

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “D”: NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.867/DEL/2023  
Assessment year: 2013-14**

Brett Lee, 7 Gordon Street, Clontarf NSW 2093, Australia. PAN- AGVPL 6640 C	<u>Vs</u>	ACIT, Circle-2(2)(1), International Taxation, Delhi.
<b>APPLICANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri S.K. Aggarwal, CA	
<b>Department represented by</b>	Shri Vijay B Vasanta CIT(DR)	
<b>Date of hearing</b>	15.05.2024	
<b>Date of pronouncement</b>	29.05.2024	

**ORDER**

**PER SAKTIJIT DEY, VP:**

The captioned appeal has been filed by the assessee assailing the final assessment order dated 27.01.2023 passed u/s 147 read with section 144 of the Income-tax Act, 1961 (the “Act”), pertaining to the assessment year 2013-14, in

pursuance to the directions of the learned Dispute Resolution Panel-1, New Delhi ('DRP').

2. Though, the assessee has raised multiple grounds, however, at the very outset, learned counsel for the assessee drew our attention to ground no. 2 and submitted that the appeal may be heard on the preliminary legal issue raised therein and thereafter, if necessary, the grounds raised on merits can be gone into. Learned Departmental Representative agreed with the aforesaid submission of the assessee. In view of the submissions made by the parties, we proceed to adjudicate ground no. 2 at the very outset.

3. In ground no. 2 the assessee has challenged the validity of the impugned assessment order on the ground that no notice u/s 148 of the Act was ever served on the assessee. Before we proceed to decide this issue, it is necessary to briefly deal with the relevant facts.

3.1 The assessee is a non-resident individual, being a tax resident of Australia. As stated, the assessee is a professional cricketer. Based on certain information available on record, the Assessing Officer found that in the year under dispute the assessee had received an amount of Rs. 3,01,67,697/- from three Indian entities, namely, Reebok India Company; Castrol India Limited; and Knight Riders Sports Private Limited. Whereas, the assessee had not filed any return of income u/s

139(1) of the Act. As observed by the Assessing Officer, on 20.03.2021 a notice u/s 133(6) of the Act was issued to the assessee seeking certain information relating to the transaction. However, since there was no compliance from assessee's side, the Assessing Officer, being of the view that income chargeable to tax had escaped assessment, proceeded to reopen the assessment u/s 147 of the Act. As alleged by the Assessing Officer, the ITBA generated notice issued u/s 148 of the Act on 30.03.2021, though, was duly served on the assessee, however, there was no compliance. Even, according to the Assessing Officer, the statutory notices issued u/s 142(1) of the Act also did not evoke any response from the assessee. Therefore, the Assessing Officer proceeded to complete the assessment ex parte to the best of his judgment invoking the provisions of section 144 of the Act. While doing so, he called for certain information u/s 133(6) of the Act from the three Indian entities, who had paid certain amount to the assessee during the year. On verifying such information, the Assessing Officer found that the assessee had received an amount of Rs. 3,01,67,697/- during the year. In absence of any response from the assessee, the Assessing Officer treated the amount received as unexplained income of the assessee taxable u/s 115BBA of the Act and brought it to tax while framing the draft assessment order.

3.2 Against the draft assessment order so passed, the assessee raised objections before learned DRP. However, the objections raised by the assessee were found to

be devoid of merit, hence rejected. In terms with the directions of learned DRP, the Assessing Officer passed the final assessment order retaining the addition proposed in the draft assessment order.

3.3 Before us, learned counsel for the assessee submitted that the notice u/s 148 of the Act, which is a mandatory requirement for reopening of assessment, was never served on the assessee. He submitted, the materials on record would go to show that the notice purportedly issued u/s 148 of the Act was never communicated to the assessee in the correct e-mail ID, but was sent to some unknown e-mail ID. He submitted, since the notice was generated through ITBA portal, the assessee could not have accessed the notice in March 2021 without creating a login ID. He submitted, the assessee had registered his e-mail ID in ITBA portal only on 31.03.2022. Therefore, there was no occasion on the part of the assessee even to access the ITBA portal. Drawing our attention to the report of the Assessing Officer, learned counsel submitted that the response received from the Systems Directorate of the Department clearly reveals that on 30.03.2021, the ITBA generated notice u/s 148 of the Act was sent to an e-mail ID, which does not belong to the assessee. Thus, he submitted, the effect of notice u/s 148 of the Act, sent to an unrelated e-mail ID would amount to non-service of notice, hence, would invalidate all actions taken in pursuance to such notice as the service of notice u/s 148 of the Act is a sine qua non for making an assessment u/s 147 of the

Act. In this context he relied upon a decision of the Hon'ble Jurisdictional High Court in the case of Suman Jeet Agarwal vs. Income-tax Officer (2022) 143 taxmann.com 11(Delhi).

