

**THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No. 98/Del/2024
(Assessment Year 2008-09)**

Maya Devi F-71, Patel Nagar-III, Ghaziabad, Uttar Pradesh-201001	Vs.	Income Tax Officer, Ward 1(4), CGO, Complex-1, Hapur Chungi, Uttar Pradesh-201002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AFTPD6087L		
Appellant	..	Respondent

Appellant by :	Sh. Praveen Jain, CA & Sh. Anubhav Joshi, CA
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	23.10.2024
Date of Pronouncement	29.10.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 20.11.2023 passed by the CIT(A) National Faceless Appeal Centre (NFAC), Delhi, arising out of the Assessment order dated 10.03.2016 passed by the ITO, Ward-1(4) Ghaziabad, Under Section 144/147 of the Income Tax Act (hereinafter referred to as 'the Act') for Assessment Year 2008-09.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The assessee before us, an individual, purchased an immovable property for Rs.73,09,000/- along with two others. On the basis of information available on records notices were sent to the assessee for furnishing the information in respect to the investment made in purchase of immovable property and the copy for ITR for the year under consideration. As the assessee did not file return of income for the year under consideration after recording reasons that the assessee had not disclosed its income during the year under consideration, an action under Section 147 of the Act was taken up. Notice under Section 148 of the Act dated 10.03.2015 was issued and served upon the assessee through registered post as well as through affixture by the inspector of the department on 16.03.2015. Since, no compliance had been made by the assessee the reassessment proceeding was finalized upon making addition of Rs.24,36,334/- i.e. his share of investment in the property purchased by him under Section 69 of the Act which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. The case of the assessee before us is this that notice issued under Section 148 of the Act dated 10.03.2015 was not on the assessee but on someone else who was the daughter of Shri

Subhash Gupta whereas the name of the father was Shri Deep Chand Gupta. In this connection he has drawn our attention to page 2 and 3 of the paper book file before us. Further that the notice which has been claimed to have been affixed by the Inspector of the department appearing at page 2 of the paper book filed before us, no signature of any witness to such affixture neither any report is forthcoming from the inspector who has claimed service made upon the assessee on 16.03.2015. Under this facts and circumstances of the matter as the notice under Section 148 of the Act is issued not on the assessee before us the initiation of proceeding is not sustainable in the eye of law and, therefore, liable to be quashed.

5. We have perused the notice issued under Section 148 of the Act dated 10.03.2015 appearing at page 2 of the paper book which has been issued to one Smt. Maya Devi, daughter of Shri Subhash Gupta, of H. No. A-85, DLF, Bhopra, Ghaziabad whereas ITR filed by the assessee appearing at page 5 of the paper book shows address of the assessee as Flat No. 71, Patel Nagar, Ghaziabad in the State of Uttar Pradesh. Further that, it is evident from the PAN Card of the assessee before us appearing at page 3 of the paper book that the name of the father of the assessee is Deep Chand Gupta and not Subash Gupta. From the above fact it is evident that notice was issued to someone else residing at H. No. A-85, DLF, Bhopra, Ghaziabad. It clearly indicates that the said notice dated 10.03.2015 has not been issued to the assessee before us and thus,

the same cannot be said to be a valid notice in the case of the assessee before us. Further that, it has been claimed that the notice has been sent through affixture by the inspector of the office on 16.03.2015 but signature of any witness at the time of service made and also the report in respect of such service made by the inspector are misplaced. It is noted that the entire fact narrated hereinabove has not been able to be controverted by the Ld. D.R.

6. Thus, having heard the Ld. Counsel appearing for the parties, having regard to the facts and circumstances of the case particularly the notice dated 10.03.2015 since issued to a different assessee under Section 148 of the Act. It is evident that no notice under Section 148 has ever been issued and served upon the assessee before us. As the notice dated 10.03.2015 issued on someone else, the same cannot be said to be applicable in the case of the assessee before us; the same is invalid. The reassessment proceeding is, thus, found to have been vitiated and therefore, quashed.

7. Assessee's appeal is, therefore, allowed.

Order pronounced in the open court on 29.10.2024

Sd/-

(Madhumita Roy)
JUDICIAL MEMBER

Dated 29.10.2024
PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI