IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "C" BENCH, BANGALORE

Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member

ITA No. 728/Bang/2024 (Assessment Year:2014-15)		
Ganganaghatta Shankarappa Ranganatha No. 120 Hoodi Apartments Cunningham Road Bengaluru 560052 PAN – AIEPG1800C	vs.	ITO, Ward - 5(3)(2) BMTC Building, 80 Ft Road 6th Block, Koramangala Bengaluru 560095
(Appellant)		(Respondent)

Assessee by:	Ms. Lakshmi, Advocate
Revenue by:	Shri Ganesh R. Gale, Standing Counsel

Date of hearing:	12.06.2024
Date of pronouncement:	20.08.2024

O R D E R

Per: KeshavDubey, J.M.

This appeal at the instance of the assessee is directed againstthe ADDL/ JCIT(A)'s Order dated 30.03.2024 vide DIN & order No. ITBA/APLS/S/250/2003-24/10611372018(1) passed under Section 250 of the Income Tax Act, 1961 (the Act) for the Assessment Year (AY) 2014-15.

2. The assessee has raised the following grounds of appeal: -

"1. The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs.7,33,880/- as against the total income reported by the Appellant of Rs.1,76,380 on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax (Appeals) erred in upholding that the service of notice through email is a valid notice on the basis that no

response was filed despite the Appellant placed written submissions on record in the facts and circumstances of the case.

4. *The learned Commissioner of Income-tax (Appeals) erred in upholding that order of assessment passed u/s 143(3) in the absence of any evidence of notice issued/served through email produced by the AO despite the Appellant discharged his onus by producing the affidavit for non-receipt of notice in the facts and circumstances ofthe case.*

5. *The learned Commissioner of Income-tax (Appeals) erred in upholding that the service of notice through email is a valid notice considering that the applicable rules were notified vide Notification No.89/2015/ F. No. 133/79/2015-TPL dated 2 December 2015 which is after the date of the service of notice contemplated by the AO being 24 Sept 2015.*

6. *The learned Commissioner of Income-tax (Appeals) ought to have adjudicated the merits of the matter and hence failed to exercise the powers conferred under section 250 of the Act in the facts and circumstances of the case.*

7. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

8. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

3. The brief facts of the case are that the assessee being an individual, filed his return of income for AY 2014-15 on 23.06.2014 declaring total income of Rs.1,76,380/- under the head 'Salary'& claimed exemption under the head Long term capital gains. The return was then processed u/s. 143(1) of the Act on 15.04.2015. The assessee was employed with M/s. Gem Superstructures Pvt. Ltd. during the FY 2013-14 as observed by the AO. Thereafter the case was selected under CASS and notices were issued calling for details in support of the return filed by the assessee.During the course of assessment proceedings the assessee claimed that no mandatory notice u/s 143(2) of the Act was **served** on the Assessee whereas the AOobserved in his order that notice u/s 143(2) of theAct was in fact issued on 7/9/2015 posting for the hearing on 23/09/2015. Further the notice dated 07/09/2015 was also served through e-mail on 24/09/2015 posting the case for hearing on 28/09/2015 as the earlier notice u/s 143(2) returned unserved by the Postal Authorities. Further during the course of Assessment proceedings the AO directed to furnish details with supporting sources for cash deposits in the SB account

with ShamraoViottal Cooperative (SVC) bank amounting to Rs.10.98 lakhs during the F.Y 2013-14. In response to which the assessee stated the same to be out of the family agriculture income along with the evidences. Further the AO also noticed that in SB A/c No. 64021635180 with the State Bank of Mysore for the period 01.04.2013 to 31.03.2014, the assessee has made total cash deposit amounting to Rs.5,57,500/- on different dates. In response, again the assessee reiterated that cash deposits are out of the family agriculture income only. The AO based on the enquiry carried with the SVC Bankfound that the declaration form made by the depositors namely Mr. G S Ranganath and Sri K T Shankaregowda and the paying in slip signed by Mr. G S Ranganath for the cash deposited on 03/01/2024 mentioned the source for cash deposited into the account no. 2033 is from the sale of the property. Accordingly the AO treated the cash deposits of Rs. 10 lakhs into the bank account were out of sale of property over & above the sale value reflected in the sale deed. Further considering the plan approval & the evidence of construction of residential house, the exemption was allowed u/s 54 of the Act by the AO.

3.1 Further the AO without considering the submission of the Assessee that the receipts of Rs.5,57,000/- was from the source of Agriculture& also in the absence of supporting evidence in respect of the sources, treatedthe entire cash deposits of Rs.5,57,500/- as income from unexplained sources and brought to tax as per the provisions of section 68 of the Act and accordingly assessed on a total income of Rs.7,33,880/-. Aggrieved by the assessment completed u/s. 143(3) of the Act dated 30.12.2016 the assessee preferred an appeal before the CIT(A).

4. The ld. CIT(A) observed that as per the provisions of s. 282(1) of the Act, the notice can be sent to the assessee’s email address and accordingly served show cause notice dated 22.03.2024 asking the assessee to show cause

as to why the notice sent through email should not be treated as a valid notice. As the assessee could not furnish any valid explanation in support of his contention and also observed that latter notices, i.e. hearing notices dated 10.09.2016 and 07.10.2016 and reminder dated 25.11.2016, which were sent through email were responded by the assessee, and accordingly concluded that the **notice issued** through email was a valid notice. The ld CIT(A) dismissed the appeal of the assessee on the basis of solitary technical ground without considering the merits of the case, although challenged by the assessee in the grounds of appeal. Aggrieved by the order of the ld. CIT(A) dated 30.03.2024 the assessee has filed the present appeal before the Tribunal.

5. Before us the learned A.R. of the assessee submitted that the ld. CIT(A) had not adjudicated the matter on merits although raised in the Grounds of Appeal and hence he failed to exercise the power conferred u/s. 250(6) of the Act. Further, the learned A.R. vehemently submitted that the ld. CIT(A) erred in upholding that **issue** of notice through email is a valid notice considering that the rule 127 were notified vide notification No. 89/15/F No. 133/79/2015-IPL dated 02.12.2015, which is after the date of service of noticethrough email as contemplatedby the AObeing 24/09/2015.

6. The learned D.R., on the other hand, supported the orders of the authorities below.

7. We have heard the rival contentions and perused the material on record. Before going into the merit of the case first we must first consider the only legal issues raised by the assessee that **whether the notice u/s 143(2) of the Act served through e-mail is a valid notice considering the fact that the applicable rule was notified only after the service of notice through email?**

7.1 It is an undisputed fact that the Notice U/s 143(2) of the Act dated 07/09/2015 could not be served physically as stated by the Assessee by way of

an Affidavit before the ld. CIT(A). Further the Ld. AO also acknowledges the same by observing in his Order that the notice U/s 143(2) of the Act dated 07/09/2015 was returned unserved by the postal authorities with the remarks on the postal cover. Therefore though the notice was issued but it was never served physically on the Assessee.

7.2 Further, the AO claims that the above notice u/s 143(2) of the Act dated 07/09/2015 was also sent through e-mail of the assessee i.e.,gs_ranganath @yahoo.co.in on **24/09/2015** posting the case for hearing on 28/09/2015. The Assessee now challenges the validity of the service of the notice U/s 143(2) of the Act through Email. It is worthwhile here to note that the Assessee never denied to have not received the notice u/s 143(2) of the Act through email. The Authorities below have also observed that the above said email id of the assessee has been used for communicating with the assessee wherein further notices dated 10/09/2016, letter dated 07/10/2016, reminder letter dated 25/11/2016 and reply from the assessee on 18/10/2016 during the course of scrutiny proceedings. The Authorities below further observed that there has been no change in the Mail ID, which only proves that the notices/letters issued in the course of Scrutiny proceedings have been communicated to the assessee. Thus we take a note that it is not a case of non service of mandatory notice within the stipulated period but in fact the assessee challenges the validity of the mode of the service of notice for which the rules was notified only after alleged service through email.

7.3 At this stage it is appropriate to take note of relevant portion of the Section 143(2) of the Act, section 292BB of the Act, Section 282 of the Act as well as Rule 127 of the Rules applicable for the purpose of this case which reads as under-

Section 143(2)-

"[(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,-

(ii) Notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]

7.4 Therefore, on plain reading of the above section it is clear that the AO is required to **serve** notice u/s 143(2) of the Act for the Asst. Year 2014-15 on or before 30/09/2015 as the Assessee had filed his return of income on 23/06/2014. It is also well settled law that there is a difference between 'issue of notice' & 'service of notice'. What the section requires is to serve the notice U/s 143(2) on or before the expiry of six months from the end of the financial year in which the return is furnished.

Section 292BB-

[**Notice deemed to be valid in certain circumstances**.

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.]

7.5 On plain reading of the above section we found that the Assessee shall be precluded from taking any objection with regard to non service of Notice, Non service of notice in time as well as service of the notice in the improper manner if he has appeared in any proceeding or co-operated in any enquiry. In the present case we found that during the course of the assessment proceedings the assessee had filed his reply not only on legal issues but also on merits of the case & thus we are of the opinion that the assessee has appeared and cooperated with the proceedings.

7.6 Now as per the proviso to section 292BB, nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment. As observed by the AO during the course of the Assessment proceedings itself the assessee had raised the objection of non service/improper service of notice u/s 143(2) of the Act vide letter dated 30/11/2016. Therefore in our considered opinion as the assessee had objected the non service of the notice u/s 143(2) before the completion of the assessment proceedings the provisions contained in section 292BB shall not apply to the case of the Assessee.Thus we can now proceed with the contention of the Assessee that service of Notice u/s 143(2) of the Act is not in a proper manner or prescribed modes.

Section 282- [Substituted by the Finance (No. 2) Act,2009, w.e.f. 01/10/2009]

[**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 rules 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).]

7.7 Thus on plain reading of the sub section (1), the service of notice may be made by delivering or transmitting a copy thereof to the person-

- By post or courier as approved by board
- In the form of electronic record as provided in Chapter IV of the Information Technology Act.2000
- By any other means of transmission of documents as provided by rules made by the board.

7.8 Sub section (2) of the Section 282 further states that the board may make rules providing for the address (including the address for electronic mail or electronic mail message) to which the communication may be delivered or transmitted to the person therein.

7.9 So from the plain reading of the entire Section 282, we come to the conclusion that the Sub section (1) talks about modes & means of delivery or transmission and sub-section (2) talks about the address (including the address for electronic mail or electronic mail message) to which the communication may be delivered or transmitted.

7.10 In our considered opinion both the modes & means of delivery as well as address to which communication may be delivered are prerequisites for the effective service of the notice which we can't ignore.

7.11 Further we also note that the Board has the power to make rules for "other means of transmission of documents" as per section 282(1) as well as for providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication may be delivered or transmitted.

Insertion of Rule 127-

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 2nd December, 2015
Income-tax

G.S.R. 923(E).—In exercise of the powers conferred by section 282 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (18thAmendment) Rules, 2015.

(2) They shall come into force on the date of publication in the Official Gazette.

2. In the Income-tax Rules, 1962, after rule 126, following rule shall be inserted, namely:-
"**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 subsection(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;

(b) for communications delivered or transmitted electronically-

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

(ii) the email address available in the last income-tax return furnished by the addressee; or
(iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or

(iv)any email 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."

[Notification No. 89/2015/ F. No. 133/79/2015-TPL]

EKTA JAIN, Dy. Secy.

Note.—The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification number S.O. 969(E), dated the 26th March, 1962 and last amended by Income-tax (17thAmendment) Rules, 2015 vide notification S. O. No. 2877(E) dated 20th October, 2015.

7.12 Thus, it can be seen from the above that after rule 126, the Rule 127 was inserted by way of Notification vide No. 89/2015/ F. No. 133/79/2015-TPL dated **02/12/2015** which states that for the purposes of Section 282(1) of the Act, the addresses (including the address for electronic mail or electronic mail message) to which the notice nay be delivered or transmitted.