3.4 The learned Departmental Representative submitted, the assessee has not raised this particular issue before learned DRP. Without prejudice, he submitted that since the notice u/s 148 of the Act was generated in ITBA portal on 30.03.2021, it must have been visible to the assessee. Therefore, it is to be construed that the notice has been validly served upon the assessee.

4. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decision relied upon. The short issue that arises for consideration is whether the notice u/s 148 of the Act was served upon the assessee or not. There cannot be any manner of doubt that service of notice u/s 148 of the Act is a mandatory requirement for reopening and completion of assessment u/s 147 of the Act. Whether notice u/s 148 of the Act was validly served on the assessee or not, is a purely factual issue and has to be decided based on the facts and material available on record. In the draft assessment order, the Assessing Officer has observed that the ITBA generated notice u/s 148 of the Act was issued on 30.03.2021 and was duly served upon the assessee. However, the assessee has strongly disputed the aforesaid claim of the Assessing Officer. To

ascertain the crucial fact relating to service of notice issued u/s 148 of the Act, the Tribunal has issued following directions to the parties:

*“07-March-2024 When the matter was called out today, the preliminary issue raised by the Assessee centered around Ground No. 2 whereby the notice u/s. 148 of the Act is sought to be challenged as being without jurisdiction, vitiated in law, liable to be quashed and void ab-initio. The plea, inter alia, is that the assessee did not receive the notice u/s, 148 purported to have been issued on 30.03.2021.*

*In compliance with the earlier directions, the Assessing Officer appeared personally and assisted the Ld. CIT-DR. In the course of proceedings, the Assessing Officer logged into the ITBA Portal in the Court Room and showed the case history of the matter. The worklist on ITBA portal showed notice(s) sent to the assessee item- wise from time to time. The last column in the worklist included a link to view email. On clicking on 'view email', a page opened showing the email address of the recipient and the content of the email. It also had boxes to show the delivery date/time and status of the email sent. However, in most of the items these boxes were blank and not showing any details of delivery. In some cases notification that email is bounced back was seen and no further details could be seen from the portal.*

*On the other hand, Ld. AR showed the assessee's account on e-filing portal which showed that the notice under section 148 was addressed to the email account which does not belong to the assessee and there was no mention of the date of sending the email. Delivery status WAS also not known from the e-filing portal.*

*On a query from the Bench, the AO was unable to answer why the delivery status was not visible from the ITBA portal and how does the Revenue intend to establish that the notice has actually been issued to the assessee. The Assessing Officer/CIT-DR requested for some time to respond.*

*Meanwhile, the Ld. A.R. was directed to file a fact sheet including the summation of today's proceeding qua the preliminary issue and thereafter Ld. DR was directed to obtain a para-wise reply thereof. Accordingly, Registry is directed to post the matter for further hearing as Part-Heard on 04.04.2024. Above was announced in the Open Court in the presence of both the parties.”*

4.1 From the observations made by the learned Bench, reproduced above, it can be seen that the Assessing Officer was present in the court room to show the case history of the proceedings. From the work list of ITBA portal, it was found that on clicking the 'view e-mail' box, though a page opened showing the e-mail address of the recipient and the contents of the e-mail, however, other boxes to show the delivery date/time and status of the e-mail sent were found to be blank and did not show any date of delivery. In some instances notification that e-mail has bounced was seen and no further detail could be seen from the portal. The Bench also took cognizance of the submission made by the assessee that the alleged e-mail generated on ITBA portal dated 30.03.2021 was sent to an e-mail account, which did not belong to the assessee. Considering the claim and counter claim made by the parties, the Bench directed the assessee to file a fact sheet and at the same time directed the Revenue to obtain a para-wise reply of the Assessing Officer.

4.2 In course of hearing, learned Departmental Representative has furnished the report of the Assessing Officer containing the response received from the Systems Directorate regarding the detailed status of the e-mails sent to the assessee. The said response of the systems Directorate reads as under:

*"Dear AO,*

*Please refer to the trail mail.*

*In this regard, the information as received from the ITBA technical team is as under:*

*1) Confirmation of whether any notice u/s 148 was served through ITBA at the e-mail ids [brettleee58@hotmail.com](mailto:brettleee58@hotmail.com) or [info@insiteorg.com](mailto:info@insiteorg.com) on 30/03/2021*

*Notice u/s 148 was generated on 30-Mar-2021 and email was triggered by system on 30-Mar-2021 on mail id [INFO@INSITEORG.COM](mailto:INFO@INSITEORG.COM) however delivery status was bounced with reason mentioned-*

*Mail was retriggered by user on 26-JUN-21 on email id [INFO@INSITEORG.COM](mailto:INFO@INSITEORG.COM) however same was bounced again.*

*Mail was resent by user on 23-Jan-22 on mail id [brett.lee58@hotmail.com](mailto:brett.lee58@hotmail.com) however it was not triggered from the system.*

*2) Source of the above two e-mail ids from where ITBA picked up these e-mail addresses for service of notice u/s 148 of the Act.*

*Both email ids were entered by ITD user."*

4.3 A perusal of the response of Systems Directorate would reveal that notice u/s 148 of the Act generated on 30.03.2021 was sent to e-mail ID [info@insiteorg.com](mailto:info@insiteorg.com), which, however, was not served but bounced. The same e-mail was again retriggered on 26.06.2021 on very same e-mail ID [info@insiteorg.com](mailto:info@insiteorg.com), however, it again bounced back. It is further seen from the aforesaid response that same e-mail was again sent on 23.01.2022 on e-mail ID [brett.lee58@hotmail.com](mailto:brett.lee58@hotmail.com). However, it was not triggered from the system. It is

further to be noted that as per the response of the Systems Directorate, both the e-mail IDs were generated by ITD user. On a query from the Bench, learned Departmental Representative clarified that ITD user means the 'Assessing Officer'.

4.4 Thus, from the response of the Systems Directorate, as noted above, it is very much clear that the notice u/s 148 of the Act generated in the ITBA portal on 30.03.2021 was sent to e-mail ID [info@insiteorg.com](mailto:info@insiteorg.com). It is the specific assertion of the assessee that the said e-mail ID does not belong to him. To prove such fact, learned counsel for the assessee has brought to our notice that for the first time the assessee through the help of a tax consultant in India registered himself on the e-filing portal on 31.03.2022 with the e-mail ID [brett.lee58@hotmail.com](mailto:brett.lee58@hotmail.com), which was confirmed through the e-mail received from [communication@cpc.gov.in](mailto:communication@cpc.gov.in). Thus, the facts narrated above clearly reveal that the notice u/s 148 of the Act generated on 30.03.2021, on ITBA portal was not served on the assessee.

4.5 At this stage, we must observe that for the assessment year under dispute the limitation for issuing notice u/s 148 of the Act in usual course would have ended on 30.03.2020. However, due to the situation arising on account of Covid-19, the limitation got extended to 31.03.2021. Pertinently, just one day prior to expiry of limitation the Assessing Officer issued notice u/s 148 of the Act through the ITBA portal. However, the Revenue has failed to establish on record that the notice so

issued was served upon the assessee. This fact becomes further clear from the response of the Systems Directorate to the Assessing Officer, reproduced elsewhere in the order. Therefore, it is an established fact on record that notice u/s 148 of the Act was never served on the assessee within the period of limitation prescribed under the Statute. It is now fairly well settled that service of notice u/s 148 of the Act is a mandatory statutory requirement for framing an assessment u/s 147. In absence of a valid service of notice u/s 148 of the Act, the consequential action flowing there from would necessarily have to be declared as invalid.

4.6 Before us, learned Departmental Representative has submitted that since the notice u/s 148 of the Act was generated in the ITBA portal on 30.03.2021, it must have been visible to the assessee. However, we do not accept this contention. When the assessee was given access to login to the ITBA portal in March, 2022, he could not have viewed the notice u/s 148 of the Act prior to it. Thus, in such a scenario, the date on which the assessee might have viewed the notice in the e-filing portal has to be considered as the date of issuance of notice, as held by the Hon'ble Jurisdictional High Court in the case of Suman Jeet Agarwal (supra). Considered in the aforesaid perspective, the notice under section 148 of the Act was not served within the period of limitation. Therefore, the facts discussed above inescapably leads to only one conclusion that there was no valid service of notice under section 148 of the Act on the assessee. That being the factual position

emerging on record, the assessment order passed has to be declared as invalid. Accordingly, we quash the assessment order.

5. In view of our decision above, the grounds on merits have become academic, hence, do not require adjudication.

6. Appeal is allowed as indicated above.

Order pronounced in open court on 29.05.2024.

**Sd/-**  
**(BRAJESH KUMAR SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SAKTIJIT DEY )**  
**VICE PRESIDENT**

**Dated: 29.05.2024.**

**\*MP\***

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI