

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **309/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2011-12

Jagtar Singh Bassi, C/o Y.K.& Co., Chartered Accountants, 4 th Floor, Ambika Tower, Police Lines, Jalandhar	Vs. बनाम	The ACIT (Int Taxation), Circle, Chandigarh
स्थायी लेखा सं./PAN No: GFXPB5393R		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Y.K. Sud, CA

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 12.09.2024

उदघोषणा की तारीख/Date of Pronouncement : 28.10.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 21.03.2024 of the Id. Commissioner of Income Tax (Appeals), Delhi-43 (herein referred to as CIT(A)

2. Grounds of appeal taken by the Assessee are as under: -

1. *That the CIT(A) was not justified in upholding the action of the AO in reopening of the assessment u/s 147/148 of the Income Tax Act 1961.*
2. *That while sustaining the action of the AO of initiating the reassessment proceedings u/s 147/148, CIT (A) failed to appreciate that neither the notice u/s 148 was served upon the assessee, nor the AO has any tangible material in his possession for formation of belief of escapement of income and further no sanction has been taken by the AO u/s 151 for issuance of the notice.*
3. *That the CIT (A) has wrongly upheld the addition of Rs. 1,66,13,000 made by the AO u/s 69 of the Income Tax Act 1961 and while sustaining the addition she failed to appreciate the complete trail of investment of Rs. 16613000 provided by the assessee duly supported by the documents.*
4. *That the CIT (A) has recorded the incorrect facts in her order for the reasons best known to her and pass the order in a biased manner which is highly deplorable.*
5. *That the orders of the ACIT and CIT (A) are against the Law and Facts of the case.*

3. At the very outset, the Counsel of the Assessee brought it on record that the notice was never served upon the assessee nor any verification letters were received because of the reason that assessee was NRI and living out of India. In fact assessee came to know from

branch manager Canara Bank VPO Virk, Jalandhar that his bank account has been attached/frozen by the department on account of demand of Rs. 18335883/- which was created as a consequence of framing a assessment u/s 144. The assessee is not in the knowledge that any kind of assessment order has been framed for the assessment year 2011-12 and no notice has been served on him since he is NRI. On knowing this fact assessee appointed his relative as the attorney in India Mrs. Rozy and attorney has appointed us as a counsel to complete the legal formalities in respect of order passed by the department. The counsel of the assessee immediately on his appointment has applied for Inspection of the file of the assessee and notices u/s 148, reasons for re-opening, notices u/s 142(1) and assessment order passed u/s 147 rw.s 144 as ex-party by way of inspection and physically going to Income Tax department Chandigarh. The notice u/s 142(1) dated 10-07-2018 was returned back by the Postal authorities with the remarks that "address of the assessee is incomplete" The notice u/s 142(1) dated 28-09-2018 was returned back by the Postal authorities with the remarks that "address of the assessee is incomplete". The show cause notice dated 17-10-2018 was returned back by the Postal authorities with the remarks that "address of the assessee is incomplete". The notice u/s

142(1) dated 23-10- 2018 was returned back by the Postal authorities with the remarks that “address of the assessee is incomplete.

4. We have considered the findings of the Assessing Officer in the assessment order and CIT(A) in the appeal order. We have also considered the arguments of the Id. DR on this issue. In fact, the Id. DR mainly relied on the findings given by the CIT(A). We have also gone through the written submission and paper book filed by the Counsel of the Assessee. We have also considered the arguments made by the Counsel of the Assessee in the proceedings before us. We find that although the Department issued various notices u/s 147/148 and for further assessment, even notices were sent by the Department through registered post but we also find that not even a single notice was served on the Assessee. Rather, it is brought on record by the Counsel of the Assessee, that during the inspection of the records it was found that all notices issued by the Department were returned back to the Department for various reasons. Keeping in view this fact that neither the notices u/s 148 for reopening of the case was served on the Assessee nor any other notices were ever served on the Assessee because of the fact that the Assessee is an NRI and he was not living in India and as such the Assessee could not receive any notice, the entire proceedings is vitiated because of non-

service of the notice to the Assessee. Accordingly, the action of the Assessing Officer of making assessment or the CIT(A) of passing appellate order are not justified. Various case laws have been brought on record such as 'Shubhashri Panicker vs. CIT', 403 ITR 434 in which the Hon'ble Rajasthan High Court has held that re-assessment notice must be served on the Assessee. It is a burden on Revenue to prove the service of notice sent by speed post. In the case of wrong address, no service of notice, the re-assessment proceedings are not valid. As per income tax Act, Similarly, the Hon'ble Delhi High Court in the case of 'Commissioner of Income tax vs. Chetan Gupta', 382 ITR 613 (Delhi) held as under:-

“REASSESSMENT-NOTICE-SERVICE OF VALID NOTICE WITHIN LIMITATION- CONDITION PRECEDENT FOR REASSESSMENT-BURDEN OF PROOFOF SERVICE OF NOTICE ON DEPARTMENT-PARTICIPATION IN REASSESSMENT PROCEEDINGS BY REPRESENTATIVE OF ASSESSEE DOES NOT RESULT INWAIVER OF NECESSITY OF SERVICE OF NOTICE-OBJECTION RAISED TONON-SERVICE OF NOTICE-REASSESSMENT PROCEEDINGS IGNORING OBJECTION-NOTICE AND CONSEQUENT REASSESSMENT NOT VALID- INCOME-TAX ACT, 1961, ss. 147, 148.”

5. Apart from these case laws, the ld. Counsel for the Assessee has also brought on record a number of other case laws which clearly show that in case notices issued u/s 148 has not been served upon

the Assessee, the assessment proceedings on the basis of that reopening is not valid.

6. In our considered opinion, the facts of this case are squarely covered by the ratio decided by the Hon'ble Rajasthan High Court and Hon'ble Delhi High Court in the case of 'Mrs. Shubhashri Panicker vs. CIT' (supra) and Hon'ble Delhi High Court in 'CIT v Chetan Gupta (supra). Hence, the assessment proceedings in this case is quashed.

7. As a result, the Assessee's appeal on this issue is allowed. Appeal on other Grounds do not survive.

8. In the result, Assessee's appeal is allowed.

Order pronounced on 28 .10.2024.

Sd/-
(A. D. JAIN)
Vice President

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

1.	Draft dictated	28.10.2024	Sr.PS
2.	Draft first placed before author		
3.	Approved draft comes to Sr.PS/PS		
4	Final draft placed before author		
5.	Order signed and pronounced on		
6	File sent to the Bench Clerk		Sr.PS
7.	Date on which file goes to the AR		
8.	Date on which file goes to the Head Clerk.		
9.	Date of dispatch of Order		