7.13 In the present case the Assessee's main contention is that the Authorities below failed to appreciate that Service of Notice U/s 143(2) of the Act through email on 24/09/2015 is not valid Notice especially when the applicable rules were notified only on 02/12/2015 by way of Notification No. 89/2015/ F. No. 133/79/2015-TPL by way of inserting Rule-127.

7.14 At this juncture before coming to the conclusion we would also like to take note of the section 282 prior to its substitution i.e. on or before 01/10/2009 which read as under-

"282. Service of notice generally.-(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed-

(a) in the case of firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(b) in the case of a local authority or company, to the principal officer thereof;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual), to the person who manages or control his affairs."

7.15 Thus section 282, as it stood prior to 01/10/2009, provided that a notice or requisition under the I. Tax Act may be served on the person named therein, either by post, or like a summon issued by a Court under CPC. Regarding the person upon whom such service could be made it was specifically provided in the sub-section (2) that service can be done, (i) in the case of firm/HUF-- upon member/manager of the firm or any adult member of HUF, (ii) in the case of local authority/company-- upon principal officer, (iii) in the case of an AOP/BOI—upon principal officer/member, (iv) in the case of any other person (not being individual)—upon the person who manages/control its affairs. The amended Section 282, as per Finance Act (No.2), 2009 w.e.f 01/10/2009, provides that a notice/summon/requisition/order/any communication issued under the Act may be served by delivery or transmission by (i) post courier as may be approved, or (ii) in the manner as provided in CPC, or (iii) in the form of an electronic record as provided under the I T Act, 2000, or (iv) by any other means of transmission of documents as provided by Rules made by the Board in this behalf. The Board is empowered bu sub section (2) to frame Rules for addresses including electronic address for emails, etc. The meaning of "electronic mail" or electronic mail message" shall be the same as provided in the explanation to section 66A of IT Act, 2000. This explanation provides that "the terms "electronic mail" and "electronic mail message" mean a message or information created or

transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message".

Difference in the Law under section 282 as it existed prior to 01/10/2009 and thereafter-

7.16 We are of the opinion that prior to 01/10/2009 section 282 specified the persons upon whom notice/requisition could be addressed, whereas section 282 as it existed after 01/10/2009 did not provide as to whom the notice/summon/order/requisition could be addressed. However, the general rule is that notice/summon, etc, should be addressed only to the assessee, i.e., in the case of the Firm it should be addressed to the firm, in the case of HUF it should be addressed to the HUF and the like. It was only as an abundant caution that an option was given to the Department, by the use of the word "may" in pre 01/10/2009 law, also to address the notice/requisition to the partner/member, etc., in addition to, or instead of, the main assessee. In Post 01/10/2009 law such an option is no longer considered necessary. The notice/order, etc., has to be addressed to the Income-Tax Assessee for whom it is meant and served upon it, or on a person authorized to receive. The law as provided in CPC, 1908 (5 of 1908) for service of summons will hold the field in respect of manner in which such notice/orders/summons under the IT Act has to be Served.

7.17 We are of the firm opinion that as the addresses, as per Rule 127, at which service of notice to be affected were notified only on 02/12/2015, any service of notice through Email prior to this date, without the explicit legal backing of such rule are invalid as the prescribed method for service is not followed. In the present case the Notice u/s 143(2) of the Act was required to be served on or before 30/09/2015 either by post or as if it were a summons issued by a court under the code of Civil Procedure, 1908 (5 of 1908) which

has not been served on the Assessee on or before 30/09/2005 in the prescribed manner & accordingly we hold that the entire Assessment proceeding are bad in law and void-ab-intio. We would like to reiterate that for the valid service of notice u/s 143(2) of the Act, both the modes & means of delivery as well as address to which notices may be delivered are prerequisites for the effective service of the notice. Accordingly, we allow the Appeal of the Assessee on this ground.

8. Since we have already annulled the entire assessment proceedings on the ground of improper manner of service of notice, we deems it appropriate not to deal with the other grounds related to merits of the case. Therefore they are remain open.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20th August, 2024.

Sd/-	Sd/-
(Chandra Poojari)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bengaluru, Dated: 20th August, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	05.08.2024		Sr. PS/PS
2	Draft placed before author	06.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			