

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री राजेश कुमार, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.: 971/KOL/2023
Assessment Year: 2012-13**

***M/s. Venus Goods & Supply Pvt. Ltd.....Appellant
[PAN: AABCV 5653 L]***

Vs.

ITO, Ward-1(4), Kolkata.....Respondent

Appearances:

Assessee represented by – Sh. Vibhor Garg, A/R.

Department represented by – Sh. B.K. Singh, JCIT, Sr. D/R.

Date of concluding the hearing : January 9th, 2024

Date of pronouncing the order : February 19th, 2024

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') dated 27.07.2023 for AY 2012-13.

2. The assessee in this appeal has taken the following grounds of appeal:

“1. That the order of Ld. Appellate Authority is bad both on facts and law.

2. That the Ld. Appellate Authority has erred in upholding the re-assessment proceedings u/s 148 after ignoring that

a. The notice dated 30.03.2019 issued u/s 148 was without jurisdiction as the company had shifted its registered office from Kolkata to Chandigarh in 2014 and was filing ITR's on the new address since then.

b. The notice u/s 148 was never served on the appellant and the assessment proceedings u/s 148 were re-opened by merely issuing notice without assuring the service of notice.

c. No enquiry was made by AO prior to issue of notice u/s 148 and the same was issued in a mechanical manner without application of mind, on borrowed satisfaction without making any independent enquiry after solely relying on the information passed on by the DDIT (Inv) Wing, Kolkata.

3. That the Ld. Appellate Authority has erred in ignoring that the entire assessment proceedings are without jurisdiction as the registered office of the company was changed to Chandigarh, way back in 2014 and assessment was framed in 2019 by the AO, Ward-1 (4), Kolkata.

4. That the Ld. Appellate Authority wrongly and illegally upheld the addition of Rs 55 lacs against the facts and circumstances of the case ignoring the fact that report of the DDIT (Inv) Wing, Kolkata did not even name the appellant company nor there is anything against the appellant directly or indirectly.

5. That the interest u/s 234A, 234B, 234C and 234D have been wrongly and illegally charged. 6. That the Appellant craves permission to add, amend, elucidate any ground of appeal at the time of hearing.”

3. At the outset, ld. Counsel for the assessee has submitted that assessment framed in this case u/s 144 read with Section 147 of the Act was bad in law as the concerned Assessing Officer at Kolkata did not have territorial jurisdiction to frame the impugned assessment order and further that no valid notice u/s 148 of the Act was ever served upon the assessee. He, in this respect has submitted that earlier the assessee company was operating its business at Kolkata. However, the assessee company closed down its operations at Kolkata in the year 2014 and shifted its operations to Chandigarh. That the shifting of the registered office of the assessee company was duly approved by the Regional Director, Kolkata vide order dated 31.03.2014. After approval by the Regional Director, the assessee company filed Form INC-22 with Registrar of Companies (ROC) at Kolkata in forming about change in registered office address. That the shifting of the registered office of the assessee to Chandigarh was not only informed to the public

through newspaper publication but the information was also served upon the State Government as well as Registrar of Companies. Further, the Regional Director had also issued notices of hearing to the State Government as well as the Reserve Bank of India about the shifting but no objection was raised by any of the authorities. That the information about the change of the registered office address was also given to the Income Tax Department. Therefore, the jurisdiction to pass the assessment order in the case of the assessee lied with the Assessing Officer (in short ld. 'AO') at Chandigarh and not at Kolkata. It has been further submitted that the AO sent the notice u/s 148 of the Act on e-mail ID *s_gupta@sify.com* and that the said service provider Sify Technologies Ltd. had closed down its operations in the year 2014 itself, and that no e-mail could be sent through the said platform *@sify.com*. He has further submitted that an alternate e-mail ID of the assessee was mentioned in the income tax return, however, no effort was made by the AO to serve the notice on the said alternate e-mail ID. Ld. Counsel for the assessee has further submitted that from AY 2014-15 onwards the assessee had filed all its income tax returns before the Assessing Officer, Chandigarh who is the jurisdictional officer of the assessee from AY 2014-15 as per Section 124 of the Act and that the address of the assessee was duly available in the said income tax returns. That therefore, the jurisdictional officer of the assessee u/s 124 of the Act was the Assessing Officer at Chandigarh and not the Assessing Officer at Kolkata. He therefore, had submitted that the assessment order framed by the Assessing Officer, Kolkata was bad in law for want of territorial jurisdiction to the concerned Assessing Officer at Kolkata and for want of service of notice u/s 148 & u/s 143(2) of the Act.

4. The ld. D/R on the other hand, has submitted that the PAN data of the assessee was lying with the ITO/AO at Kolkata and therefore, the Assessing Officer at Kolkata was justified in framing the assessment order u/s 147 of the Act.

5. We have considered the rival submissions and gone through the records. The assessee's registered office admittedly has been shifted from Kolkata to Chandigarh in the year 2014. The said shifting of the office has

been duly notified by the competent authority and due information was given to the stake holders through newspaper publication. Even the shifting of the office was done by the Regional Director after calling for the objections from the stake holders. The assessee has been filing its income tax returns from AY 2014-15 onwards with the Assessing Officer, Chandigarh who as per the provisions of Section 124 of the Act is the jurisdictional AO of the assessee. However, the notice u/s 148 of the Act has been issued by the ITO/AO at Kolkata and the assessment has also been framed by the ITO/AO at Kolkata. The only reason given by the Id. CIT(A) in the impugned order relating to the jurisdiction objection is that the PAN data was lying with the Assessing Officer, Kolkata. In our view, the lying of PAN data with any Assessing Officer does not confer jurisdiction upon him, rather the jurisdiction to frame the assessment has to be determined as per the provisions of Section 124 of the Act, which read as under:

“Jurisdiction of Assessing Officers.

124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.”

6. Therefore, the territorial jurisdiction over the assessee was lying with the AO, Chandigarh. If the PAN data of the assessee was lying with a non-jurisdictional officer, that does not confer jurisdiction upon him rather he is supposed to transfer the PAN data to the jurisdictional AO for further action. Therefore, the impugned assessment order framed by the AO, Kolkata being without jurisdiction is held to be bad in law.

7. The second contention raised by Id. Counsel for the assessee is that no notice u/s 148 of the Act was ever served upon the assessee. That the notice

was attempted to be served through e-mail ID *s_gupta@sify.com*. It has been contended that the said *sify.com/Sify Technologies Ltd.* had closed down its business in the year 2014 itself, and no e-mails could have been sent/served through the said platform/service provider. It is to be noted that any e-mail sent by the AO under the circumstances would have been bounced back as unserved for want of proper e-mail ID. There is no evidence on the file that the AO has ever attempted to serve the notice u/s 148 of the Act through any other statutorily prescribed mode as provided u/s 282 of the Act, provisions of which are reproduced below for the sake of ready reference:

“Service of notice generally.

282. (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules⁷³ providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

Explanation.—For the purposes of this section, the expressions "electronic mail" and "electronic mail message" shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000).”

8. Further, Rule 127 of Income Tax Rules, 1962 relating to service of notice/summons etc. read as under:

“[Service of notice, summons, requisition, order and other communication.

127.(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be—

(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—

(i) the address available in the PAN database of the addressee; or

(ii) the address available in the income-tax return to which the communication relates; or

(iii) the address available in the last income-tax return furnished by the addressee; or

(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:

1[Provided further that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:—

(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or

(ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or

(iv) the address of the assessee as furnished in Form No.61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director

of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or

(v) the address of the assessee as furnished in Form No.61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or

(vi) the address of the assessee as available in the records of the Government; or

(vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.]

(b) for communications delivered or transmitted electronically—

(i) e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or

(iv) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.]”

9. Admittedly, no effort was made by the AO to serve notice upon the assessee in the manner provided in Clause (a) & (b) to Section 282(1) of the Act. The notice was attempted to be served through electronic mode i.e. at the e-mail address available in the income tax return filed by the assessee for assessment year under consideration i.e. AY 2012-13. However, as pleaded by the assessee, the said service provider *sify.com* had stopped its operations in the year 2014 itself, whereas the notice u/s 148 of the Act was sent electronically by the AO in the year 2019. The said e-mail sent by the AO would have been notified as unserved. There is no evidence on the file that the

assessee had the knowledge or access to such e-mail sent by the AO or has ever the knowledge of the reopening of the assessment otherwise in any manner. No attempt was made by the AO to serve the notice at the e-mail address available in the last income tax return furnished by the assessee. Even as per Clause (iii) to sub-Rule (b) to Rule 127(2) of the Rules, the assessee being a company, the e-mail address of the assessee was available on the website of Ministry of Corporate Affairs. But the AO never attempted to find the e-mail address of the assessee from the said portal and serve the notice. It is to be pointed out here that merely sending the e-mail at the e-mail address itself does not raise any presumption that the notice has been served upon the assessee. Merely sending an e-mail without any evidence or acknowledgement of access to such an e-mail by the assessee or his representative does not *ipso facto* give any presumption of service of such notice. In the case in hand, the AO had sent the notice allegedly on a non-operating e-mail ID. No effort was made to serve the notice by any other means as prescribed u/s 282 of the Act read with Rule 127 of the Rules. There is neither any evidence of service of notice u/s 148 of the Act upon the assessee nor there is any presumption raised of such service. In view of this, the assessment framed by the AO for want of service of statutory notices u/s 148 & u/s 143(2) of the Act is also held bad in law. In view of this, the assessment framed by the AO, Kolkata being bad in law is hereby quashed.

10. The appeal of the assessee stands allowed.

Kolkata, the 19th February, 2024.

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Sanjay Garg]
Judicial Member

Dated: 19.02.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Venus Goods & Supply Pvt. Ltd., SCO-7, Sector 30D, Chandigarh-160 020.**
2. **ITO, Ward-1(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata