 of the Income-Tax

Act,1961 was quashed by the learned CIT (Appeals) on the ground that there is no proper service of notice under Section 148 of the Act. Learned Departmental Representative submits that notice was served through affixture and, therefore, there is a valid service of notice. The learned Departmental Representative further submits that the order of the learned CIT (Appeals) may be set aside and the appeal be restored to the file of the learned CIT (Appeals) for adjudication on merits.

4. On the other hand, learned counsel for the assessee strongly placed reliance on the order of the learned CIT (Appeals).

5. Heard rival contentions.

6. The assessee contended before the learned CIT (Appeals) that the service of notice for reopening the assessment under Section 144 is bad in law for the following reasons:

“4. That the above fixture of notice is invalid due to following reasons.

a) The above information on the basis of which case was opened was with the A.O. since 25.04.2013. He did not take any action till 28.03.2014. He applied for seeking approval for issue of notice 28.03.2014 which was approved by the Learned Joint Commissioner of Income Tax on the same date and A.O. issued notice on 28.03.2014. Learned A.O. has made no effort to contact/ locate the assessee. A.O. sent his inspector on

29.03.2014 for service of notice by fixture but his inspector did not made any enquiry from the neighbors about the assessee.

b) Whether the assessee is residing in the house or has left the house

c) Whether the society is carrying on any activity from this house for the last 2-3 years.

d) Whether the person is dead or alive on which the notice was to be served. He simply went to the house and made the fixture.

e) He has not even mentioned in his report, whether the house was open or locked.

f) Whether some body attended him in the house. Whether the person present in the house had refused to take notice.

g) Whether he enquired from neighbors about the person. The inspector had not bothered to make any enquiry and even had not made the fixture in presence of two respectable persons of the area/ society. He had acted in arbitrary manner which is not expected from a responsible person of judicious mind. The procedure followed by the inspector made his action doubtful. There is no evidence on the file which can prove that fixture had been made in the house on 29.03.2014 except the report of the inspector. If fixture is to be made in such a manner, then where is the need to go anywhere for making fixture. This fixture report can be prepared on any day while sitting in office. Fixture in this style by the Inspector had created a doubt that whether any fixture had been made or not. The Law makers have given complete guidelines for such situations describing the complete system to be followed for service of valid notice. The complete details are given in section 282(1) of Income Tax Act. The reason for taking all these precautions is that service by affixture is substituted service and since it is not direct or personal service upon the defendant, to bind him by such mode of service the mere formality of affixture is not sufficient. Since the service has to be done after making the necessary efforts, in order to establish the genuineness of such service, the Serving Officer is required to state his full action in the report and reliance can be placed on such report only when it sets out all the circumstances which are also duly verified by the witnesses

in whose presence the affixture was done and thus the affidavit of the Serving Officer deposing such procedure adopted by him would also be essential, h) The inspector has not filed any affidavit.

3. The submissions made by the AR of the appellant are as under: -

We respectfully submit the following facts for your kind & sympathetic consideration.

The AO received information on 25.04.2013 from Ward-2 Hisar regarding advance given by the society for purchase of agricultural land. The A.O. did not take any action up to 28.03.2014. On 28.03.2014 he sought approval for issuing notice which was promptly given by learned Joint Commissioner of Income Tax on 28.03.2014. On 28.03.2014 he sent notice U/S 148 by Regd. Post which was returned back with the remark "Incomplete Address". On 29.03.2014 he authorized his inspector to serve notice by fixture who as per his report affixed the notice on 29.03.2014 without making any enquiry. The assessee denied any service of notice and took the stand that proceedings are barred by time as no notice was served upon him up to 31.03.2014 and no notice for A.Y. 2007-2008 can be served after 31.03.2014. The learned A.O. refused to give copies of the papers on file. He put the condition of filing income tax return before inspection of file. The A.O. did not supply certified copies of the documents on file and decided the case ex parte u/s 144 of the Income Tax Act. Hence this appeal".

7. After careful examination of the submissions of the assessee, the evidences on record, the case laws relied on, the learned CIT (Appeals) held that the service of notice under Section 148 for reopening of assessment is bad in law and consequently the

assessment framed under Section 144 of the Act was quashed observing as under:

“A Perusal of the facts of the case reveal that the AO had not made any effort of issuing notice to the assessee for completing the assessment till the fag end of the year although information was with him since 25.04.2013. On 28.03.2014 once permission was accorded to issue notice, the AO sent notice through post office which was returned unserved with the remarks “Incomplete address”. Subsequently, the inspector was asked to serve notice by affixture. No effort was made to trace the assessee and without enquiring about the whereabouts of the assessee, the notice was affixed on the building. He has also not enquired from the neighbors whether the assessee was conducting the business from the said building. No one has witnessed the affixture. He had also not submitted an affidavit as required under the Act. I have perused the record of the A.O. and have come to conclusion that A.O. has failed to discharge his duty as per Section 282 of the Act in view of judgment in the case of Commissioner of Income Tax vs. Ramendra Nath Ghosh (1971) 82 ITR 888 (SC) and Commissioner of Income Tax vs. AVI-OIL India Pvt. Ltd. (20101323 ITR 0242 and other judgments relied by the appellant reproduced above. Due procedure has not been adopted in the service of notice. I, therefore, quash the order passed in this case.

8. We have carefully perused the order of the learned CIT (Appeals) and the evidences placed before us. The Revenue could not rebut any of the findings of the learned CIT (Appeals). It is the finding of the learned CIT (Appeals) that the Revenue did not follow the

procedure laid down for service of notice and, therefore, the assessment is bad in law.

9. In the circumstances, we see no infirmity in the order passed by the learned CIT (Appeals) in quashing the reassessment made under Section 143(3) r.w.s.(4) of the Act. Grounds raised by the Revenue are rejected.

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

Pronounced in the open court on 30.01.2024.

Sd/-
(G.S. PANNU)
VICE-PRESIDENT

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 30th January, 2024
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi