

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

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 2756/Del/2019 : Asstt. Year : 2006-07

Income Tax Officer, Ward-32(2), New Delhi-110002	Vs	Mahavir Singh Dagar, K-259A, High Gate Mansion, Maidan Garhi Road, Chattarpur Enclave, Phase-2, New Delhi-110074
(APPELLANT)		(RESPONDENT)
PAN No. ACOPD4476D		

**Assessee by : Sh. Ved Jain, Adv. &
Sh. Aman Garg, CA
Revenue by : None**

Date of Hearing: 09.11.2023

Date of Pronouncement: 07.02.2024

ORDER

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

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-15, New Delhi dated 14.09.2018.

2. Following grounds have been raised by the Revenue:

"1. "Whether the Ld. CTT(A) is correct in deleting the addition on account of undisclosed capital gain without appreciating the fact that during search operation conducted by DRI, Mumbai, excel sheet was found from the possession of Zaver Cyprus Dadlani, wherein it was categorically mentioned that sale proceeds of the property sold were also in cash and not recorded in the sale deeds

2. Whether the Ld. CTT(A) is correct in deleting the addition on account of undisclosed capital gain without appreciating the fact that both M's. Saturn Advisory Services Pvt. Ltd and Ms. Merino Realtors Pvt. Ltd. were purchasers, whereas the assessee is seller, therefore the decision in the case of purchasers could not be applied in the case of seller.

3. The Ld. CIT(A) erred in not appreciating the fact that seized documents have an evidentiary value. From the seized documents it is seen that amount stated therein to be paid by

DO Cheque exactly matches the amount mentioned in the Registered Deed which further emphasizes that the cash transaction mentioned in the seized documents took place and should therefore be taken to be part of sale consideration for computation of capital gains."

3. The assessee has filed application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 which is as under:

"1. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not quashing the assessment order u/s 147/144 of the Act passed without following the due procedure for reopening of the assessment.

2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in ignoring the contention of the assessee that reassessment proceedings are bad in law in the absence of any live nexus in the formation of belief and reason to believe.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in not quashing the assessment order u/s 147/144 of the act passed in the absence of any valid notice being issued under section 148 of the Act.

4. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in not quashing the assessment order u/s 147/144 of the act passed without service of notice under section 148 of the Act before completion of reassessment proceedings."

4. Heard the arguments of both the parties and perused the material available on record.

Notice u/s 148 is not a valid notice.

5. At the outset, it is relevant to mention that AO passed order u/s 147/144 of the Act dated 24.03.2014 without a valid notice u/s 148 of the Act and this is evident from copy of Notice u/s 148 (PB 2 Pg. 102-104) wherein address of the assessee is mentioned as "Village & P.O., New Delhi-110068" , whereas the correct address of the assessee is "K-259A, High Gate Mansion, Maidan Garhi Road, Chattarpur Enclave, Phase-1, New Delhi".

6. It is settled position in law that valid notice under section 148 of the Act is a jurisdictional requirement must be complied with this contention of assessee is supported by Delhi High court judgment in the case of Commissioner of Income-Tax Vs. Rajesh Kumar Sharma, 2007(8) TMI 322, Dated- 13.08.2007, wherein Hon'ble High court observed as under:

"8. As far as the second contention is concerned, with regard to service of the notice by post, the proviso to Order V, rule 9(5) of the Code of Civil Procedure provides that the summons must be properly addressed and sent by registered post. In the present case, the notice was sent by speed post at the following address as per the postal receipt:

"Sh. R. K. Prop M/s. Karol Bagh, New Delhi, Pin 110065."

9. Clearly, the above is not the address of the assessee. It would have been a different matter altogether if the Revenue had been able to show from the envelope that it was addressed to the correct person but the receipt prepared by the postal department was incomplete. However, for proving this, the onus would have been on the Revenue, particularly when the assessee had categorically deemed receipt of the notice. The Revenue did not discharge this burden but placed reliance only upon the receipt, which as we have noted hereinabove does not give the correct or complete address of the assessee. Under no circumstances, therefore, can it be said that the notice was correctly addressed to the assessee.

10. It was submitted by learned counsel for the Revenue that the envelope did not return with any remark to the effect that it was undelivered and so it must be presumed that it was actually served upon the assessee.

11. We are not in a position to make any such assumption because of the categorical stand of the assessee that he had not received the notice. The burden was entirely upon the Revenue

to show that the notice was des-patched to the correct address, it is only then that such a presumption could have been made. But learned counsel for the Revenue has not been able to show that the envelope containing the notice was correctly addressed. We are, therefore, not inclined to accept this contention of learned counsel for the Revenue.

12. It was finally contended that the assessee presented himself in the proceedings before the Assessing Officer. However, as we have noted above, the assessee appeared before the Assessing Officer in response to a notice under sections 142(1) and 143(2) of the Act and not pursuant to a notice under section 147/148 of the Act. In fact, as we have already noted, the assessee had written a letter to the Assessing Officer soon after receiving the notice under sections 142(1) and 143(2) of the Act and that he was unaware of any-notice having been issued under section 147/148 of the Act. Moreover, the assessee entered appearance and filed his return under pro-test making it abundantly clear that he had not received the notice under section 147/148 of the Act. This argument does not, therefore, advance the case of the Revenue."

Non-service of notice u/s 148 of the Act

7. In this regard, it is relevant to mention that Assessment Order u/s 147/144 of the Act dated 24.03.2014 is an *ex-parte* order without service of notice u/s 148 of the Act.

8. In this regard, it is relevant to mention assessment u/s 147/143(3) r.w.s. 144 of the Act has been framed without service of notice u/s 148 of the Act and this action of AO is contravention section 148 of the Act, which impose binding condition on the Assessing Officer to serve on the notice u/s 148 of the Act before making assessment u/s 147 of the Act, relevant portion of the section is reproduced below:

"148. (1) Before making the assessment, reassessment or re-computation under section 147 the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed: and the provisions of this Act shall, so far as may be apply accordingly as if such return were a return required to be furnished under Section 139."

9. It is settled position in law that service of notice under section 148 of the Act is a jurisdictional requirement must be complied with and the onus to prove the service of notice lies upon the Revenue and this contention of assessee is supported by the order of the Hon'ble Delhi High Court in the case of CIT Vs. Chetan Gupta [(2016) 382 ITR 613] vide order dated 15.09.2015, wherein the Hon'ble High court held as under:

"46. To summarize the conclusions:

(i) Under Section 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. They are not mere procedural requirements.

(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under Section 148 (1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282 (1) of the Act read with Order V Rule 12 CPC and Order Hi Rule 6 CPC.

(iii) *Although there is change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with Section 282 (1) and Section 153 (2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.*

(iv) *The onus is on the Revenue to show that proper service of notice has been effected under Section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.*

(v) *The mere fact that an Assessee or some other person on his behalf not duly authorized participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the Assessee under Section 148 of the Act.*

(vi) *Reassessment proceedings finalized by an AO without effecting proper service of notice on the Assessee under Section 148(1) of the Act are invalid and liable to be quashed.*

(vi) *Section 292 BB is prospective. In any event the Assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292 BB is not attracted.*

47. On the facts of the present case, the Court finds that the ITAT was right in its conclusion that since no proper service of notice had been effected under Section 148 (1) of the Act on the Assessee, the reassessment proceedings were liable to be quashed. Consequently, the question framed is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue."

10. Further, reliance is placed upon the following judicial pronouncement wherein it has been observed that hat service of

notice under section 148 of the Act is a jurisdictional requirement must be complied with and the onus to prove the service of notice lies upon the Revenue:

- i. Harjeet Surajprakash Girotra Vs. Union Of India & Ors., Writ Petition No. 513 of 2019 (Bob. HC), order dated 16.07.2019*
- ii. PCIT Vs. Atlanta Capital Pvt. Ltd. in ITA 665-666/2015, order dated 21.09.2015 (Del. HC)*
- iii. CIT Vs. Eshaan Holding (P.) Ltd. (344 ITR 541) (Del.)*
- iv. CIT Vs. M/s Hotline International Pvt. Ltd. 2007 (4) TMI 44 (Del.)*
- v. Mrs. Shubhashri Panicker Vs. CIT 2018 (6) TMI 98 (Raj.)*
- vi. PCIT Vs. M/s Mahla Real Estate Pvt. Ltd. 2021 (12) TMI 142 (Raj.)*
- vii. Rambhai Mafatlal Patel Vs. ITO (2021) (3) TMI 1173(Guj.)*
- viii. Naveen Tyagi Vs. ITO in ITA No. 2089/DEL/2018, order dated 20.06.2022*

11. Hence, in the view of the above mentioned submissions and judicial pronouncements, we hold that the re-assessment proceedings completed without service of valid notice u/s 148 of the Act are liable to be quashed.

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

Order Pronounced in the Open Court on 07/02/2024.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 07/02/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR